



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

On May 30, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting a Monetary Order for damage or compensation, to apply the security deposit to the claim, and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

### Procedural Matter

The Tenant called in from Disneyland for this hearing. The background noise was, at times, extreme and interfered with the testimony of both the Tenant and the Landlord. The parties showed patience and regardless of the noise, both parties had an opportunity to provide their testimony and present their evidence and indicated, at the end of the hearing, that they did not have any questions or anything to add.

### Issues to be Decided

Should the Landlord receive a Monetary Order for damage or compensation?  
Should the Landlord be authorized to apply the security deposit to the claim?  
Should the Landlord be reimbursed for the Filing Fee?

### Background and Evidence

The Landlord and the Tenant agreed on the following terms of the Tenancy Agreement:

The 1-year, fixed-term tenancy began on April 16, 2017, with an end date of April 30, 2018. The rent was \$1,850.00 a month and the Landlord collected and currently holds a security deposit of \$925.00. The Tenant moved out of the rental unit on May 15, 2018.

The Landlord testified that a move-in inspection was completed on April 12, 2017 and the written report indicated that the rental unit was in good condition and that the Tenant was provided with 2 rental unit keys and 2 fobs. The report was signed by the Tenant and by an agent for the Landlord and indicated that the Tenant agreed that the report fairly represented the condition of the rental unit.

The Landlord stated that a move-out inspection was completed on May 16, 2018, and the written report indicated that many of the rental unit walls required touch up, repair and repainting, that the oven needed cleaning, and that the carpet required cleaning and stain removal. The report noted that 2 rental unit keys and 1 fob was returned. The report was signed by the Tenant and indicated that she agreed that the report fairly represented the condition of the rental unit.

The Landlord submitted pictures as evidence to provide examples of the rental unit walls that required sanding and repainting, the carpets that required cleaning and the kitchen stove that was left dirty.

The Landlord submitted a Monetary Order Worksheet that itemized the costs that had been incurred to repair and paint the walls, repair and clean the carpets, clean the kitchen and to replace one of the rental unit fobs for a total of \$1,245.00.

<b>Item</b>	<b>Amount</b>
Wall repair and paint	\$735.00
Carpet repair	210.00
Kitchen and carpet clean	200.00
Replacement of fob	100.00
<b>Total Monetary Claim</b>	<b>\$1245.00</b>

As part of the Landlord's Application, she is requesting to apply the Tenant's security deposit to the monetary claim.

Tenant's Evidence:

The Tenant testified that she didn't really review the move-in inspection report and that the rental unit was not clean upon the start of her tenancy. She stated that she and her family needed the rental unit and just signed the move-in inspection report. The Tenant had had a conversation with the Landlord's agent about the cleaning that would be required and said that the Landlord deducted \$100.00 of her first months rent as compensation for the cleaning provided by the Tenant.

The Tenant stated that the walls of the rental unit had previously been patched and at the end of her tenancy, that she also patched the art holes in the walls. The Tenant acknowledged that it was a rough patch job and that she didn't sand down the patching of the holes. The Tenant said that she left the rental unit in the same condition as she found it and because she was in a hurry at the end of her tenancy, she agreed to sign the move-out condition report.

The Tenant did not submit any evidence for this hearing but stated that she did not agree with the costs claimed by the Landlord.

Analysis

When making a claim for damages under a Tenancy Agreement or the Act, the party making the claim has the burden of proving their claim. Proving a claim for damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I accept the Landlord's evidence that the rental unit was in good condition at the beginning of the tenancy and that the Tenant acknowledged this on the move-in condition report. I accept the Landlord's evidence that, at the end of the tenancy, many walls in the rental unit required patching and painting, that the kitchen oven required cleaning and that there were some stains that needed attention on the carpet. The Tenant acknowledged this on the move-out inspection report and failed to provide sufficient evidence to prove that this wasn't the case. I accept the Landlord's evidence that the Tenant failed to return one of the entry fobs for the rental unit. I find that the

costs that the Landlord incurred and the receipts submitted were reasonable expenses for the services provided.

On the basis of the testimony and evidence presented, I find, on a balance of probabilities, that the Tenant failed to comply with Section 37(2) of the Act when the Tenant failed to leave the rental unit in reasonably clean and undamaged condition and failed to give the Landlord all the keys or other means of access for the rental unit. I, therefore, find that the Landlord is entitled to compensation as claimed, in the amount of \$1,245.00.

I find that the Landlord applied for Dispute Resolution to apply the security deposit to the monetary claim in accordance with Section 38 of the Act. As the Landlord has established a monetary claim, I authorize the Landlord to apply the security deposit to the monetary claim in accordance with Section 72 of the Act.

As the Landlord's Application has merit, I find the Landlord should be reimbursed \$100.00 for the Filing Fee.

I issue a monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover damages and the Filing Fee for this Application, and to retain the Tenant's security deposit:

Item	Amount
Damages	\$1245.00
Recovery of Filing Fee for this Application	100.00
Less Security Deposit	-925.00
<b>Total Monetary Order</b>	<b>\$420.00</b>

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,345.00, which includes \$1,245.00 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$925.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$420.00. In the event that the Tenant does not comply with this Order, it may be

served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 14, 2018

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Residential Tenancy Branch