



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S MNDCL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$2,900 for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord and tenant AE (tenant) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they were served with and had the opportunity to review the documentary evidence from the landlord. The tenant confirmed they did not serve documentary evidence on the landlord. Given the above, I find the tenant was served in accordance with the Act.

### Preliminary and Procedural Matters

Firstly, a previous decision dated August 12, 2021 was referred to during the hearing and will be addressed as Previous Decision for the remainder of this Decision. The file number of the Previous Decision has been included on the cover page of this Decision for ease of reference.

In the Previous Decision, the tenant was successful in applying for monetary compensation in terms of doubling of the security deposit for a total monetary award of \$1,537.50. As the security deposit has already been dealt with, and pursuant to section 64(3)(c) of the Act, I have removed the request for the security deposit from the landlord's application as that matter has already been decided upon, which I am unable to address further due to the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

With respect to *res judicata*, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I will not be considering the security deposit further in this Decision.

In addition, the parties confirmed their respective email addresses during the hearing. The parties confirmed their understanding that the Decision would be emailed to the parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2020 and converted to a month-to-month tenancy after August 31, 2021. Monthly rent was \$1,650 per month and was due on the first day of each month.

The landlord's monetary claim for \$2,900 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Wall repair	\$200
2. Loss of rent for May 2021, plus	\$1,800
3. Tenant placing fee	\$800
4. Filing fee	\$100
<b>TOTAL</b>	<b>\$2,900</b>

Firstly, the tenants did not agree to any of the items being claimed by the landlord.

Regarding item 1, the landlord has claimed \$200 for the cost to repair four walls of the rental unit that the landlord testified were damaged beyond reasonable wear and tear. There is no dispute that the landlord did not complete an incoming Condition Inspection Report (CIR) or an outgoing CIR at the start or at the end of the tenancy, which I will address later in this Decision. The landlord claims they did a “walk through” but nothing was in writing.

The landlord referred to 6 photos submitted in evidence, which are titled as follows and to which I have assigned a corresponding number as follows:

1. [damage\\_to\\_living\\_room\\_wall.jpg](#)
2. [damage\\_to\\_second\\_living\\_room\\_wall.jpg](#)
3. [damage\\_to\\_kitchen\\_wall.jpg](#)
4. [damage\\_to\\_dining\\_room\\_wall.jpg](#)

5. [damage\\_to\\_bedroom\\_wall.jpg](#)
6. [damage\\_to\\_second\\_bedroom\\_wall.jpg](#)

The following is a description of what each photo shows:

Photo #	Description
1	5 small drywall spackle (spackle) marks on one wall
2	5 tiny holes marked with green painter tape
3	14 small spackle marks on one wall
4	2 large spackle marks on one wall
5	6 small spackle marks on one wall
6	2 small spackle marks on one wall and 3 small spackle marks on another wall

The landlord testified that their “handyperson” made the spackle marks on the walls and that were no before photos to show the size of the holes behind the spackle. A receipt from the handyperson for \$200 was submitted in evidence and states in part “4 walls.”

The tenant’s response to item 1 was that the photos were pretty accurate and that the holes were nothing more than in any other rental unit they have rented and that they always had their security deposit returned. The tenant claims the photos show normal wear and tear. Regarding photo 3, the tenant confirmed that the 14 holes were left when they removed the shelving they had installed in the kitchen.

Regarding item 2, the landlords have claimed \$1,800 for loss of rent for May 2021. The landlord stated that the fixed-term tenancy did not end until August 31, 2021 and that the tenant vacated early on April 30, 2021, breaching the fixed-term tenancy. The landlord writes that they were unable to secure a new tenant until June 1, 2021. The landlord stated that the new tenants were paying \$1,600 per month, which was \$50 less than what the tenant was paying, so the landlord is also seeking the \$50 shortfall for June, July and August of 2021 for a total of \$150 to be added to the \$1,650 loss of rent for May 2021, which is a grand total of \$1,800 for this item. Submitted in evidence by the landlord is a copy of the new tenancy agreement effective June 1, 2021 for \$1,600 per month.

The tenant’s response was that they were pregnant and the unit was too small and that they gave more than one month of notice on March 28, 2021 to the landlord that they would be vacating on April 30, 2021.



Regarding item 3, the landlord has claimed \$800 for a tenant placement fee and that the invoice for \$800 was submitted in evidence. The tenant had no response to this item during the hearing.

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

I will first address the lack of an incoming and outgoing Condition Inspection Report (CIR). Sections 23 and 35 respectively require a landlord to complete both an incoming and outgoing CIR at the start and the end of the tenancy and as the landlord failed to do so, **I caution** the landlord to comply with sections 23 and 35 of the Act in the future.

**Item 1** – I have carefully reviewed the 6 photos submitted in evidence by the landlord.

I have also considered Residential Tenancy Branch (RTB) Policy Guideline 1 – *Landlord & Tenant – Responsibility for Residential Premises* (Guideline 1) which applies and states under “Walls”:

#### Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and

- removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
  3. The tenant is responsible for all deliberate or negligent damage to the walls.

I find all photos, with the exception of photo 3, show repaired holes that are not excessive and are examples of reasonable wear and tear. In addition, when all photos except one show spackle over the actual holes, I am unable to determine the size of the holes behind the spackle. Regarding photo 3; however, there are 14 spackle marks on one wall, which the tenant confirmed during the hearing that these were from shelving they installed. I find 14 holes on one wall to be excessive and that the tenants are responsible for the repair to that wall.

In addition, section 37(2)(a) of the Act applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(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**  
[emphasis added]

Given the above, I find the tenants breached section 37(2)(a) of the Act for the wall with 14 holes that had to be repaired. As the receipt for \$200 was for 4 walls, I find that each wall was \$50 to repair and as a result, I find the landlord has met the burden of proof for the repair to one wall and as a result, I grant the landlord **\$50** for this item. I dismiss any amount over \$50 for this item due to insufficient evidence from the landlord, without leave to reapply.

**Item 2** - The landlords have claimed \$1,800 for loss of rent for May 2021, which is comprised of \$1,650 for loss of May 2021 rent, plus a \$50 shortfall for the remainder of the fixed-term tenancy, which was scheduled to end on August 31, 2021. Section 45(2) of the Act applies and states:

**Tenant's notice**

**45(2) A tenant may end a fixed term tenancy** by giving the landlord notice to end the tenancy effective **on a date that**

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[emphasis added]

Given the above, I find the tenants were unable to give notice to end the tenancy earlier than August 31, 2021 and that tenants breached section 45(2) of the Act by giving notice on March 28, 2021 with a vacate date of April 30, 2022. Accordingly, I find the tenants are liable for the loss of May 2021 rent of **\$1,650**. In addition, I find the landlord complied with section 7 of the Act, which also reflects part 4 of the 4-part test for damages or loss indicated above. Section 7 of the Act applies and states:

**7(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.**

[emphasis added]

Based on the new tenancy agreement the landlord submitted which I find supports that the new tenants were paying \$1,600 rent as of June 1, 2021 that the landlord suffered a rent differential loss of \$50 for June 2021, July 2021, and August 2021. Accordingly, I grant the landlord the additional **\$150** amount as claimed by the landlord for the rent differential loss. Consequently, I find the landlord has met the burden of proof and I grant the landlord **\$1,800** for this item.

**Item 3** – I have reviewed the invoice submitted by the landlord and find that the landlord suffered a financial loss of \$800, which was paid as a tenant placement fee. I also note that the tenant had no comment about this part of the landlord's claim. I find the breach by the tenants indicated in item 2 above, also resulted in the landlord paying \$800 during the tenancy that they would not have otherwise paid had the tenants not breached the fixed-term tenancy. Accordingly, I find that due to the tenants' breach of section 45(2) indicated above, that the landlord has met the burden of proof and I award the landlord **\$800** as claimed for this item.

As the landlord's claim was mostly successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of comprised of **\$2,750** comprised of \$50 for item 1, \$1,800 for item 2, \$800 for item 3, plus the \$100 filing fee.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$2,750** owing by the tenants.

### Conclusion

The landlord's claim was mostly successful. The landlord has established a total monetary claim of \$2,750. The landlord is granted a monetary order pursuant to section 67 of the Act, for the amount owing by the tenants to the landlord in the amount of \$2,750.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. This Decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 17, 2022

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Residential Tenancy Branch