



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for alleged damage caused by the tenant and for recovery of the filing fee paid for this application.

The landlord and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence and that he had not filed any evidence, instead choosing to respond at the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for alleged damage caused by the tenant and to recovery of the filing fee paid for this application?

### Background and Evidence

The undisputed evidence was that this tenancy officially began on November 1, 2018, ended on April 15, 2019, monthly rent was \$1,150.00 and the tenant paid a security deposit of \$575.00.

The landlord's monetary claim is \$897.97. Included in that claim were various charges such as carpet cleaning, cleaning, earthquake supplies, paint, polyfilla, cleaning supplies and a soap caddy. The tenant said he agreed with these items.

The remaining claim was from a carpet cleaning company for repair to the Oriental carpet ("Rug"). The tenant said he disagreed with this claim of \$431.11.

As a result, the hearing dealt only with that issue.

In support of his claim, the landlord submitted that he had the Rug professionally cleaned prior to the start of this tenancy, as shown by the receipt he provided into evidence, which reflects it was clean from the start of the tenancy. The landlord said that a Rug such as that should require cleaning every five years.

The landlord submitted that at the end of the tenancy, there was a visible difference in color on the fringes of the Rug, and both fringes were discoloured.

The landlord submitted that the tenant was told not to eat on the Rug and he agreed; however, that did not appear to be the case.

#### *Tenant's response-*

The tenant submitted that he was careful with the Rug and did not do anything other than just sit on the chair. The tenant submitted that he did drink on the sofa, but does not recall spilling any drinks.

The tenant submitted that any discolouration was normal wear and tear.

#### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to minimize their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the obligation to prove their claim and the claim fails.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

The disputed portion of the landlord's monetary claim is damage to the fringe on the Rug.

I have reviewed the landlord's evidence and while he has submitted up-close photos of the Oriental carpet fringe, post tenancy, he has not provided an equally up-close photo from the start of the tenancy. I was therefore unable to determine if there was any damage that occurred during the tenancy which was above normal wear and tear.

While the landlord states the Rug was cleaned prior to the start of the tenancy, his evidence shows that the cleaning was from July 2018, over three months prior to the start of the tenancy.

Additionally, while the parties conducted a move-in inspection, I note that the move-out condition inspection report ("CIR") was not signed by the landlord, although remarks were written on the CIR. I therefore was not able to rely on that CIR as to the state of the rental unit as it was not signed.

Lastly, I also considered that the landlord expected the rental unit to be left exactly as it was at the start of the tenancy. As noted above, this is not allowed by the Act, as the tenant is allowed normal wear and tear. I find the landlord's standard for the condition of the rental unit expected of the tenant caused me further to doubt the reliability of the landlord's evidence as to the state of the Oriental carpet.

Due to the above, I dismiss the portion of the landlord's application for damage to the Oriental carpet in the amount of \$431.11.

As the tenant agreed to the remainder of the landlord's claim, I find the landlord is entitled to a monetary award of \$466.86 (\$897.97 total monetary claim less \$431.11).

I grant the landlord recovery of the filing fee of \$100.00, reflecting partial success with his application, for a total monetary award of \$566.86.

I direct the landlord to retain the amount of \$566.86 from the tenant's security deposit in full satisfaction of his monetary award.

Pursuant to section 62(3), I order the landlord to return the balance of the tenant's security deposit. To give effect to this order, I grant the tenant a monetary order in the amount of \$8.14, the balance of his security deposit.

The order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement purposes.

### Conclusion

The landlord's application has been partially successful as he is granted a monetary award in the amount of \$566.86, which is a portion of his monetary claim and the filing fee. The landlord is directed to retain this amount from the tenant's security deposit and to return the balance to the tenant.

The tenant is granted a monetary award for the balance of his security deposit.

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: September 4, 2019

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Residential Tenancy Branch