



# 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 the Landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage – security deposit applied to the claim pursuant to Section 67 of the *Act*; and
- the recovery of the filing fee for this application pursuant to Section 72 of the *Act*.

The Landlord and the Tenant attended the teleconference hearing. Both parties were given a full opportunity to provide affirmed testimony and present their evidence.

The Tenant confirmed receipt of the Landlord's notice of hearing and evidentiary materials which were sent by the Landlord via registered mail, as such I find the Tenant was served in accordance with Sections 88 and 89 of the *Act*. The Tenant did not submit documentary evidence in response to the Landlord's claim.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for damages, to apply the security deposit towards the claim, and
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

The Landlord testified this was a 10-year tenancy and that the parties never encountered any issues with each other until the end of the tenancy.

The parties agreed that this tenancy started in June of 2008 and ended in August 31, 2018 as the Landlord gave the Tenant notice to end tenancy for Landlord's use of a close family member, the Landlord's daughter.

The parties further agree that there was no condition inspection report at the start of the tenancy and the condition inspection report at the end of the tenancy was completed by the Landlord alone, as the Tenant was not available.

The parties agreed that the apartment was approximately 20 years old and in its original condition except for the paint that was 10 years old and the floors that were 12 years old.

The parties also agree that the Tenant did not provide a forwarding address at the end of the tenancy and that the Landlord continues to hold the security deposit in the amount of \$650.00.

The Landlord claims that it took a month to clean and repair the rental unit and as a result lost a month of rental income. The Tenant disagreed and claimed that he left the unit in a reasonable state and that the cleaning and repairs were undertaken to make improvements for the benefit of the Landlord's daughter.

The Landlord contends that the Tenant breached the tenancy agreement by:

- Renting or leasing apartment spaces to unregistered and undisclosed sub tenants
- Permitting pets to occupy the apartment in contravention of the rental agreement
- Allowing family members to occupy the apartment, causing excessive damage
- Failure to notify owner of change of occupancy
- Failure to notify owner of damages to wall and appliances (dryer and fridge)
- Allowing sub tenants to retain keys and security fobs for apartment, garage and mail box
- Failing to maintain minimum levels of repair and cleanliness

and claims compensation in the amount of \$1,511.00 for one-month loss of rent and \$2,790.62\* for damages:

Gas fireplace repairs	588.00
Drywall repairs and repainting of walls and ceilings	951.13
Fluorescent light covers in kitchen shattered; Ceiling lights broken at swivel; several tubes and bulbs burned out or missing	233.40
Broken Panel on Kitchen cupboard doors*	38.57
Mail box keys, Repair entrance door and re-key entrance door	31.19
Cut keys for new door	17.94
Entrance door new deadbolt; passage set and adjust striker	178.75
Bedroom door holed and patched with un-sanded unpainted fabric patch	323.68
Shelf in bedroom closet torn off wall; mounting brackets broken	38.57
Damaged Dryer	156.96
Missing door fob	11.00
13 hours cleaning at \$20/hour	260.00
Missing garburator safety Plug missing	
Window blinds taped to the wall in Kitchen	
Smoke detector removed	
Floors Scratched in hallway	
<b>Sub total - Damages</b>	2,829.19
One month rent from Aug 31 to September 30	1,511.00
<b>TOTAL</b>	4,340.19

(\*omitted adding but submitted in claim \$38.57)

The Tenant disputes breaching the tenancy agreement due to undisclosed sub tenants or for failure to notify of occupancy changes, as the Landlord was aware that the Tenant's younger son and wife were living in the unit. The Tenant's points to the Landlord's own evidence which confirms the individuals were added to the agreement and to the Strata Form K. The Tenant asserted that he never stopped being a Tenant and that while he spent long periods of time away from the unit due to his out of town work, he remained a Tenant, regularly returning to the unit and continued to pay the rent to the Landlord.

The Tenant acknowledges that his other son, the son's girlfriend and her small dog stayed in the unit from time to time; and that the mail box key was not returned. The Tenant also acknowledges that his younger son did have parties in the rental unit. The Tenant stated that the fob was left on the kitchen counter.

The Landlord provided evidence and testimony that the gas fireplace required maintenance and repairs. The Tenant argued that he never used the fireplace and that he reported the broken fireplace switch to the Landlord a few years prior to the tenancy ending. The Tenant further testified that the Landlord gave permission to proceed with the repairs; however, as he never used the fireplace he did not undertake the repairs. The Tenant claimed that the maintenance and repairs are the responsibility of the Landlord.

The Landlord provided testimony and evidence that the drywall, wall and ceilings required fixing and painting. The Tenant disputed this claim and testified that he patched the drywall, and that the Landlord needed to paint the unit as the unit had not been painted during the 10-year tenancy. The Tenant further pointed out that the paint was old and outlived its expected life use. The Tenant confirmed he did not paint the patched walls.

The Landlord testified that the fluorescent light covers, and ceiling lights were broken from misuse and that light bulbs were missing. The Tenant testified that the fluorescent light covers were made of plastic and were in their original condition; that the plastic was brittle and broke due to normal wear and tear. The Tenant agreed that there were a few tubes and bulbs missing. The Landlord confirmed these were the original light fixtures.

The parties agree that the kitchen cabinet panel door was damaged but disagree on the cause. The Landlord claims that it was punched, and the Tenant claims it broke naturally due to its age. The Landlord testified that the kitchen panel was kicked in, damaged and needed to be replaced. The Tenant testified that the panel had a hole, that it was not kicked and that the damage appeared as a result of the laminate being de-glued and cracked during cleaning. The Tenant reiterated that the unit was 20 years old and in its original condition.

The Landlord submitted evidence and testimony to support her claim for replacing the mail box keys, repairing entrance door deadbolt and re-key entrance door. The Tenant testified that there was nothing wrong with the deadbolt, that the handle was reversed. The parties agree that the entrance door was not properly working. The Tenant admits that the mail box key was not returned.

The Landlord testified that the bedroom door had a hole covered with an un-sanded, unpainted, fabric patch. The Tenant agreed that this was the case.

The Landlord testified that a shelf in the bedroom closet was torn off the wall and that the mounting brackets were broken. The Tenant testified that he added the shelf in the closet and put in the brackets and spent more money improving than the cost of repairs.

The Landlord claimed that the dryer required repairs as the start button was removed or smashed by the Tenant. The Tenant objected to the Landlord's description of the dryer being smashed. The Tenant stated that the dryer's control knob was broken and disputes the claim on the basis that the dryer was 15 years old, and the repairs were required as a result of normal wear and tear.

The Landlord testified and provided evidence to support her claim for cleaning cost as she had to hire a person to clean accumulated dirt, animal hair from a closet, and accumulated stains and deposits on stove. The Tenant testified that he too hired a cleaning person and left the place reasonably clean, maybe not to the Landlord's standard. The Tenant however did not provide documentary evidence to support this claim. The Landlord further stated that the Tenant could not know of the state in which the unit was left as the Tenant was not present when the unit was returned to the Landlord.

The Tenant argued and reiterated that most of the repairs and damages were the result of normal wear and tear as the apartment was in its original condition and was approximately 20 years old. The Tenant testified that he took photographs but did not submit any photographs or receipts into evidence.

The Tenant testified that the garburator safety plug was under the counter; that the window blinds were the original blinds and were approximately 20 years old; that the smoke detector was inspected by the strata and the strata knew it was non-functional for an extended period of time.

The Landlord testified that the laminate wood floors were scratched and had deep gouges. Tenant testified that floors were over 12 years old and the scratches were normal wear and tear for an item of that age. The Landlord agreed that the floors were last replaced 12 years ago.

The Tenant testified and agreed that the Landlord can keep the \$650.00 Security Deposit in partial satisfaction of the Landlord's claims.

### Analysis

I will refer to these policies in assessing the Landlord's claims. The policies can be found in: [https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-](https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl01.pdf)

[tenancies/policy-guidelines/gl01.pdf](https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl01.pdf)

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl17.pdf>

and

(<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl40.pdf>) The full text of the Act, and other resources, can be accessed via

the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of the damage or loss and order a party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the Landlord to prove on the balance of probabilities that the Tenant caused the damage and that the damage was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

The Residential Tenancy Branch, Policy Guideline 1, clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning and repairs. Policy Guideline 17 provides direction on off-setting provisions for Security and Pet Damage deposits. Policy Guideline 40 sets out the useful life of building elements.

At the start and end of every tenancy a landlord and a tenant are required to perform an inspection of the rental unit together, pursuant to Sections 23 and 35 of the Act respectively. The primary purpose of performing an inspection at the start and end of the tenancy is to record the condition of the property when the tenant takes possession and when possession is returned to the landlord. Section 21 of the Residential Tenancy Regulation (the "Regulation") provide that a condition inspection report prepared in accordance with the Regulation is the best evidence in a dispute resolution proceeding unless there is a preponderance of evidence to the contrary.

By not completing a Condition Inspection Report at the start of the tenancy, the Landlord failed to comply with Section 23 of the Act and as per Section 24 of Act and I find the Landlord extinguished its right to make a claim against the Security Deposit for damages to the unit.

Section 37 of the Act states that a when a tenant vacates the rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear and the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant that allow access to and within the residential property. **I find the Tenant failed to leave the unit reasonable clean and undamaged and that the Landlord suffered a loss stemming from this.**

I accept that the parties agreed that the Landlord can retain the Security Deposit in partial satisfaction of the Landlord's claims.

The tenancy agreement did not allow pets; the Tenant's other son and girlfriend were more than casual guests as allowed by the tenancy agreement and were not added to

the agreement. I find the Tenant breached the tenancy agreement by allowing his other son, son's girlfriend and her dog to stay in the unit.

I will address each of the Landlord's claims below:

**One Month Loss of Rent (\$1,511.11)**

Section 49 of the *Act* allows a landlord to, in good faith, give notice to end a tenancy for landlord's use of property to allow a close family member to occupy the unit. In this case, it is the Landlord's daughter who occupied the unit. I find the Landlord is not eligible to claim for loss of rent, as no rent was lost. The Landlord failed to establish a loss and consequently, **I dismiss the Landlord's claim for Loss of one month rent in the amount of \$1,511.11.**

**Gas Fireplace repairs (\$588.00)**

The Landlord provided testimony and evidence that the gas fireplace required maintenance and repairs. However, the Landlord failed to establish that the repairs for installing a new valve kit and pilot assembly were as a direct result of deliberate damage or negligence caused by the Tenant. The tenancy agreement specifically states that the Natural Gas Fireplace will be maintained by the Landlord.

**I find that the Landlord was responsible for maintaining the gas fireplace and dismiss the claim for \$588.00.**

**Drywall repairs and repainting of walls and ceiling (\$951.13)**

Policy Guideline 40 points that the useful life of paint is 4 years. The parties agreed that the unit had not been painted since the start of this tenancy, that is 10 years ago. Furthermore, Policy Guideline 1 establishes that:

"Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to **paint the premises or to maintain and repair appliances provided by the landlord**. Such a term of the tenancy agreement would not be enforceable. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.



Painting of the unit and repairs are the responsibility of the Landlord. Consequently, **I find that the Landlord is not entitled to recover the cost from the Tenant and dismiss the claim for \$951.13.**

**Fluorescent light covers, ceiling lights and several missing bulbs (\$233.40)**

As per Policy Guideline 1, a Tenant is not responsible for deterioration due to normal wear and tear. I find the Tenant did not cause intentional damage to the light fixtures and the damage was as a result of normal wear and tear; I find the Tenant is responsible for replacing the lightbulbs.

I dismiss the Landlords claims for light covers and light fixtures as they outlived their useful life. **I award the Landlord a nominal amount of \$50 for replacement of fluorescent light tubes and light bulbs in accordance with Section 37 and 67 of the Act.**

**Broken Panel on Kitchen cupboard door (\$38.57)**

The parties agreed that the kitchen cupboard door was broken. I find that on the balance of probabilities the cupboard door was not broken due to cleaning and normal wear and tear. The evidence submitted by the Landlord is more persuasive that damage was caused by the Tenant or its occupants, consequently, in accordance with Sections 37 and 67 in of the Act, **I award the Landlord the cost for replacement of the door for \$38.57**

**Mail box keys and Repairs to the entrance door (\$31.19);**

**Entrance door new deadbolt; Passage set and adjust striker and new keys for the door (\$178.75);**

**Cut keys for new door (\$17.94).**

**Missing Door Fob (\$11)**

I find the Landlord changed the entrance deadbolt and cut new keys as it was malfunctioning and required repairs or change. I find the Tenant did not cause damage to the deadbolt and did not breach Section 37 of the Act.

**I dismiss the Landlord's claim for \$178.75 for the deadbolt and the new keys \$17.94.**

As the Tenant agreed that the mail box key was not returned, in accordance with Section 37, I find that the Landlord established a claim for replacing the mail box keys and **I award the Landlord \$14.85.**

The Tenant claimed the fob was left on the table, the Landlord claimed there was a fob missing. As there was no condition inspection at the start of the tenancy, the Landlord was not able to establish if there were one or two fobs provided to the Tenant; consequently, **I dismiss the Landlord's claim for \$11 for replacing one fob.**

### **Bedroom Door (\$323.68)**

The Landlord provided testimony and evidence that the bedroom door was damaged. The Tenant agreed that it was the case. As such, I find the Tenant is responsible for the cost of these repairs and I am satisfied the Landlord has established the value through the submission of receipts. In accordance with Section 37 and 67 of the Act **I award the Landlord \$323.68.**

### **Shelf bedroom closet – broken (\$38.57)**

In accordance with Policy Guideline 1, any changes to the rental unit that have not been consented by the Landlord must be returned to its original condition. If the tenant does not return the rental unit to its original condition before vacating, the landlord may return the rental unit to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Based on the testimony of both parties, I accept the Tenant made these alterations without the consent of the Landlord therefore pursuant to the Policy Guideline 1 the Tenant is responsible for the repairs that the Landlord had to undertake. I find the Landlord has established her loss for repairs of the broken shelf **and I award the Landlord \$38.57**, pursuant to Section 37 and 67 of the Act.

### **Damaged Dryer (\$156.96)**

The Tenancy agreement specifically stated that the appliances will be maintained by the Landlord which includes the dryer. The Landlord failed to establish that the damage was a result of the Tenant's action. I find that it is more likely than not that the repairs

required were as the result of normal wear and tear. Consequently, **I dismiss the Landlords claims for repairs in the amount of \$156.96**

**13 hours cleaning at \$20.00 per hour**

Section 37 of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the Landlord's evidence and testimony is more persuasive than the Tenant's testimony. I find on the balance of probabilities, it is more likely than not that the unit was not left reasonably clean. I find the Landlord established her loss and consequently, **I award the Landlord the recovery of cleaning cost for the unit in the amount of \$260.00**, pursuant to Section 37 and 67 of the Act.

**Garburator plug, window blinds, smoke detector and floor scratches.**

The parties agreed that the garburator plug, the window blinds and smoke detectors were in their original state and the floors were at least 12 years old. While the Landlord testified that these were damaged, she failed to establish that she suffered a loss as no receipts for replacements or pairs were submitted. **I find that the Landlord failed to establish that she suffered a loss consequently, I dismiss these claims**, pursuant to Section 37 and 67 of the Act.

**Filing Fee**

As the Landlord was partly successful in the claims, **I award the Landlord \$100.00 as per Section 72 of the Act**

In Summary I award the Landlord the following:

(see next page)

	Claimed	Granted
Gas fireplace repairs	588.00	0
Drywall repairs and repainting of walls and ceilings	951.13	0
Fluorescent light covers in kitchen shattered; Ceiling lights broken at swivel; several tubes and bulbs burned out or missing	233.40	50
Broken Panel on Kitchen cupboard doors	38.57	38.57
Mail box keys (14.85), Repair entrance door and re-key entrance door	31.19	14.85
Cut keys for new door	17.94	0
Entrance door new deadbolt; passage set and adjust striker	178.75	0
Bedroom door holed and patched with unsanded unpainted fabric patch	323.68	323.68
Shelf in bedroom closet torn off wall; mounting brackets broken	38.57	38.57
Damaged Dryer	156.96	0
Missing door fob	11.00	0
13 hours cleaning at \$20/hour	260.00	260.00
Missing garburator safety Plug missing		0
Window blinds taped to the wall in Kitchen		0
Smoke detector removed		0
Floors Scratched in hallway		0
<b>Sub total - Damages</b>	2,829.19	725.67
Filing fee		100.00
One month rent from Aug 31 to September 30	1511.00	0
<b>TOTAL</b>	<b>\$4,340.19</b>	<b>\$825.67</b>

As the Tenant agreed that the Landlord can retain the security deposit in partial satisfaction of its claim, the net award to the Landlord is \$200.67.

<b>Award</b>	<b>825.67</b>
<b>Less Security Deposit</b>	<b>625.00</b>
<b>Net Award</b>	<b>\$200.67</b>

Conclusion

**I HEREBY ORDER**, pursuant to Section 67 and 72 of the *Residential Tenancy Act* that the respondent Tenant, **Richard Horvath**, pay to the applicant Landlord, **Donna Carol A. Nyberg**, the sum of **\$200.67**.

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 26, 2019

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Residential Tenancy Branch