



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOFFO DEVELOPMENTS SUSSEX LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** MNDL- S, FF

### **Introduction**

This hearing was convened in response to the landlord's application for a monetary award for damage to the rental unit, and for an order to retain the tenants' security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The tenants and 2 representatives of the landlord called in and participated in the hearing. The parties acknowledged exchanging all hearing related documents by registered mail, and all evidence including photographs as before this proceeding.

All participants were affirmed under solemn declaration. At the outset of the hearing the tenant requested an adjournment so as they could accumulate additional evidence from the landlord and the City respecting maintenance records of the residential property. I determined the adjournment request as unnecessary as the landlord bore the burden of proving their claims, the City would not have evidence respecting the condition of the rental unit interior, I was not convinced by the tenant's claims of available relevant evidence; and, despite the landlord not having served their evidence earlier, they did so within the Rules of Procedure timelines and the tenant was clearly able to respond to the landlord's evidence.

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

Is the landlord entitled to a monetary award for the cost to repair damage to the rental unit and if so, in what amount?

### **Background and Evidence**

The relevant evidence of this matter is as follows. The rental unit is an apartment. The tenancy has ended. The parties were embroiled in previous dispute arbitration concerning unpaid rent. The tenancy began July 01, 2016. The payable monthly rent

was due on the first of each month. The tenants paid a security deposit of \$650.00 which the landlord retains in trust.

The tenants claim they moved from the rental unit at the end of February 2019. The landlord claims the tenant abandoned the rental unit, which they discovered vacated of personal effects on March 28, 2019. The tenants claim they personally provided the landlord (NV) their tenant's notice to end the tenancy in January 2019 for vacancy February 28, 2019. The landlord denied having been personally given such notice by the tenants. Neither party provided further evidence respecting or clarifying the issue of a tenant's notice to end.

The tenant's claim that on February 28, 2019 they vacated and on March 07, 2019 they personally met with the landlord (NV) to whom they handed all their keys of the residential property. The landlord denied meeting the tenants as asserted by them and testified last seeing the tenants in the early part of February 2019. The landlord asserted they were never provided the 4 keys originally given the tenants at the outset of the tenancy. The parties acknowledged that near the end of the tenancy their disputatious relationship escalated to the point the parties no longer communicated effectively.

The parties agreed they completed a condition inspection report when the tenants moved in, however a move out condition inspection did not occur. The landlord testified that on March 28, 2019 they entered the rental unit on indications the tenants had vacated and found the rental unit unclean, damaged and with furniture and other castoff items, as well as refuse. The tenant claims that after they vacated February 28, 2019 the landlord did not allow them back into the unit to clean or remove such items as their 2 couches and 2 mattresses as claimed by the landlord. The tenants also questioned the number bags of garbage (4) claimed by the landlord to have been left behind.

The tenants provided a written forwarding address October 04, 2019, and the landlord made their application 14 days thereafter.

In the application for dispute resolution the landlord claimed a monetary award in the amount of \$2760.54, making the following claims.

- Two door locks (for rental unit and residential property doors), deadbolt for rental unit door, and 25 access keys for residential property door.

The landlord claimed that the tenants did not return any of the keys for the rental property and that during March 2019 security issues and concerns from other

residents mounted. After coming upon the rental unit, they were obligated to secure the building's access. The landlord claimed the receipted sum of \$314.00 for the lock-related costs, including all hardware, and 25 replacement keys for the building tenants.

The tenants disputed the landlord's claim stating they had returned the keys, however could not prove they had done so. The tenant also argued that according to their tenancy agreement addendum, in events concerning keys and locks, that the following would apply:

*3. \$10.00 is charged for any additional key, or if a key is not returned at end of tenancy. \$25.00 is charged if you require your lock to be changed.*

The tenant also disputed the landlord's claim for a deadbolt unit which they claim never existed on their door. The landlord explained that the original rental unit lockset contained an integral deadlock, whereas the replacement lockset unit did not, therefore provided a separate deadbolt.

- Cleaning.

The landlord testified that the tenants left the rental unit unclean and strewn with small items, garbage and 4 large pieces of furniture. The landlord is claiming 13.5 hours for cleaning at \$18.00 per hour in the sum of \$243.00. Again, the tenant claimed the landlord did not allow them to clean the rental unit after they vacated February 28, 2019, with which the landlord disagreed as they were unaware the tenants had vacated. the landlord submitted a series of photo images depicting the condition of the rental unit on March 28, 2019.

- Miscellaneous repairs – labour (\$1550.00) and materials (\$653.54).

The landlord ultimately claimed for a *reduced* number of various items under this heading. The landlord claimed a bundled sum amount for repairs-related labour of \$1550.00 and receipts for various items in the amount of \$653.94 (tax and fees). The landlord was apprised as to the difficulty before an Arbitrator in determining an abundance of different repair activities bundled into one sum and in the absence of an itemized list.

On the other hand, for the relevant items supported by receipts, the landlord claimed \$394.46 for paint and caulking materials, \$18.98 for a toilet seat, \$25.97 for a system-wide (wired) smoke alarm unit, and an undiscernible amount for "blinds".

Of the bundled sum for labour the landlord claims for:

- Disposing of 2 couches and 2 mattresses, which the tenant agreed leaving behind.
- Repainting the entire rental unit walls and ceiling, which the landlord agreed with the tenant were likely last painted 4-5 years earlier, and certainly not immediately before the tenancy started in July 2016
- Refurbishing drywall vis a vis 2 windows and repainting, for reason not known to tenant nor aptly explained by the landlord
- Repainting scratched doors. The tenant disputed the doors were scratched. The landlord submitted one photo image of a brown door.
- Replacement of 2 (2x4) wall studs in a bedroom. The landlord did not aptly explain this portion of their claim nor why the tenant was responsible for replacement of the 2 wall studs.
- Outdoor window and balcony caulking. Landlord did not explain why the tenant was responsible for this claim.
- Replacement of a toilet seat. Both parties agreed the toilet seat was stained beyond cleaning, thus replaced.
- Repainting miscellaneous cabinets. The landlord provided photo images of various cabinets and their insides left stained. The tenant did not provide rebuttal evidence to this claim.
- Replacement of various blinds. The tenant did not provide rebuttal evidence to this claim; however, the landlord also did not provide photo evidence in respect to this claim, nor an identifiable receipt.
- Replacement of a missing smoke alarm. The parties argued as to the particulars of the smoke alarm (wired versus battery). However, the landlord claims the unit replaced was destined and installed for exposed wires in the living room, for which they provided a photo image for the unit base and exposed wires.

### **Analysis**

*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).*

On preponderance of the evidence and balance of probabilities I find as follows.

Under the Act, a party claiming losses bears the burden of proof. Moreover, the applicant (landlord) must satisfy each of the component established by **Section 7** of the Act, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Therefore, in summary the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the landlord must then provide evidence that can verify the monetary amount or value of the loss (receipt, invoice, or estimate in respect of the loss). Finally, an applicant must show that reasonable steps were taken to address the situation to mitigate or minimize the claimed resulting loss.

The landlord claimed a monetary award of \$314.00 to replace 2 locksets (each \$71.32), a deadbolt unit and 25 access keys for the main building doors. In the absence of evidence from the tenant proving they returned the access keys for the building the tenant argued any compensation to the landlord should be guided by the tenancy agreement respecting keys and locks.

It must be known that within the life of a tenancy, certain terms within the tenancy agreement or contract, unless deemed unconscionable, will guide what takes place during the tenancy. In this matter, during the tenancy \$10.00 is charged for an additional key and \$25.00 if the tenant requires a new lock. Ten dollars is also the landlord's request if a key is not returned when required – at the tenancy's end. Once the tenancy has ended there is no basis upon which a term of the tenancy endures or still applies. In this matter the landlord's claim is not rooted in the terms of the tenancy agreement, but rather as means to claim compensation for a loss which they claim has been created by the tenant's conduct by not returning a building wide access key. While the tenancy agreement states that an unreturned key is subject to a charge, I find the landlord has not relied on this term of the agreement supporting their claim.

I accept and prefer the landlord's evidence that due to the tenant's conduct the landlord was obligated to replace the means of access to the main building, to ensure the security of all tenants, and determined that the services of a locksmith versus replacing the building door lockset for \$71.32, would be more costly. On the basis that the landlord is not also seeking labour costs for replacing either of the locksets, I accept the landlord's premise they effectively mitigated this portion of their claim. On the same basis I also accept the landlord's claim for replacement of the rental unit lockset. None the less, I am mindful of the landlord's photo evidence respecting the existing locksets which I find both depict considerable wear and tear. As a result, it is my decision to

grant the landlord half of their claim for all locks-related hardware to account for depreciation, resulting in an award amount of **\$157.00**, without leave to reapply.

In respect to the landlord's claim for cleaning, I find the tenant's version of events in respect to this portion of the landlord's claim confusing. If I were to accept their testimony that they vacated February 28 and returned the keys March 07, 2019, I find the tenant knew or ought to have known to reasonably clean the rental unit upon vacating it, and, had time to clean the rental unit and dispose of their items prior to returning the keys. However, on March 28, 2019 the landlord came upon an unclean and cluttered rental unit. As a result, I prefer the landlord's evidence in this claim and therefore grant their requested amount for cleaning of **\$243.00**, without leave to reapply.

In respect to labour for miscellaneous repairs in the absence of an itemized claim list I find it reasonable granting the landlord 3 hours labour at their previously referenced hourly rate of \$18.00 for solely disposing of 2 couches, 2 mattresses and a quantum of other refuse, in the sum of **\$54.00**, without leave to reapply.

In respect to repainting cabinets, I find the landlord has submitted sufficient evidence to support that the cabinetry required refurbishing by painting it. Therefore, in the absence of an itemized claim list I find it reasonable granting the landlord 2 hours labour at their previously referenced hourly rate of \$18.00 for solely repainting the cabinets, in the sum of **\$36.00**, without leave to reapply.

In respect to the toilet seat, I accept the parties' evidence the toilet seat required replacement as it was beyond cleaning. I find the landlord submitted a receipt for the toilet seat for \$21.25 (tax of 12% inclusive) and I grant the landlord \$9.00 for its related labour in the sum award of **\$30.25**, without leave to reapply.

In respect to the wired smoke alarm, I find the landlord has submitted sufficient evidence to support a missing system-wide (wired) smoke alarm. As a result, I grant the landlord the receipted amount for the smoke alarm of \$30.43 (tax and eco fee inclusive) and I grant the landlord \$9.00 for its related labour for a sum of **\$39.43**, without leave to reapply.

I find that **Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements** states the useful life for an interior painting finish is 4 years. I have not been presented with evidence that the interior paint last applied 4 or 5 years earlier than 2019 requires consideration as the rental unit paint having a superior or longer useful life than suggested in the Policy Guideline, which I find takes a reasonable stance. **Section 7(2)** of the Act imposes on the landlord a duty to *reasonably mitigate or minimize their loss*

*/claim.* Therefore, in respect to the landlord's claim for repainting the 4 to 5 year old interior finish I find that even if I were to accept that the tenant is responsible for, or by their action damaged the rental unit walls, I find that the factored mitigated or depreciated value of any entitlement for repainting would be reduced 100% and the resulting allowable compensation to the landlord would be \$0.00. Effectively, I therefore **dismiss** this portion of the landlord's claim for painting the walls and ceiling, without leave to reapply.

In respect to all remaining claims the landlord has placed in their application I find insufficient evidence to prove the existence of a loss, and/or that a claimed loss stemmed directly from a violation of the tenancy agreement, contravention of the Act, or conduct on the part of the tenant. In other words, that the tenant was responsible for such a loss. As a relevant example in this matter, a tenant would not normally be responsible for an outside window and balcony caulking repair. As a result, I **dismiss** the balance of the landlord's claims, without leave to reapply.

I have allowed the landlord's claim for a monetary award in the total amount for all fractional amounts of \$559.68. As the landlord has in part been successful in their application, they are entitled to recover the \$100.00 filing fee for their application, for a total award of **\$659.68**.

The tenant's security deposit will be offset from the award made herein.

#### *Calculation for Monetary Order*

Total of landlord's award	\$559.68
Filing Fee	100.00
<i>Less Security Deposit held in trust</i>	<i>-625.00</i>
<b>Monetary Order to landlord</b>	<b>\$34.68</b>

#### **Orders**

**I Order** that the landlord may retain the security deposit of \$625.00 currently held by them in trust, in partial satisfaction of their claim. And,

**I grant** the landlord a Monetary Order under Section 67 of the Act for the balance due of **\$34.68**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**Conclusion**

The landlord's application in parts compensable has been granted, and the remaining claims dismissed without leave to reapply.

**This Decision is final and binding.**

*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 05, 2020

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Residential Tenancy Branch