



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL (Landlord's Application)  
                              MNSD, FFT (Tenant's Application)

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application filed on January 11, 2018 the Landlord sought monetary compensation from the Tenant, authority to retain the Tenant's security deposit and recovery of the filing fee. In the Tenant's Application filed on January 16, 2018 the Tenant requested return of the security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on August 14, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No 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 respective submissions and or arguments are reproduced here; further, 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 monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?

3. Should either party recover the filing fee?

Background and Evidence

The tenancy began on December 6, 2016 for a fixed one year term. Monthly rent was payable in the amount of \$2,200.00. The Tenant paid a security deposit of \$1,100.00.

The tenancy ended on December 31, 2017.

The Landlord's representative stated that the building was built in 2015 and the Tenant was the second tenant in the rental building such that it was essentially new when the tenancy began.

The Landlord performed a move in and move out condition inspection on December 6, 2016 and December 31, 2016 respectively. A copy of the inspection report was provided in evidence before me.

On the move out inspection, the Landlord noted that the laminated floor was damaged. Photos of the flooring show damage to the flooring from what appears to be swelling. The Landlord sought the sum of \$2,457.00 for the cost to replace the laminate flooring as the Landlord's representative testified that the flooring could not be repaired and therefore required replacement. He further confirmed that as the flooring was installed by a developer there were no extra materials from which the Landlord could obtain materials to repair the flooring.

The report also indicated that the Landlord wished to retain \$200.00 towards the cost of the parking as well as a further \$200.00 for a strata fine associated with the Tenant not giving notice

The Landlord testified that the strata also charged the Landlord \$100.00 for the move out fee associated with the Tenant moving out without providing the proper notice.

In total the Landlord sought the sum of \$500.00 for amounts paid to the strata. In evidence were copies of letters from the strata related to these costs.

The Landlord also sought the sum of \$420.00 for costs associated with repairing the ceiling in the downstairs unit which he claimed was damaged by a leak in the bathroom caused by the Tenant.

In response to the Landlord's submissions and in support of the Tenant's claim the Tenant's daughter and representative testified as follows.

She confirmed that her father disputed the amounts claimed by the Landlord.

In terms of the \$100.00 move out fine charged by the strata, the Tenant's representative alleged the Landlord's representative (who performed the move out inspection) agreed to waive this amount, and indicated this by crossing it out on the move out inspection. She confirmed she was there when this occurred and further confirmed that it was after a significant discussion about the fine. She also noted that it was crossed out on the copy of the move out condition inspection report as filed in evidence.

(Notably, the copy of the move out inspection provided in evidence also included the additional words "200 file for use the elevator". The Tenant's representative confirmed that was not written on the copy they signed. At this time, the Landlord's representative confirmed that notation was written on the document *after it was signed.*)

The Tenant's representative confirmed that the \$200.00 fine for parking was also waived by the strata. In support she provided in evidence a copy of a letter from J.P., the strata manager confirming that amount was waived.

The Tenant agreed to pay the \$100.00 move out fee claimed by the Landlord.

In terms of the damage to the flooring the Tenant's representative stated that it was the Tenant's position that the flooring was of very poor quality. The Tenant's representative stated that when they moved in they noticed that the flooring was swollen and prone to damage. She also stated that she was aware that the builder who built the building and that they did so on a very limited budget; as such, she submitted that the Landlord should pursue the warranty replacement on the flooring before seeking contribution from the Tenant.

In terms of the water damage to the ceiling below the rental unit, the Tenant's representative stated that they were not in the rental unit when the damage occurred. She stated that she was out of the country and her father was in another apartment which they own. She further stated that the Landlord should again be pursuing compensation through the warranty process as this appears to be a result of poor building.

The Tenant's representative stated that the Tenant sought recovery of the \$1,100.00 security deposit paid as well as the \$100.00 paid for the fob deposit (which she claimed was paid in cash). She confirmed that the Landlord's representative who attended the move out inspection was unaware of the fob deposit which was another reason why they had an argument on the date of the inspection.

In reply the Landlord's representative stated that the laminate flooring was "pretty strong", and believes that the flooring may have been damaged by some water which would have made it more vulnerable. The Landlord's representative stated that they have other units within the same building and this damage did not occur in other units.

In reply to the Tenant's submissions regarding the damage to the lower unit's ceiling, the Landlord's representative stated that they were informed by the strata that the cause was the subject rental unit. He confirmed they did not find any leaking in the subject rental unit, and assumed it was simply due to an overflowing sink.

The Landlord's representative stated that the person who did the move out inspection did not waive the \$200.00 move out fine did not have had sufficient authority to do so.

The Landlord's representative stated that he did not have confirmation that the parking fine was waived; although he acknowledged receipt of the email from J.P., the strata manager, confirming the \$200.00 bylaw fine was waived.

The Landlord's representative stated that they did not take a \$100.00 deposit, rather the Tenant "bought" an extra fob. He stated that it is a two bedroom unit and they are provided two fobs; if they need more they have to buy it themselves.

### Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [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.

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 as follows.

The photos submitted by the Landlord confirm that the flooring was damaged at the end of the tenancy. Large scratches are seen crossing several pieces of paneling. In some

areas the top coating appears to be peeling off, possibly caused by prolonged exposure to water.

The Tenant did not dispute the floor was damaged; rather, his representative simply alleged that the flooring was of poor quality and likely a “warranty issue”. No evidence was submitted by the Tenant to confirm such an opinion as to the quality of the flooring. I am therefore unable to find that the flooring was of inferior quality.

I find the Tenant damaged the flooring in the rental unit.

The Landlord claimed \$2,457.00 representing the cost to replace 390 square feet of the flooring. Documentary evidence provided by the Landlord confirms the Landlord was quoted this sum.

*Residential Tenancy Branch Policy Guideline 40* provides that flooring has a useful building life of 15 years. I accept the Landlord’s evidence that the Tenant was the second tenant in the rental unit after it was built; however I was not provided with any information as to the duration of the first tenancy or the age of the flooring. Without this information I am unable to find the age of the flooring. I therefore discount the Landlord’s claim by 25% and award them **\$1,842.75** as a discounted cost to replace the flooring.

I accept the Tenant’s representative’s testimony, as well as the notations on the move out condition inspection report, and find that the Landlord’s representative waived the \$200.00 move out fine which was originally levied by the strata against the Tenant. While the Landlord’s current position may be that the representative did not have had authority to agree to this, representative attended on behalf of the Landlord on the date of the move out, and it was reasonable for the Tenant to rely on their agreement. I therefore dismiss the Landlord’s claim in this regard.

I also find, based on the email provided in evidence by the Tenant, that the strata waived the \$200.00 parking fine. I therefore find the Landlord is not entitled to this sum.

I am unable to find, based on the evidence before me to find that the water damage to the ceiling below the rental unit was caused by the Tenant. The Landlord failed to submit any evidence to support such a finding and merely relied on the opinion of the strata. Without corroborating evidence I find the Landlord has failed to meet the burden of proving this portion of their claim.

The Tenant's representative confirmed the Tenant was agreeable to paying the **\$100.00** move out fee; pursuant to section 63 of the *Act* I note this as agreed to by the parties.

The Landlord's representative was cautioned during the hearing that altering a move out inspection report after it is signed may render the document of no evidentiary value and may form the basis of an allegation that the Landlord has attempted to submit fraudulent evidence.

As the parties have enjoyed divided success, I find they shall each bear the cost of their own filing fee.

### Conclusion

The Landlord is awarded the sum of **\$1,947.75** representing 25% of the amount claimed to replace the flooring and the agreed upon **\$100.00** move out fee.

I authorize the Landlord to retain the Tenant's \$1,100.00 security deposit towards the amount awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$847.75**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: August 31, 2018

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Residential Tenancy Branch