Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes (T) MNSD, FFT
(L) MNDL, FFL

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return of all or a portion of their security deposit and pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

This hearing also addressed the Landlord's Application for Dispute Resolution under the Act for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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 under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Landlord B.U. attended the hearing.

Tenant S.L. attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find the Landlord was served in person on July 18, 2025, in accordance with section 89(1) of the Act. The Tenant submitted a completed proof of service form signed by a

witness to confirm this service. Further, the Landlord confirmed the Tenant's service of the proceeding package to him in this manner.

Service of Evidence

The Tenant stated she included copies of her evidence in the proceeding package. The Landlord noted he had received a copy of a cleaning receipt from the Tenant a day prior to the hearing. As the document was a one-page receipt and the Landlord had reviewed it prior to the hearing, I allow its late admission. However, I informed the Tenant the remaining documents (copies of sale listings for the rental unit) she had filed one day prior to the hearing were untimely and would not be considered.

Preliminary Matters

The Landlord stated he served the proceeding package and copies of his evidence to the Tenant by leaving the package with an employee at the store where the Tenant worked. The Landlord was unable to provide the date he left the proceeding package at the Tenant's place of employment. The Tenant stated she did not receive the proceeding package or evidence from the Landlord as she had been on a leave of absence and then subsequently left that employer in May 2025. The Landlord did not provide an explanation as to why he did not serve the Tenant by email or by registered mail to the PO Box address provided by the Tenant on her notice of forwarding address he had received on June 23, 2025.

Section 89(1) of the Act provides:

> An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> > (a) by leaving a copy with the person;
> > (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
> > (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> > (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> > (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
> > (f) by any other means of service provided for in the regulations.

In this case, the Landlord admittedly did not serve the Tenant with the proceeding package in conformity with the Act. However, as the Landlord's rationale for withholding the Tenant's security deposit was known to the Tenant (that is, the Landlord's position the Tenant had caused damage to the rental unit) I find the Tenant was sufficiently served with the notice of hearing so that the Landlord could provide testimony and be heard on his application.

Rule of Procedure 3.5 provides, with respect to a party's evidence:

> 3.5 Proof of service required at the dispute resolution hearing or facilitated settlement conference
>
> During the hearing or conference, the applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.
>
> If the applicant cannot demonstrate that each respondent was served as required by the Act and the Rules of Procedure, the director may adjourn the application or dismiss it with or without leave to reapply.

The Landlord stated he included copies of his evidence in support of his application in the proceeding package he left with an employee at the Tenant's former place of employment. The Tenant stated she did not receive this evidence. As the Landlord did not properly serve copies of his evidence, I find the Landlord is precluded from introducing copies of these documents in support of his application but I find the Landlord is entitled to testify as to the contents of those documents.

Issues for Decision

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Tenant entitled to the Return of the Security Deposit?

Is the Landlord or the Tenant entitled to recover the filing fee for this application from the other party?

Background and Evidence

I have reviewed the relevant evidence, and I have considered the testimony of the parties, but I will refer only to what I find relevant to my decision.

Evidence established this tenancy began in June 2019 and ended on May 31, 2025 (the Tenant testified she physically vacated the rental unit on April 30, 2025, but paid rent through May 2025). At the start of the tenancy, on May 25, 2019, the Tenant provided the Landlord with a security deposit in the amount of $775.00. No pet damage deposit was paid by the Tenant. A copy of the parties' most recent tenancy agreement was provided in evidence by the Tenant.

At the start of the tenancy, the parties agreed a move-in inspection was conducted and a report, signed by the Tenant, was completed. The Tenant stated she had a copy of the move-in inspection report. At the conclusion of the tenancy, the parties stipulated a move-out inspection was conducted with both parties in attendance. The Landlord prepared the written report and signed it, but the Tenant refused to sign as she disagreed with the damages listed in the report. The Tenant stated she was upset at the conclusion of the inspection and left the unit; the Landlord did not provide a copy of the report to the Tenant after he signed the report on the date the inspection was conducted (he stated he included it in his package of evidence left at the Tenant's former place of employment).

The Tenant provided her notice of forwarding address to the Landlord on June 23, 2025, delivering a copy to the Landlord at his residence on that date. The Tenant submitted in evidence a copy of the forwarding address notice together with a completed proof of service form. The Landlord confirmed receipt of the Tenant's notice of forwarding address on June 23, 2025.

The Landlord testified the Tenant's cat had damaged the carpeting in the home, and the Tenant had left the carpeting in a very dirty condition requiring replacement throughout the home (3 bedrooms and the stairway). The Landlord stated he opted to replace the carpet in the living room with a hard-surface flooring for durability purposes. Upon inquiry the Landlord stated he did not know how old the carpeting was as he had purchased the rental property in early 2019 and had rented to the Tenant in June 2025. The Landlord stated the cost to replace the carpeting was $5,578.98.

The Tenant testified the carpeting was in very poor condition when she moved in, that the carpeting was very old, it had pre-existing stains and smelled musty. She stated the home was constructed in 1905 and the carpeting (although admittedly not original) was quite old when she moved in. The Tenant testified she cleaned the carpeting when she left. She stated the cat pulled up a small corner of the carpeting in one location in the rental unit.

The Landlord testified he reduced the Tenant's rent by $150.00 per month on the agreement she would maintain the yard and flower garden, which totaled $10,650.00 during the course of the tenancy. The Landlord stated she did not do so and when he re-took possession, he incurred costs for hiring two gardeners to restore the garden (who charged him $2,807.15 and $420.15). The Tenant denied the garden was in poor

condition when she vacated. She testified that throughout the tenancy she planted flowers, cared for and maintained the garden and the yard. She stated she purchased soil and plants for the gardens. On an annual inspection, she stated the Landlord casually informed her to weed a certain area which she explained she later did pursuant to his instruction. The Tenant explained she moved out in spring and thus the garden would not look its best as flowers would not have blossomed. She further stated that during the tenancy she properly watered the yard and flower gardens, but noted the municipality had imposed water restrictions due to drought conditions.

Lastly, the Landlord stated he was required to replace the lock (deadbolt) on the door to the unit as a result of damage he attributed to the Tenant. The Tenant denied damaging the lock and stated she was uncertain how it was damaged but noted she was not present in the unit during May 2025 although the Landlord had gardeners at the site.

The Landlord noted he cleaned the stove and oven himself after the Tenant moved out, stating it was “wear and tear,” and had repaired the ceiling paint where the Tenant had used adhesives.

Analysis

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states a tenant must repair damage to the rental unit or common areas caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has not provided sufficient evidence to establish a claim for damage to the rental unit or common areas.

I find the Landlord has not provided sufficient evidence that the carpeting throughout the home required replacement. The Tenant testified the condition of the carpet at the time she rented the unit was musty, old and stained in a few places. The Landlord was uncertain of the age of the carpet when he purchased the property in 2019. Policy Guideline 40 states the useful life of carpeting is 12 years. In this case, the tenancy lasted 6 years and the carpet was used for an indeterminate period prior to this time. Thus, the Landlord has not provided evidence the carpet was less than 12 years old. Furthermore, the Policy Guideline notes that repair or replacement may constitute betterment; that is, placing the party in a better position and resulting in overcompensation. I find the Landlord's replacement of the carpeting throughout the unit and requesting compensation from the Tenant for the total cost would result in impermissible betterment and overcompensation to the Landlord in the event the Landlord could establish the age of the carpet.

I find the Landlord has not provided adequate evidence to support his claim the Tenant damaged the yard and garden of the rental property. While the Landlord may have retained gardeners to improve the yard and gardens, there was no satisfactory evidence to establish the Tenant damaged the yard and garden. The Tenant stated no ornamental tree(s) died while she occupied the rental property. Furthermore, the Landlord had adequate opportunity at least each year to conduct inspections and notify the Tenant of any damage to the yard or garden. The Tenant testified that at the last inspection conducted prior to the move-out inspection, the Landlord only "casually" advised her to weed a certain area, which she did.

Lastly, I find the Landlord has not established the Tenant is responsible for any damage to the door lock. While the Landlord may have had to replace the lock, there was inadequate evidence to establish when the damage occurred or that the Tenant (as opposed to a worker or other individual retained by the Landlord to make improvements to the property who may have been present on the property during May 2025) was responsible for the damage.

Therefore, I find the Landlord is not entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, and the Landlord's application is dismissed without leave to reapply.

Is the Tenant entitled to Return of the Security Deposit?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute

resolution to claim against it. As the forwarding address was provided on June 23, 2025, I find the Landlord timely applied for dispute resolution on July 8, 2025.

In this case, as I have determined the Landlord has not provided sufficient evidence to establish the Tenant damaged the rental unit, I find the Tenant is entitled to the return of her security deposit, plus accrued interest.

Is the Landlord or the Tenant entitled to recover the filing fee for this application from the other party?

As the successful party, I find the Tenant is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act from the Landlord.

Conclusion

The Tenant's application is granted. The Landlord's application is dismissed, without leave to reapply.

I grant the Tenant a Monetary Order in the amount of **$916.86** under the following terms:

Monetary Issue	**Granted Amount**
a Monetary Order for the return of the security deposit under sections 38 and 67 of the Act including interest	$816.86
authorization for recovery by the Tenant of the filing fee under section 72 of the Act from the Landlord	$100.00
Total Amount	**$916.86**

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than $35,000.00. Monetary Orders that are more than $35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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

Dated: September 9, 2025

Residential Tenancy Branch