



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on April 11, 2020 wherein the Landlord sought monetary compensation from the Tenant in the amount of \$4,454.00, authority to retain her security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was originally scheduled for teleconference on August 18, 2020, continued on October 2, 2020 and concluded on December 10, 2020. Both parties called into the hearings. I accepted the Tenant's health care provider's submissions that during the August 18 and October 2 hearings the Tenant was not able to participate in the hearing due to medical issues. The hearings were adjourned to facilitate the Tenant obtaining the assistance of an advocate. This Decision must be read in conjunction with my Interim Decisions.

When the hearing reconvened on December 10, 2020 the Tenant appeared without an advocate. She confirmed that she was doing well and was prepared to proceed with the hearing on her own behalf. At all times the Tenant was articulate and able to convey her testimony and response to the Landlord's claims.

At the conclusion of the hearing the Landlord stated that she did not receive the Tenant's evidence. The Tenant responded that her evidence was sent by her caseworker by email. She was unable to confirm the date it was sent and did not provide proof of service. On balance I find it more likely the Landlord was not served the Tenant's evidence.

In any case, during the hearing before me the Tenant failed to refer to any of the evidence filed by her caseworker. As such, the significance of that documentary

evidence was not brought to my attention by the Tenant. For reasons which will be expanded upon further in this my Decision, I found it unnecessary to consider the Tenant's documentary evidence in making my Decision.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Is the Landlord entitled to recover the filing fee paid for this Application?

### Background and Evidence

This tenancy began April 15, 2015. Monthly rent was \$675.00 and the Tenant paid a \$350.00 security deposit.

The Landlord filed a previous Application for Dispute Resolution which was scheduled before me on August 2, 2020. By Decision dated the same day I granted the Landlord authority to retain \$100.00 from the Tenant's security deposit as recovery of the filing fee paid for that previous Application (the file number for that matter is included on the unpublished cover page of this my Decision). Accordingly, the Landlord continues to hold the sum of \$250.00 in trust as a security deposit for the Tenant.

The Landlord testified that the tenancy was supposed to end on February 1, 2020, but instead ended February 28, 2020.

In the Application before me the Landlord requested monetary compensation for the following:

Estimate to repair damage to rental unit	\$1,975.00
Cost to change mailbox lock and key	\$29.00

Unpaid rent for February 2020	\$725.00
Loss of rental income for March 2020	\$725.00
Loss of rental income for April 2020	\$725.00
Filing fee for prior application	\$100.00
Missing orbit chaise lounge cushion, table and umbrella	\$325.00
Extra garbage can	\$414.75
Filing fee for current application	\$100.00
<i>Security deposit credit</i>	\$350.00
<b>TOTAL CLAIMED</b>	<b>\$4,043.75</b>

At the hearing before me the Landlord testified that the estimate to fix the damage was accurate as she in fact paid \$1,975.00. The repairs included the following:

- replacing a light fixture;
- repairing electrical outlets;
- replacing the front door lock;
- repainting the cabinets;
- repairing the bifold door;
- replacing the toilet seat;
- repairing the garage door; and,
- cleaning the carpet.

In support of her claim, the Landlord submitted photos in evidence of the condition of the rental unit at the end of the tenancy.

The Landlord also claimed the Tenant failed to return the mailbox lock and key such that she incurred the cost to replace the locks.

The Landlord also sought compensation for unpaid rent. She stated that the Tenant failed to pay rent for February 2020, and although the tenancy ended at the end of February, she was unable to re-rent the rental unit until May 2020 as such she sought compensation for loss of rental income for March and April 2020.

The Landlord also claimed \$325.00 for the cost to replace a chaise lounge cushion, table and umbrella as she claimed these items were missing when the tenancy ended.

The Landlord stated that the Tenant called the municipality and ordered another garbage can and as such the Landlord was charged \$414.75 on her property taxes. In support of this she provided communication from the municipality which shows the

Tenant's phone number as being the one that called requesting the garbage can. In the claim before me the Landlord sought monetary compensation for this unauthorized charge.

The Tenant responded to the Landlord's claims as follows.

In response to the Landlord's claim for the cost to repair damage to the rental unit, the Tenant denied causing any damage and stated that the rental unit was in better condition when she left than when she moved in. The Tenant also noted that the Landlord did not perform a move in condition inspection.

In specific response to the Landlord's claims the Tenant testified as follows:

- The bedroom door always had an inch gap as depicted in the Landlord's photos.
- The Landlord was aware that the bi-fold door never closed properly.
- She had the carpets professionally cleaned when she moved out.
- Any damage to the rental unit, and in particular the holes in the drywall, and broken tile, were a result of a flood in the ceiling. She stated that the flood occurred on December 19, 2017 and claimed the Landlord failed to properly repair the damage.
- She confirmed she painted the kitchen cupboards. She also claimed the Landlord liked them. She also stated that the cupboards were second hand and previously outside.
- She denied removing the blinds.
- She denied that her dog scratched the door. The Tenant stated that her dog is very small and could not have done the damage; she stated that it was caused by the pitbull that lived there before she lived there.
- She does not recall spilling nail polish on the bathroom cabinet but questioned why it could not be removed with nail polish remover.
- The original toilet seat broke and she replaced it with a wooden one.

- The garage was cleaned by the Tenant's mother. The Tenant also stated that the holes in the wall in the garage were due to the Landlord operating a "grow op" in the garage.
- She denied removing any of the Landlord's possessions and stated that the outdoor patio furniture and umbrella remained at the rental unit when the tenancy ended.
- The Tenant confirmed that the garbage can was left at the rental unit; she also noted that there were five people living upstairs in addition to her unit, such that another can was required, and further noted that one of the other tenants could have called the municipality to order another can.
- She stated that she left all keys at the rental unit.
- She claimed that she and her mother cleaned the rental unit thoroughly.

In reply to the Tenant's submissions the Landlord confirmed that a pipe burst on December 18, 2017. She stated that all repairs had been completed and denied that the damage depicted in the photos was a result of this flood.

The Landlord confirmed that she did not complete a move in condition inspection. She stated that to prove the condition of the rental unit at the start of the tenancy, she relied on the letter provided by her previous tenant, who moved out in 2015, shortly before this tenancy began.

In terms of the kitchen cabinets, the Landlord stated that the cabinets were the original cabinets. She also denied the Tenant's assertion that she was happy with the paint job.

The Landlord stated that she obtained information from the City which confirmed that the Tenant called from her personal number and impersonated the Landlord to order a new garbage can. Documentary evidence submitted by the Landlord indicates the Tenant's phone number was used to make this call.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

Pursuant to section 23 and 35 of the *Act*, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

I find that the Landlord failed to perform a move in condition inspection as required by the *Act* and the *Regulations*. Although both parties provided testimony, the only documentary evidence provided to me in terms of the condition of the rental unit at the start was a letter from the previous tenant who writes that the unit was left clean and undamaged at the end of her testimony. I find this letter to be self-serving and of limited evidentiary value. I therefore find that I was provided with insufficient evidence as to the condition of the rental at the start of the tenancy.

The Tenant conceded that she painted the kitchen cabinets. She claims the Landlord gave her permission to do so. The Tenant stated that her friend assisted her and painted the cabinets with a brush. The photos submitted by the Landlord suggest the

cabinets were spray painted; however, the coverage was irregular, and the paint job was of such poor quality that the Landlord would need to repaint them. I award the Landlord **\$500.00** as a nominal sum towards the amount required to repaint the cabinets.

The Tenant testified that the toilet broke during the tenancy and that she replaced it with a wooden seat. The photos submitted by the Landlord show a broken plastic seat. I find it likely the Tenant replaced the one she purchased with the broken one when leaving the rental unit. I was not provided any evidence as to the age of the toilet seat and as such, I award the Landlord the nominal sum of **\$50.00** towards the cost to replace the broken seat.

I dismiss the balance of the Landlord's claim for the cost to repair and clean the rental unit for the following reasons. Without a move in condition inspection report or compelling evidence as to the condition of the rental, such as photos taken when the tenancy began, I find the Landlord has not met the burden of proving the Tenant damaged the rental unit. Without a move in condition inspection report, I was not able to assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the Tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants. I also found that the Landlord's photographs taken at the end of the tenancy did not prove the tenants caused damage to the rental unit, as there were no corresponding photographs from the beginning of the tenancy.

The Landlord sought the cost of replacing the locks on the rental unit claiming that the Tenant failed to return the keys. The Tenant testified that she left the keys in the rental unit.

While it is often the case that the parties' testimony will conflict, without corroborating evidence supporting one parties version of events, I am unable to prefer one parties testimony over the other. In this case, I am not persuaded the Landlord has met the burden of proving the Tenant failed to return the keys.

I also note that it is customary for landlords to change the locks on rental units when they enter into a new tenancy. This is specifically dealt with in section 25 of the *Act* which provides as follows:



### Rekeying locks for new tenants

**25** (1)At the request of a tenant at the start of a new tenancy, the landlord must

(a)rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b)pay all costs associated with the changes under paragraph (a).

(2)If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

I therefore dismiss the Landlord's request for the cost to change the locks on the rental unit.

I accept the Landlord's evidence that the Tenant vacated the rental unit at the end of February, yet failed to pay the February rent. I therefore award the Landlord recovery of the **\$725.00** rent for February.

The Landlord claimed she was not able to re-rent the unit until May 2020, and sought loss of rental income for March and April 2020. I was not provided any evidence of the Landlord's attempts to re-rent the unit such as advertising, or communication with prospective tenants. As such, I am unable to determine whether the Landlord mitigated their losses. As such, I dismiss the Landlord's claim for loss of rental income.

As the Landlord has been partially successful, I award the Landlord recover of the \$100.00 filing fee.

### Conclusion

The Landlord's monetary claim is granted in part. The Landlord is entitled to the sum of **\$1,375.00** for the following:

Nominal amount to repaint kitchen cabinets and replace toilet seat	\$550.00
Unpaid rent for February 2020	\$725.00
Filing fee for current application	\$100.00
<b>TOTAL AWARDED</b>	<b>\$1,375.00</b>

I authorize the Landlord to retain the balance of the Tenant's deposit, in the amount of \$250.00 and I award her a Monetary Order for the balance due in the amount of **\$1,125.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 23, 2020

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Residential Tenancy Branch