



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL MNDL-S

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* ("the *Act*"), for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- A monetary order to retain the security deposit pursuant to section 38 of the *Act*, and,
- Reimbursement of the filing fee pursuant to section 72.

OC appeared on behalf of the landlord but no one appeared on behalf of the tenant. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the tenant the opportunity to call. The teleconference system indicated that only the landlord and I had called into the hearing. I confirmed the correct call in number and participant code for the hearing I had been provided. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that he served the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence package by Canada Post registered mail on November 29, 2018 to the tenant's stated forwarding address. The landlord provided a copy of the Canada Post registered mail tracking slip. The landlord testified that he obtained the tenant's forwarding address in writing from the tenant on the condition inspection report. The mailing address to which the landlord sent the notice of dispute resolution package matched the tenant's stated forwarding address. I find the landlord has served the notice of dispute resolution and evidentiary package in compliance with sections 88 & 89 of the *Act* and deem the tenant, pursuant to section 90 of the *Act*, to have received these documents on December 3, 2018, five days after their posting.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67?

Is the landlord entitled to retain the security deposit pursuant to section 38 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision.

The landlord provided a copy of the tenancy agreement which stated that the tenancy was a fixed term tenancy running from December 15, 2015 to December 31, 2019. The stated rent was \$6,200.00 per month with a \$3,100.00 security deposit and no pet damage deposit.

The tenancy agreement had a provision that stated the following:

21. BOTH PARTIES AGREE TO THE FOLLOWING(S):

....

(4) Tenant will deal with all electrical and plumbing issues under \$300 per repair *[sic]*

The landlord provided a copy of the condition inspection report which stated that the move-in inspection was performed on November 16, 2015.

The landlord testified that the tenant moved out of the property on July 16, 2018. The landlord testified that the tenant performed a move-out inspection on July 16, 2018. The tenant's forwarding address was written on the move-out inspection report.

The landlord submitted a variety of invoices. Among those presented were; a "Construction Invoice", an "Electrical Invoice", and a "Plumbing Invoice."

The Construction Invoice dated October 1, 2018 for general construction repairs included the following repairs:

- Repair front door
- Holes in bedroom wall
- Adjust closet doors in basement bedroom
- Repair windows and replace screens
- Repair slow draining kitchen sink
- Repair shower door and fixtures
- Repair bathtub spout
- Repair door hinges
- Purchase garage door openers

The Construction Invoice stated labour costs of \$460.00, material costs of \$373.03, and GST of \$41.65 for a total of \$874.68.

The Electrical Invoice dated September 7, 2018 stated the following charges:

- 3 Carbon monoxide alarms
- 10 lightbulbs
- 1 micro LED light
- 1 GFCI receptacle
- 8.5 hours of labour at \$70 per hour to install smoke detectors, rewire GFCI outlet, check house wiring, rewire hall switch, check and replace washroom light

The Electrical Invoice charged \$395.53 for parts, \$595.00 for labour and \$77.22 in sales tax for a total of \$1,067.74.

The Plumbing Invoice stated the following charges:

- Leak repair on main shut off
- Install new hammer arrestors for laundry
- Replacement of the aquastat on the hot water tank

The Plumbing Invoice charged \$570.00 for labour, \$280.00 for parts and \$42.50 for sales tax for a total of \$892.50.

The landlord submitted a further invoice dated September 6, 2018 for \$202.39 from a garage door service company for the replacement and reprogramming of two garage

door openers along with, an invoice dated August 21, 2018 for \$378.00 from a carpet cleaning service.

The landlord also provided an email correspondence from the tenant's lawyer dated October 23, 2018 in which the tenant acknowledged responsibility for the \$202.39 garage door invoice and the \$378.00 carpet cleaning invoice. The tenant denied responsibility for the remaining invoices.

### Analysis

Based on the correspondence from the tenant's lawyer dated October 23, 2018, the following claims are not disputed:

Item	Cost
Garage door remote replacements	\$202.39
Carpet cleaning	\$378.00
Total	\$580.39

Accordingly, I will allow landlord's claim for \$580.39 for the garage door remote replacement and carpet cleaning. The remaining claims for damages are disputed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of

probabilities, which means that it is more likely than not that the facts occurred as claimed.

Each of the landlord's claims are addressed as follows:

#### *General Construction Repairs*

The repairs stated in the Construction Invoice are listed on the condition inspection report. *Residential Tenancy Regulation* section 21 provides that "...a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection." Based on the landlord's undisputed testimony and the notations of damage in the condition inspection report, I find that the repairs set forth in the Construction Invoice were appropriate. I also find that the landlord has produced adequate evidence to establish that the repairs noted in the Construction Invoice were the responsibility of the tenant.

However, the Construction Invoice includes a charge for the replacement of the garage door openers. I find this is duplicative of the garage door replacement expense of \$202.39 which I have already awarded the landlord above. Accordingly, I shall reduce the Construction Invoice claim by \$202.39, to \$672.29, so that the landlord is not double compensated for the replacement of the garage door openers.

Accordingly, I award the landlord \$672.29 for the Construction Invoice expenses.

#### *Electrical Repairs*

Residential Tenancy Branch Policy Guideline No. 1 states that tenants are responsible for replacing light bulbs during their tenancy. Accordingly, I find that the landlord's claim of \$120.53 for replacement lightbulbs is appropriate and I grant this application.

However, Policy Guideline No. 1 states that it is the landlord's responsibility to install and maintain smoke alarms. Accordingly, I deny the landlord's request of \$225.00 for carbon monoxide alarms.

The landlord did not produce any evidence to establish that the tenant should be responsible for the GFCI repairs or the electrical service labour. Electrical repairs are generally the responsibility of the landlord, not the tenant. Policy Guideline No. 1 states

that the "...landlord must provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation." As the supply of electricity is an essential residential service, I find that electrical services are the landlord's responsibility.

Even though electrical systems are the landlord's responsibility, the tenant can still be liable for damage caused by the tenant's actions or neglect pursuant to Section 32(1) of the *Act*. However, in this matter there is no evidence that the electrical damage was caused by the tenant's actions or neglect.

The landlord argued that the tenant is responsible for the electrical repairs pursuant to section 21 of the tenancy agreement which states that "...the tenant will deal with all electrical and plumbing issues under \$300 per repair." However, this tenancy agreement provision does not apply herein because the amount of the electrical repair was \$1,067.74 which exceeds \$300.00.

Accordingly, I find that the landlord has failed to satisfy their burden of proving that the tenant is responsible for the GFCI repair and the labour costs charged by the electrical contractor. As such, I only award the landlord sum of \$120.53 for electrical repairs.

### *Plumbing Repairs*

Plumbing services are also an essential residential service which is the landlord's responsibility. As above, the landlord did not provide any evidence the plumbing repairs requested were the fault of the tenant. As such, the landlord has failed to provide sufficient evidence to prove a claim for compensation for the plumbing repairs.

The landlord again argued that the tenancy agreement specifically makes the tenant liable for plumbing repair costs of less than \$300.00. However, this contractual provision again does not apply because the plumbing repair cost of \$892.50 exceeds \$300.00 so this tenancy agreement provision is not applicable.

Accordingly, I deny the landlord request for a monetary award regarding the plumbing repairs.

I find that the landlord is entitled to an award of \$1,373.21 from the tenant for damages to the property as summarized below:

<u>Item</u>	<u>Amount</u>
Uncontested claim for garage door opener replacement and cleaning	\$580.39
General construction repairs	\$672.29
Electrical repairs	\$120.53
<b>Total</b>	<b>\$1,373.21</b>

### *Security Deposit*

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$3,100.00. I find that the repair costs of \$1,373.21 may be deducted from the deposit pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

The landlord shall return the balance of the security deposit of \$1,626.97 to the tenant pursuant to section 38 of the *Act*.

<u>Item</u>	<u>Amount</u>
Security deposit held landlord	\$3,100.00
Less: Damages payable to landlord	(\$1,373.21)
Less: Filing recovered by landlord	(\$100.00)
<b>Net refund of deposit to the tenant</b>	<b>\$1,626.97</b>

Accordingly, I order the landlord to return \$1,626.97 of the security deposit to the tenant.

### Conclusion

I find that the landlord is entitled to a monetary award of \$1,373.21 for damage to the property.

I find that the landlord is entitled to recover \$100.00 as reimbursement of their filing fee.

The landlord may deduct the monetary award of \$1,373.21 and the reimbursement of the filing fee of \$100.00 from the tenant's security deposit.

I find that the tenant is entitled to a partial refund of his deposit in the amount \$1,626.97 pursuant to section 38 of the *Act*.

The tenant is granted a monetary order in the amount of **\$1,626.97**. This order must be served on the landlord. If the landlord does not comply with this order, the tenant may enforce this order in the Small Claims Division of the British Columbia 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: February 13, 2019

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Residential Tenancy Branch