



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, MNDL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$14,514.62 for money owed or compensation for damage or loss under the Act, and to recover the cost of their \$100.00 Application filing fee.

The Landlord and an agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant, although the hearing went on for 28 minutes and the phone lines were monitored during this time. I considered the Landlord's service of the Application and documentary evidence on the Tenant below.

I explained the hearing process to the Landlord and Agent and allowed them to ask questions about the hearing process. During the hearing, the Agent was given the opportunity to provide evidence for the Landlord orally and to ask questions. English is not the Landlord's first language and the Agent translated and explained the process to the Landlord as the hearing progressed.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The Agent provided the Landlord's email address at the outset of the hearing and confirmed her understanding that the decision would be emailed to the Landlord and mailed to the Tenant.

The Agent said that the Tenant did not give a forwarding address, but that the Landlord knows that the Tenant owned a property, which they determined that he still owns. They mailed the Application package to Tenant at this residential address. The Agent also

said they talked to a building manager at the Tenant's property who said he recognized the name; as a result, the Agent said she believed the Tenant lived there now. The Agent said that she sent the Application and documentary evidence to the Tenant at this address by registered mail on January 15, 2019, and she provided a Canada Post tracking number as evidence in this regard. I find pursuant to section 90 of the Act that the Application and documentary evidence was duly served on the Tenant on January 20, 2019.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

#### Background and Evidence

The Landlord submitted a copy of the Parties' tenancy agreement, which indicates that they signed a fixed term tenancy agreement on April 8, 2018, that was to run from April 15, 2018 to April 30, 2019. The tenancy agreement sets out a monthly rent of \$2,650.00 due on the first day of each month, and that the Tenant paid a security deposit of \$1,350.00 and no pet damage deposit. The Landlord described the rental unit as having two bedrooms, two bathrooms and two living rooms.

The Agent said the Parties completed a move-in condition inspection report ("CIR") and the only problem noted on it was that the cooktop light switch was burned out. The Agent said the Tenant would not meet to do a move-out condition inspection of the rental unit after he moved out, and he did not give the Landlord his forwarding address for her to send a written notice of the time for a move-out CIR. The Landlord still holds the security deposit, as the Tenant did not provide a forwarding address, pursuant to section 38 of the Act.

The Agent said the Tenant paid for the first two months of the tenancy without problem. She said at one point the Tenant called to say that the cook top was broken. The Agent said that she and the Landlord figured out that the Tenant was using the rental unit for an Airbnb and they told him that he could not do that anymore, as the building has a policy against it. The Agent said that the Tenant tried to use this as an excuse to end the tenancy and he stopped paying rent. The Agent said: "We tried to communicate with him; he said he wanted his security deposit back or he would not move out and would not give them the key."

The Agent said they applied for and obtained an order of possession from the RTB, a writ of possession from the B.C. Supreme Court, and a bailiff to get the Tenant out of the rental unit.

In the Application, the Agent said:

The tenant [did] not clean the apartment. We [had] to ask the [building services] company to do the whole house and carpet cleaning. And the tenant [did] not dispose of their garbage, so we needed to ask the company do that, too. There [were] obvious stains on the walls and ceiling, therefore we [had] to repaint the house. Wooden floor and chandelier also has different level of damage. The cook top is completely broken, we have to replace [it with] a new one.

The Agent submitted a Monetary Order Worksheet with the Landlord's claim, as follows:

Doc. #	Receipt/Estimate From	For	Amount
1	Rental Agreement	Unpaid rent (Aug 1-28)	\$2,393.55
2	Receipt	Court bailiff	\$1,312.25
3	Receipt	Garbage disposal	\$400.00
4	Receipt	House cleaning	\$300.00
5	Receipt	Carpet cleaning	\$200.00
6	Receipt	Repaint ceiling	\$700.00
7	Receipt	Repaint walls	\$2,500.00
8	Receipt	Repair wooden floor	\$150.00
9	Receipt	Repair chandelier	\$100.00
10	Receipt	New gas cooktop	\$538.82
11	Receipt	Cooktop installation fee	\$500.00
12	Receipt	RDSG Revenue document Supr Payment	\$80.00
13	Receipt	RDSG Revenue document Supr Payment	\$40.00
14	Rental Agreement	2 Months rental loss	\$5,300.00
<b>Total monetary order claim</b>			<b>\$14,514.62</b>

The Landlord submitted receipts for these claims in her documentary evidence. A one-page invoice from a building services company lists items 3 – 11 (the “Invoice”). The other items were on separate invoices.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

According to section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Subsection 35(2) requires a landlord to offer a tenant “at least 2 opportunities, as prescribed, for the inspection.”

“As prescribed” means as required by regulation. Section 17(1) of the Residential Tenancy Regulation requires a landlord to offer a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. Pursuant to section 17(2) of the Regulation, if the tenant is not available at the time offered for the first opportunity, the landlord must propose a second opportunity to the tenant “by providing the tenant with a notice in the approved form.” The “approved form” is form #RTB-22 “Notice of Final Opportunity to Schedule a Condition Inspection”. A landlord is required to use this form to give the tenant a second opportunity to participate in the move-out condition inspection.

If a landlord does not provide the tenant with this written notice of the second opportunity in the prescribed form, the landlord’s right to claim against deposit(s) for damage to the rental unit is extinguished pursuant to section 36(2)(a).

If the tenant does not give the Landlord a forwarding address within one year after the end of the tenancy, the tenant’s right to the return of the deposit(s) is extinguished pursuant to section 39 of the Act.

### *Rent Owed to the Landlord*

In the case before me, there is no evidence that the Landlord offered the Tenant a second opportunity for a condition inspection of the rental unit in writing. I therefore find that the Landlord extinguished her right to claim against the security deposit for damages pursuant to section 36 of the Act. However, this section does not preclude the Landlord from claiming against the security deposit for unpaid rent or claiming for

damages, otherwise. Based on the evidence before me, I award the Landlord **\$2,393.55** in unpaid rent, which may be set off against the \$1,350.00 security deposit, leaving a monetary award of **\$1,043.55** for unpaid rent left owing by the Tenant to the Landlord.

Test for damages or loss

A party who applies for monetary compensation against another party has the burden of proving their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. In this case, the Landlord must prove on a balance of probabilities:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

[the "Test"]

According to Policy Guideline #16:

A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons or pets that the tenant permits on the property. Section 37 requires tenants to leave the rental unit undamaged.

Court Bailiff

The Agent said that the Landlord incurred this fee, because the Tenant did not comply with an order of possession issued by the Residential Tenancy Branch, which was served on the Tenant by the Landlord. The Landlord was entitled to apply for a writ of possession through the B.C. Supreme Court and to have it executed, because the Tenant did not comply with the RTB order of possession. Accordingly, I find this a reasonable cost to claim and I award the Landlord **\$1,312.25**.

### Garbage Disposal

Section 37 of the Act establishes that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged, except for wear and tear. In terms of garbage left behind, the Landlord submitted a photograph of some garbage, but it is not clear how much there was or why it cost \$400.00 to get rid of it, as set out in the Invoice. Based on the evidence in this regard, I find that the Tenant violated section 37 of the Act and that the Landlord incurred a cost to remedy the situation. However, I find the Landlord did not establish that the cost or value of the loss incurred was reasonable in the circumstances. Without any breakdown of this cost or further evidence of the amount of garbage left behind, I find that half of this amount is a more reasonable cost in line with the evidence before me. Accordingly, I award the Landlord **\$200.00** for recovery of the cost of garbage disposal.

### House Cleaning

The Invoice sets out the cost of cleaning the rental unit as \$300.00. Again, it does not set out any specifics, such as the hourly rate or how long it took to clean. At a standard rate of \$25.00 per hour, it would mean that it took 12 hours to clean the rental unit. The Landlord submitted photographs of the condition of the rental unit, which included garbage, debris in the sink, stains and damage to the ceiling, and stains on the carpet.

In terms of the Test, I find that the Tenant did not leave the rental unit “reasonably clean and undamaged except for reasonable wear and tear”, as is required by section 37 of the Act. I also find that the Landlord incurred a cost to resolve the Tenant’s violation of the Act. However, I am not satisfied that the photographs submitted by the Landlord indicate that it would have taken 12 hours to bring the rental unit up to a reasonable state of cleanliness. “Reasonably clean” pursuant to the Act does not mean spotless or good as new, it means “reasonably” clean.

Based on a standard cleaning cost of \$25.00 per hour, and the apparent condition of the rental unit as set out in the photographs, I find seven hours to be a more reasonable amount of time to bring the rental unit to a reasonable level of cleanliness. Therefore, I award the Landlord **\$175.00** for cleaning cost recovery.

### Carpet Cleaning

In the Invoice, the Landlord was charged \$200.00 for carpet cleaning. The photographs indicated that the carpets were stained throughout the rental unit. I find that \$200.00 is a

typical rate charged to clean carpets of this sized rental unit. I therefore award the Landlord **\$200.00** for recovery of the cost of carpet cleaning.

### Repaint Ceiling

The move-in CIR indicates that the ceilings were not damaged at the start of the tenancy. The Landlord did not do a move-out CIR with the Tenant; however, the preponderance of photographic evidence submitted by the Landlord satisfies me that the Landlord incurred damage and associated cost, as a result of this tenancy.

In terms of the value of repairing the damage, the Invoice states that the Landlord was charged \$700.00 for the cost of repainting the ceiling. There is no breakdown of the number of hours it took to repaint the ceiling; however, the video and photograph the Landlord provided of the ceiling indicates that it would take time to prepare the ceiling to be painted, as well as the actual painting itself, plus the cost of the paint. I find the Landlord established that the Tenant breached sections 32 and 37 of the Act and that the Landlord had to incur a cost to remedy this violation.

If the painter charged a standard rate for painting of \$25.00 per hour, and it took approximately five hours for a professional to prep and paint the ceiling that would be \$125.00. This means that the supplies in this case would have cost approximately \$575.00, which I find to be unreasonable in the circumstances. This indicates that the Landlord was not reasonable in minimizing the cost to repair the damage or loss. If the company had charged \$350.00, this would mean that the supplies cost \$225.00, which I find to be a little more reasonable. As a result, I award the Landlord **\$350.00** for the ceiling to be repainted.

### Repaint Walls

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Sections 32 and 37 of the Act requires tenants to make repairs for

damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets, and to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of interior paint is 4 years. The evidence before me is that the rental unit was painted before this tenancy, which only lasted from April 2018 to August 2018. As such, the paint was relatively new. The move-in CIR indicates that there was nothing wrong with the walls and trim in the rental unit at the beginning of the tenancy. The Agent commented on and submitted photographs of the damaged ceiling finish, but she did not do the same for the condition of the walls, other than to say there were stains on the walls.

The Invoice billed the Landlord \$2,500.00 for repainting walls, without any specifics of this amount. There is no indication as to why the entire rental unit had to be repainted, if the damage was limited to a few stains on the walls. Without further explanation or photographs of the type of damage done, I find that the Landlord has not met the burden of establishing the value of the claim, as per step three of the Test. Further, \$2,500.00 is an unreasonably large amount for this work and I find the Landlord did not do what was reasonable to minimize the cost of repairing this damage.

As a result, I find that the Landlord has not fulfilled the burden of proof for the Test, so I award the Landlord a nominal amount of **\$200.00** for repainting walls.

### Wood Floor

The Agent said there were scratches on the wood floor. She said "it looks pretty bad, so we got it done by a professional company." The Agent submitted photographs of the wood floor with a person's foot in the picture to give context and show the size of the damage. The move-in CIR notes that there was a "black scratch mark" on the floor in the living room and that there was no other damage to other floors in the rental unit at the start of the tenancy. The scratch mark in the photographs is not a black mark, so I am satisfied that the damage claimed in this regard occurred during the tenancy. I am satisfied that the Landlord has met the burden of proof of the first two steps of the Test.

The wood floor repair was set out in the Invoice at a cost of \$150.00. Again, there is no indication of what work was involved with repairing the floor or that the Landlord checked other companies for the repair work; however, I find that the cost of this repair



is not unreasonable and I award the Landlord **\$150.00** for this item.

### Repair Chandelier

The Landlord submitted a video of the ceiling, which also included a shot of a light fixture hanging from the ceiling with a shirt hanging from it. In the hearing, the Agent did not specify if this was the chandelier or the type of damage incurred. Further, the Invoice gives no specifics as to what cost \$100.00 to fix. I find that the Landlord has not met the burden of proof on this item, and I dismiss this claim without leave to reapply.

### Cooktop Replacement and Installation

In the hearing, the Agent said the cooktop or gas stove elements in the rental unit were no longer working after the tenancy. The Agent submitted a video of the cooktop, which shows that the elements do not come on when a person turn the knobs. She said in the hearing that they tried to get it fixed, but that the technician said it would cost approximately \$1,000.00. The Agent said that is why they decided to buy another unit.

The Agent said the cooktop was a unique size, "really thin; not the standard size." She said they priced one at \$1,600.00, but ultimately were able to buy it for \$538.82 at a large, wholesale shopping outlet; however, she said they needed to hire someone to install it. The installation is the last item on the Invoice and it cost \$500.00.

The Invoice does not set out whether a special technician had to be brought in to install the appliance, but I find it unreasonable that the mere installation of the cooktop would cost almost as much as it cost to purchase this appliance. I find that the Landlord has established that the Tenant or someone he allowed in the rental unit damaged the appliance, causing the Landlord to incur the cost of replacing it. I find the Landlord established the cost to buy the unit was reasonable and that they minimized the cost of the repair. As such, I award the Landlord the replacement cost of **\$538.82**; however, I find that the cost of the installation has not been demonstrated to be reasonable in the circumstances, so I award a nominal amount of \$150.00.

### BC Supreme Court Fees

The Landlord submitted receipts for B.C. Supreme Court fees. The Landlord received an order of possession of the rental unit from the RTB, but the Tenant did not comply with the order of possession. As such, the Landlord had to obtain a writ of possession in the Supreme Court and hire bailiff services to get the Tenant out of the rental unit. I find

the Tenant breached the Act by failing to give vacant possession when served with an order of possession. I find the Landlord is, therefore, entitled to recover the court fees in the amount of \$120.00.

### Two Months' Rental Loss

The Agent said in the hearing that it took them two months to repair the damage to the rental unit, which meant they were not able to rent it during this time. As a result, the Landlord claims \$5,300.00 in lost rental income. I find that the lost rental income was a direct result of the Tenant's breach of the Act and the tenancy agreement, which caused the Landlord a direct loss of income. I, therefore, award the Landlord recovery of two months' lost rental income in the amount of two months' rent at \$2,650.00 per month for a total of **\$5,300.00**.

I find that the Landlord established monetary claim of **\$11,191.62** comprised of the above described amounts and recovery of the \$100.00 filing fee for this Application.

I order that the Landlord retain the security deposit of **\$1,350.00** in partial satisfaction of the claim for unpaid rent. I grant the Landlord an order under section 67 of the Act for the balance due of **\$9,841.62**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Landlord was partially successful in their Application for recovery of unpaid rent and the cost to repair the damages to the rental unit resulting from the Tenant's tenancy. I also award the Landlord recovery of the \$100.00 Application filing fee.

I grant the Landlord a monetary order under section 67 of the Act from the Tenant in the amount of \$11,191.62. I authorize the Landlord to keep the Tenant's \$1,350.00 security deposit to set off against the unpaid rent owing by the Tenant. After this set off, the Landlord is owed **\$9,841.62** in compensation from the Tenant.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the Act states that the Director does not lose authority in a

dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 04, 2019

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Residential Tenancy Branch