



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **FFL, MNDL-S**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenants attended ("the tenant"). The landlords attended ("the landlord"). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed their email addresses to which the Decision will be sent.

### *Agreement During Hearing*

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute. The hearing was placed on hold for 15 minutes to allow the landlord to provide a concise summary of the various aspects of the claim. During this time, the Arbitrator did not speak, and the parties did not address each other.

Following subsequent discussions, the tenant agreed to a monetary award in the amount of **\$1,945.38**.

No settlement was reached regarding the remainder of the landlord's claim, and the hearing continued to conclusion.

### *Reference to Evidence*

The parties submitted considerable evidence in a 2.3-hour hearing. Only key, relevant and admissible evidence is referenced in the Decision.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damages or compensation?

Is the landlord entitled to authorisation to apply the security deposit to the Monetary Order?

Is the landlord entitled to reimbursement of the filing fee?

### Background and Evidence

This is an application by a landlord for compensation for damages allegedly caused by the tenant. The landlord submitted considerable evidence and testimony in a 2.3-hour hearing. The tenant submitted no documentary evidence but responded to the landlord's claims in extensive testimony.

The tenant agreed the pet and security deposits in the total amount of \$1,000.00 could be applied to any Monetary Order.

The landlord submitted a copy of the tenancy agreement. The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Type of Tenancy	Monthly
Beginning Date	October 15, 2017
Vacancy Date	September 30, 2021
Rent payable on first of month	\$1,350.00

The landlord stated the unit is a house built in 1976 and purchased by them in 1996. The landlord and family lived in the house until 2015. The house was rented once before the tenant moved in in 2017.

The tenant stated that they are parents who lived in the house with four children and two dogs.

The parties agreed this is the second hearing between them. The file number of the first Application for Dispute Resolution is referenced on the first page. The previous Decision resulted in a settlement which included an agreement the tenant would move out on September 30, 2021.

At the hearing, the tenant agreed to monetary award for certain expenses claimed by the landlord in the total amount of **\$1,945.38**. The agreed upon expenses include cleaning, cost of appliance inspection and cost of replacement boards for the deck.

At the hearing, the landlord clarified the remainder of the disputed claims which are reflected in the following table.

The landlord seeks compensation for the following:

	ITEM	AMOUNT
1.	Walls – repair and painting	5,757.99
2.	Sewer repair	359.40
3.	Screens (estimate)	203.75
4.	Fencing panels (estimate)	433.33
5.	Labour 68.6 hours @ \$25.00	1,715.00
6.	Insurance deductibles (\$1,000.00 x 2)	2,000.00
	<b>TOTAL</b>	<b>\$10,469.47</b>

### *Condition Inspection Report*

The landlord submitted a copy of the condition inspection report on moving in which indicated the unit was in good condition in all material aspects. Some damage was noted, such as ripped wallpaper in one bedroom.

The parties agreed that the tenant did not attend two scheduled inspections on moving out. Accordingly, the landlord conducted an inspection which the tenant never signed. A copy of the report on moving out was submitted.

The landlord did not issue a Final Notice of Inspection.

### *Landlord's Claims*

Each of the landlord's claims and the tenant's responses are addressed.

#### *1. Walls – repair and painting - \$5,757.99*

The landlord testified the walls were freshly painted and in good condition when the tenant moved in during 2017. The landlord did not submit documentary evidence in support of this claim.

The landlord testified as follows. When the tenant moved out, the walls had several holes in them. They were filthy and had dog feces on them. There was mold caused by the tenant not keeping the house warm enough. The odor was “extreme”.

In support of their claim, the landlord submitted the condition inspection reports as

referenced. The landlord submitted a receipt for repairs to the walls and painting.

The landlord submitted several photos some of which are referenced here. Two of the photos showed damaged windowsills; one has dirt and mold and the other appears to have been chewed by a dog. Another photo was of some peeling drywall above a baseboard heater. A picture of a room containing a dirty carpet also included some peeling parts of a wall. The picture of a bathroom shows dark stains close to the baseboard. Pictures of the laundry room and bathroom do not illustrate wall damage. The picture of another room shows no wall damage.

The tenant denied the landlord's allegation that they damaged the walls more than normal usage of the years of the tenancy.

They testified as follows. A previous tenant was responsible for some damage which was present when they moved in.

Secondly, the tenant testified that the primary cause of any wall damage was five water leaks over which they had no control. Each of these leaking episodes were discussed in the hearing but are not all referenced here.

For example, there was a leak in the ceiling of one room which started 6 months after moving in. The tenant reported the problem. The landlord's insurer replaced flooring at a cost of \$26,000.00 and the landlord seeks to have the tenant compensate them for the cost of \$1,000.00 for the deductive. After this water event, some walls were damaged and not repaired. The tenant denied any responsibility for damage caused by this and other leaks for which he was not responsible.

Thirdly, the tenant said the building components of the house were dated and required maintenance. They testified as follows. The landlord is attempting to get the tenant to pay for repairs that are the landlord's responsibility as the homeowner. The house was old, and all parts were original to the initial construction in 1976. The house was "falling apart around them". They notified the landlord of the many repairs needed and water leaks. The copper pipes were "thin" and required replacing; as a result, they leaked frequently causing mould.

The tenant testified that the landlord's claim is exaggerated and is based on bad feelings between them for which the landlord sought revenge and retribution. The tenant testified that the landlord called Social Services and reported the tenant several times

for the care of their children.

The landlord denied the tenant's allegations. They acknowledged, "there were some leaks" from the pipes for which the tenant was not responsible. Nevertheless, the tenant was responsible for the damage and the deductibles for at least being slow in informing the landlord.

2. *Sewer repair* - \$359.40

The landlord testified as follows. When the tenants moved out, the landlord discovered that one of the toilets in the house required plumbing repairs. A plumber removed the toilet from the floor and took out 2 plastic utensils lodged inside which were blocking the pipe. The landlord submitted a receipt for the repair and requested compensation.

The tenant testified as follows. There were 3 toilets in the house. The toilet referenced in this claim did not work properly when they moved in. They reported the matter to the landlord and no effective repair took place. The plastic utensils may have been in the toilet before they moved in. They denied responsibility.

3. *Screens (estimate)* - \$203.75

The landlord claimed the reimbursement cost for two screens, one on the front door and one in a bedroom. The landlord submitted an estimate in the above amount and stated he has not carried out the repair yet.

The tenant denied there was a screen on the front door when they moved in. They stated the other screen was damaged by the company employed to do remediation for water damage to the house. The tenant denied any responsibility for this expense.

4. *Fencing panels (estimate)* - \$433.33

The landlord claimed damage to fencing panels. The landlord submitted a photo in support of the claim along with an estimate of the repair estimate. The landlord did not submit evidence of the age of the panels or their original cost. No receipt was submitted as the landlord has not carried out the repair yet.

The tenant denied they were responsible for this expense. They testified the panels were damaged when a tree fell on them. The tenant denied any responsibility for this

expense.

5. *Labour 68.6 hours @ \$25.00 - \$1,715.00*

The landlord claimed they spent 68.6 hours repairing and cleaning the house beyond the above claims for which they seek compensation at the rate of \$25.00 an hour. The landlord submitted many photos showing debris and garbage left in the unit. The landlord testified they kept daily track of the time although the daily record and corresponding activity were not submitted.

The tenant denied that the landlord spent any of this time as claimed. The tenant acknowledged they left the unit requiring cleaning and as stated earlier, they agreed to compensate the landlord for cleaning costs and some repairs. They testified that the unit is an older home requiring normal age-related maintenance carried out by the landlord for which the tenant bears no responsibility.

6. *Insurance Deductibles - \$2,000.00*

The landlord testified that the landlord's insurance paid two substantial claims each resulting in a \$1,000.00 deductible paid by the landlord. The landlord did not submit evidence of this payment or the insurer's opinion regarding cause.

Considerable argument took place between the parties about the cause of the water leaks in the house. Not all these allegations and contentions are reviewed here.

The landlord testified as follows. The first claim related to the replacement of flooring caused by water damage from a leak in the pipes. The second claim related to water damage which first appeared on a window, and which was not reported by the tenant in a timely manner resulting in considerable water damage. The landlord claimed the tenant is responsible for each incident and should reimburse them for the two deductibles in the total amount of \$2,000.00.

The tenant denied responsibility for these two claims and any damage caused by the other three major leaking events. They testified as follows. The key leaking and water damage episodes started about a year after the tenants moved in. The tenant claimed this resulted in a collapsed ceiling in one room and water damage in others. The second leak involved a malfunctioning kitchen faucet which caused water damage in the adjacent floor and wall. The parties acknowledged the tenant paid for the repair and a

new faucet themselves.

As stated earlier, the tenant believed the cause of the leaks was the age of the pipes. The house was dated, and the original copper piping was “thin” and at the end of its life.

The landlord acknowledged there were “a couple of water leaks” and the tenant is responsible for the damage by failing to notify the landlord.

The tenant denied they failed to notify the landlord. They testified that the parties were on good terms most of the tenancy. The tenant repeatedly told the landlord about the problems with the house. Neither party submitted supporting documents.

### *Summary*

The landlord claimed a Monetary Order as set out above. The tenant requested that the landlord’s claim be dismissed without leave to reapply.

### Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

### *Standard of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.



### *Four-part Test*

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

. . .

*67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

### *Credibility*

In considering the application, I weighed the credibility of the parties. I considered the two competing versions of responsibility for the landlord's time and expenses (or estimate expenses). Each party vehemently blamed the other.

The tenant acknowledged that he still had the emails sent to the landlord about the

matters at hand as well as photos. The tenant did not provide a convincing reason for failing to produce even one document for the hearing.

While the landlord's testimony was supported by some documents, I find they failed to dispel the tenant's assertions about the repairs and maintenance being caused by normal ageing and decay of the unit for which the tenant is not culpable.

Each claim is addressed.

### *Condition Inspection Report*

I find that the Condition Inspection Report on moving out to be unreliable as evidence. The landlord did not provide a Final Notice and the tenant was not present. I therefore do not give much weight to the findings of damage as reported by the landlord in the report.

However, I note the comment in the Report on moving in about one room: "wallpaper ripped".

### *Findings*

#### *1. Walls – repair and painting - \$5,757.99*

I have considered the landlord's evidence including the invoice and the photos. I acknowledge the landlord's assertion that the walls were severely damaged and filthy.

However, the photos submitted by the landlord do not fully support this viewpoint. Some damage is noted, particularly to a windowsill that may have been chewed by a dog. The remainder of the photos illustrate an older home with walls and trim that may be original. The tenant's testimony is that the house needed renovation and many building components were at the end of their useful life. This seems to me to be a reasonable observation supported by the landlord's photographs and testimony about the age and history of the building.

I find a common sense view is that the rental house was an older home with many aging components in need of normal replacement or repair. These conditions led to normal deterioration such as leaking pipes which caused damage. I find the tenant is not responsible for the water damage.

I accept the landlord incurred the expense for wall repair and painting. However, I conclude that this expense in its entirety cannot be passed on to the tenant.

I have considered RTB *Policy Guideline # 40 – Useful Life of Building Elements*. This Guideline states as follows:

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The Guideline goes on to say that the useful life of paint is 4 years of drywall is 20, and wood windows/window framing is 15 years.

I do not accept the landlord's testimony that the walls were all freshly painted and were in like-new condition when the tenant moved in; the condition inspection report notes one wall had damage, as stated earlier. I conclude that the walls needed some maintenance, repair and painting primarily because they were past their useful life as defined in the Guideline.

Because the landlord did not submit adequate evidence establishing the age and condition of the walls, I find I am unable to determine on the evidence precisely how much damage there was and how much of that was attributable to the tenant.

Nevertheless, I find the tenant did cause some damage to the walls for which they are responsible to compensate the landlord. For example, I find the tenant's dog chewed the window ledge shown in one of the pictures. I therefore find the landlord has met the first and second steps of the 4-part test and find they have met the burden of proof that the tenant failed to comply with their obligations and are responsible for some wall damage.

In determining the amount of damages, I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find this is an appropriate situation for the award of a nominal amount.

Considering the testimony, the evidence and this Policy Guideline, I therefore award the landlord a nominal amount under this heading of \$200.00.

2. *Sewer repair - \$359.40*

I find I am unable to accept the tenant’s explanation that the toilet never worked. I find a more likely version of events is that the toilet clogged during the tenancy from the plastic utensils being flushed, perhaps by the tenant’s children. The clogging was not reported to the landlord, the toilet was not repaired, and the family used the other toilets.

I have considered evidence. I find the landlord has met the burden of proof on a balance of probabilities that toilet was in good condition when the tenant moved in, the tenant damaged the toilet, the landlord incurred the expense for repairs, the repair amount is reasonable, and the tenant must compensate the landlord in this amount. I therefore award the landlord the sum of requested under this heading.

I accordingly award the landlord \$359.40 under this heading.

3. *Screens (estimate) - 203.75*

I have considered the evidence. I find the landlord has not met the burden of proof on a balance of probabilities that screens were in place and in good condition when the tenant moved in, and the tenant damaged them. The landlord has failed to show an expense as claimed.

I therefore deny the landlord an award under this heading and the claim is dismissed without leave to reapply.

4. *Fencing panels (estimate) - \$433.33*

I have considered the evidence. I find the landlord has not met the burden of proof on a balance of probabilities that fencing panels were damaged by the tenant. The landlord

has failed to show an expense as claimed.

I therefore deny the landlord an award under this heading and the claim is dismissed without leave to reapply.

5. Labour 68.6 hours @ \$25.00 - 1,715.00

The landlord claimed the tenant caused damage which resulted in considerable time in labour on various jobs related to repairs for which the tenant is responsible.

The landlord testified that they recorded the time they spent on a daily calendar, a copy of which was not submitted. They submitted no evidence to support this aspect of the claim.

The tenant denied the landlord's testimony and asserted that the hours claimed were guesswork and included the landlord's normal activities as a homeowner.

Given the evidence and photographs, I find it is likely that the landlord has incurred some expenses of time because of the condition of the unit at the end of the tenancy which required time and effort on their part. For example, the landlord still must repair the deck damage acknowledged by the tenant as caused by them. The tenant has agreed to pay for the cost of the replacement boards.

However, I am unable to determine with any certainty how many hours can be considered under this heading. I find the landlord claimed expenses, such as wall repair, which I have found are not the tenant's full responsibility. I am therefore not able to calculate with any accuracy the number of hours to which the landlord is entitled to compensation.

Further to the provisions in the Policy Guideline referenced above, I find this is an appropriate situation for the award of nominal damages. In view of the evidence, I award the landlord \$200.00 for nominal damages under this heading.

6. Insurance deductibles (\$1,000.00 x 2) - \$2,000.00

As stated above, I find the tenant is not responsible for water leaks to the house. I therefore find the landlord has not met the first step in the 4-part test.

I find the landlord has failed to meet to establish the tenant has failed to comply with the Act or the tenancy agreement. I find the landlord has failed to meet the burden of proof under this heading.

Accordingly, this claim is dismissed without leave to reapply.

### *Summary*

My award is summarized as follows:

	<b>ITEM</b>	<b>AMOUNT</b>
1.	Settlement	\$1,945.38
2.	Wall repair and painting	\$200.00
3.	Sewer repair	\$359.40
4.	Labour 68.6 hours @ \$25.00	\$200.00
	<b>TOTAL</b>	<b>\$2,704.78</b>

### *Security deposit*

As stated earlier, the tenant authorized the landlord to apply the deposits of \$1,000.00 to the award.

### *Filing fee*

As the landlord has been successful in this matter, I award the landlord \$100.00 for reimbursement of the filing fee.

I therefore grant a Monetary Order of **\$2,404.78** to the landlord calculated as follows:

<b>ITEM</b>	<b>AMOUNT</b>
Award set out above	\$2,704.78
Filing fee	\$100.00
(Less Deposits)	(\$1,000.00)
<b>MONETARY ORDER</b>	<b>\$1,804.78</b>

Conclusion

The landlord is granted a Monetary Order of **\$1,804.78**. The Monetary Order must be served on the tenant. The Monetary Order may be filed and enforced as an Order of the courts of BC.

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: April 13, 2022

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Residential Tenancy Branch