



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

FFL MNDCL-S  
FFT MNSD

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The landlord’s for:

- authorization to retain all of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$750.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- authorization to obtain a return of all of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### **Preliminary Issue – Service of Landlord’s Notice of Dispute Resolution Proceeding**

The tenant testified, and the landlord confirmed, that the landlord never served her with the Notice of Dispute Resolution Proceeding Form, as required by Rule of Procedure 3.1.

The landlord testified, and the tenant agreed, that he served the tenant with a handwritten letter and typed addendum which set out his claim against the tenant.

The parties also agreed that the landlord served the tenant with all the documentary evidence the landlord submitted to the Residential Tenancy Branch in support of his application.

The tenant stated that, despite not having received the Notice of Dispute Resolution Proceeding, she was prepared to proceed with the hearing. As such, the landlord is permitted to bring his application.

The landlord confirmed that all of the tenant's documents were served on him in accordance with the Rules of Procedure. I find that the tenant served her evidence upon the landlord in accordance with the Act.

### **Issue(s) to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$750.00 in compensation for damage done to the rental unit by the tenant?
- 2) the reimbursement of his filing fee?

Is the tenant entitled to:

- 1) the return of the security deposit?
- 2) the reimbursement of her filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting September 1, 2018. The agreement terminated on April 30, 2019. Monthly rent was \$2,100.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$750.00 and no pet damage deposit. The landlord still retains the security deposit. The landlord testified that he did not prepare a move-in condition inspection report at the start of the tenancy.

The tenant vacated the rental unit at the end of April, 2019. A walkthrough of the rental unit was conducted by the landlord's agent and the tenant in early May, 2019, but the landlord did not prepare a written move-out condition inspection report.

The tenant provided the landlord with her forwarding address on May 13, 2019. The landlord applied for dispute resolution on May 21, 2019. The tenant applied for the return of the security deposit on July 29, 2019.

### Landlord's Claim

The landlord claims that the tenant caused significant damage to the garage door (the cost of which to fix is \$1,500.00) and the interior carpets (which necessitate their replacement at a cost of \$6,000.00). However, the landlord stated that he is only claiming for \$750.00 (the amount of the security deposit) because the tenant was a good tenant throughout the course of the tenancy.

The landlord claims that the garage door is bent, and that the tenant added a wooden brace to the back of the garage door to support it. He also testified that a number of garage door panels are damaged (he did not specify how many). He alleges that the tenant caused this damage.

The landlord submitted a number of photos into evidence. However, he submitted no photographs depicting damage to the garage door, and only a single photo of the wooden brace the landlord alleges the tenant installed.

The landlord claims that the carpet was stained throughout the rental unit, and that the stains were likely caused by a cat that the tenant owned. The landlord testified he was unaware that the tenant owned a cat, and pointed to the fact he did not ask for a pet damage deposit in support of this point.

The landlord submitted two photos of the carpet into evidence (one of a closet, and the other of a corner of an unknown room), which appear to show some discoloration.

The landlord did not submit any documentary evidence as to the cost of either repairing or replacing the garage door or replacing the carpet.

The landlord gave evidence that there was carpenter ant damage to parts of the unit, and that these ants were likely attracted to the rental unit by skin shed by the tenant's cat. However, as the landlord has not claimed for any damages relating to carpenter ant activity, I do not need to discuss the matter further.

The tenant denied that she caused any damage to the carpet. She testified that she cleaned the carpets prior to vacating the rental unit. She submitted receipts for the rental of carpet cleaning equipment dated prior to her vacating the rental unit. She submitted photographs in which the rental unit carpets appear to be clean.

The tenant denied she caused any damage to the garage door. She testified (and the landlord agreed) that use of the garage was not included in the rental agreement. She testified that the landlord gave her a fob to open the garage in the event of an emergency. The tenant testified that she did not use the garage, but that she did open it from time to time to air it out, as it contained a musty smell that entered the rental unit.

The tenant admitted she owned a cat, but testified that the landlord or his agent knew this. The tenant argued that there is no evidence that her cat caused any damage to the carpet.

### The Tenant's Claim

The tenant claims that she caused no damage to the rental unit. She testified that she has provided her forwarding address to the landlord, and that he has not returned her damage deposit.

The tenant argues that, as she caused no damage to the rental unit, she is entitled to the return of the entire security deposit.

### Analysis

Rule of Procedure 6.6 states

#### **6.6 The standard of proof and onus of proof**

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

In this case, the landlord is alleging that the tenant damaged the rental unit, so he bears the onus to prove this and prove he is entitled to compensation as a result.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

Section 32(3) of the Act states:

**Landlord and tenant obligations to repair and maintain**

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In order to show that the tenant failed to comply with the Act (as required by Policy Guideline 16) the landlord must prove, on a balance of probabilities she damaged the rental unit, and failed to repair this damage.

Garage Door

Upon review of the materials submitted by both parties, I find that the landlord has failed to prove that the tenant caused any damage to the garage, or that the garage door is even, in fact, damaged. There are no photographs of damage to the garage door. Without such photographs, I cannot assess what, if any, damage actually exists.

Likewise, the lack of a move-out inspection report prevents me from determining what the garage door's condition was at the end of the tenancy.

Even if the landlord did provide photographs showing the damage to the garage door at the end of the tenancy, the lack of a move-in inspection report would make it difficult for me to find that this damage did not predate the tenant moving into the rental unit.

Accordingly, I find that the landlord has failed to meet the evidentiary onus place on him to show that the tenant breached the Act by damaging the garage door.

### Carpets

As with the garage door, the lack of move-in inspection report prevents me from determining the condition of the carpets prior to the tenant moving into the rental unit. As such, I am not persuaded that the tenant caused the damage to the carpet that is depicted in the photographs the landlord submitted into evidence.

In any event, there is no documentary evidence before me (such as a quote, estimate, or price list) as to the cost to repair or replace the carpet, so even if I found that the tenant damaged the carpet, I would find that the landlord failed to meet his burden to prove that the value of damaged suffered (per Policy Guideline 16).

Accordingly, I find that the landlord is not entitled to any compensation in connection to his claim for recovery of damages to the carpet.

### Return of Security Deposit

The landlord testified that he completed neither a move-in nor move-out condition inspection report. He testified his agent conducted a walkthrough inspection with the tenant at the end of the tenancy.

The completion of condition inspection reports at the start and end of the tenancy are required by sections 23(4) and 35(3) of the Act, which state:

#### **Condition inspection: start of tenancy or new pet**

23(4) The landlord must complete a condition inspection report in accordance with the regulations.

**Condition inspection: end of tenancy**

35(3) The landlord must complete a condition inspection report in accordance with the regulations.

Consequences for the failure to complete such reports are set out at sections 24(2) and 36(2) of the Act:

**Consequences for tenant and landlord if report requirements not met**

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

**Consequences for tenant and landlord if report requirements not met**

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with sections 24(2)(c) and 36(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report at both the start and at the end of the tenancy.

Residential Tenancy Policy Guideline 17 states:

C3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit

[...]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

- whether or not the landlord may have a valid monetary claim.

The tenant has not specifically waived the doubling of the deposit. Accordingly, I find that as the landlord's right to claim against the security deposit is extinguished (discussed above). Therefore the tenant is entitled to receive double the security deposit from the landlord.

Accordingly, I order that the landlord pay the tenant \$1,500.00, representing double the security deposit.

As the tenant has been successful in her application, I order that the landlord reimburse her the filing fee of \$100.00.

For the reasons set out above, I dismiss the landlord's application in its entirety.

### **Conclusion**

Pursuant to sections 24, 36, 67, and 72 of the Act, I order that the landlord pay the tenant \$1,600.00. This order may be filed and enforced in the Provincial Court of British Columbia.

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