



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PINE APARTMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on February 15, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site or property;
- an monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to retain all or part of the pet damage deposit or security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by C.C., the manager. In addition, Y.G. attended the hearing to provide evidence with respect to the cleaning and repairs required at the end of the tenancy. Both C.C. and Y.G. provided a solemn affirmation. The Tenant did not attend the hearing.

On behalf of the Landlord, C.C. testified the Application package was served on the Tenant by registered mail on February 22, 2017. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenant is deemed to have received the Landlord's Application package on February 27, 2017.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order permitting him to retain all or part of the security deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord testified the tenancy began on or about August 3, 2011, and ended on or about January 31, 2017. The Tenant paid a reduced rent of \$500.00 per month and provided the Landlord with caretaking services. The Tenant paid a security deposit of \$348.50, which the Landlord holds.

The Landlord's claims were summarized on a Monetary Order Worksheet dated February 15, 2017. First, the Landlord claimed \$1,000.00 to repair holes in the wall of the rental unit. Y.G. testified the Tenant left many holes of various sizes in the rental unit. Although the Tenant appeared to have tried to repair some of them, Y.G. stated they had to be repaired properly. The walls also needed to be repainted throughout the rental unit after the repairs were made.

Second, the Landlord claimed \$2,000.00 to remove a railing, remove a balcony partition, remove and replace linoleum, and reinstall the partition. According to C.C., the linoleum was badly damaged by cigarette burns. Although C.C. testified the unit was rented at a reduced rate as a result of the damage, she was unable to confirm the difference. In addition, C.C. testified that both sides of the balcony need to be replaced because the balcony, although divided, is shared with the adjacent unit. Although Y.G. submitted an estimate, the work has not yet been completed due to the expense. However, C.C. confirmed the Landlord intends to complete the repair once losses are recovered.

Third, the Landlord claimed \$1,560.00 for various cleaning and repair costs. This amount was revised to during the hearing to \$1,467.07, based on actual amounts paid. She testified blinds and curtains needed to be replaced as they were burned by cigarettes. She stated the actual amount paid to replace them was \$227.37. In addition, the Landlord claimed \$403.75 for time spent by C.C. to clean the rental unit. C.C. testified she spent 16.15 hours at \$25.00 per hour to clean the oven (which she thought she would have to throw away), the fridge, and to wash walls in preparation for painting. Further, C.C. confirmed that she and Y.G. spent 35 hours at \$20.00 per hour to clean and paint kitchen cabinets. The Landlord sought to recover \$700.00 for this work. Specifically, C.C. testified she had to scrub the cabinets, which were soiled with food products like ketchup and molasses that had spilled and formed a sticky substance "worse than tar". Finally, on behalf of the Landlord, C.C. testified she had to have the carpets cleaned at an actual cost of \$135.95.

In support of the above, the Landlord submitted a copy of the move-in Condition Inspection Report, signed and dated August 3, 2011, which confirms the required cleaning and repairs were not needed (or noted) at the beginning of the tenancy.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and asked to retain the security deposit in partial satisfaction of the claim.

### Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

I find the Landlord's claim for cleaning and repair costs to be reasonable in the circumstances. The cleaning and repairs claimed for were required due to the poor condition of the rental unit. I find the condition of the rental unit was beyond reasonable wear and tear. I also find it is more likely than not that the balcony repair will be completed once the Landlord is in a financial position to do so. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary award in the amount of \$4,218.57, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Repair walls:	\$1,000.00
Repair balcony:	\$2,000.00
Miscellaneous cleaning and repairs:	\$1,467.07
Filing fee:	\$100.00
<i>LESS</i> security deposit	(\$348.50)
<b>TOTAL:</b>	<b>\$4,218.57</b>

Conclusion

The Landlord is granted a monetary order in the amount of \$4,218.57. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: July 24, 2017

---

Residential Tenancy Branch