



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SHAWNESSY SQUARE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL, MNDCL, FFL

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for alleged damage caused by the tenant; and
- recovery of the filing fee paid for this application.

The landlord's agent (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 evidence submitted prior to the hearing, and make submissions to me.

While I have turned my mind to all the documentary, oral, and digital evidence, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim, the tenant's response, and my findings around it are set out below.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and for recovery of the filing fee paid for this application?

Background and Evidence

I heard undisputed evidence that the tenancy began on June 29, 2012 and ended in September 2019. The tenant paid a security deposit of \$382.50, which the landlord has retained, claiming against it in this application.

The landlord's monetary claim is:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning of the rental unit	\$135.00
2. Drapery cleaning	\$82.50
3. Cleaning supplies	\$21.75
4. Carpet cleaning	\$259.00
5. Carpet/bleach re-dying	\$465.00
6. Carpet/cigarette burn	\$140.00
7. Wall repair damages	\$235.00
8. Bathtub repair damages	\$85.00
9. Rental loss/clean and repair	\$140.90
10. Management time	\$213.48
<b>TOTAL</b>	<b>\$1,777.63</b>

In support of their application, the landlord claimed that the tenant failed to reasonably and properly clean the rental unit when he vacated. This included the entire rental unit, the balcony door, the drapery, and the carpeted floor, which was soiled, burned, and stained.

The landlord claimed that the tenant left 29 screw holes and 84 nail holes in the walls and a bedroom door; that there were heavy scratch marks on the walls and door; and that there was damage to the bath tub.

The landlord claimed that the tenant caused the landlord a loss of five days rent in order to clean and repair and that the tenant is responsible for management time spent in scheduling and overseeing all cleaning and repair work.

In response to my inquiry, the landlord said the carpet was 7 years old.

The landlord's relevant evidence included invoices, a written tenancy agreement with an attached inspection report, and a considerable number of photographs.

*Tenant's response-*

The tenant claimed that the landlord was nitpicking and that he left the rental unit cleaner than when he moved in. The tenant said that the nail holes were tiny finishing nail holes and that paint would cover them over.

The tenant said the toilet was damaged at the start. The tenant submitted that he steam cleaned the carpet and the landlord's agent here knew that it was, saying further that the suds mentioned on the carpet invoice was due to his steam cleaning.

The tenant said that he washed the drapery, using the landlord's equipment and supplies, and that it was stained in washing. The tenant said he was to get blinds during the tenancy, but did not.

The tenant said he completed every item on the landlord's move-out check list and left it so clean, the new tenant would be able to move in the next day.

The tenant said that he wiped down all fixtures and dusted everything. The tenant denied that he was the cause of the singed carpet, as ashes blew in from the balcony on a windy day. The tenant denied ever smoking in the rental unit.

The tenant said he was only human, and might have missed something in the clean-up.

*Landlord's rebuttal-*

The landlord, when questioned, said the drapery in the rental unit had been replaced by a blind, but that he keeps the drapery folded in case another unit with a drapery needs a replacement.

The landlord submitted that the tenant agreed on the move-out inspection report that the landlord could keep his security deposit.

*Tenant's further response-*

The tenant submitted that he is not one to fight and argue over picky things, but disagreed that he had agreed the security deposit was to be kept.

The tenant said he treated the rental unit with respect.

### Analysis

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

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

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.

I have reviewed the landlord's considerable number of photographs and the documentary evidence. When looking at various photographs, in many instances, I was not able to determine for what damage the landlord was claiming.

Many photographs were extremely close-up to the claimed damage or unclean state. On other photographs, instead of seeing damage or unclean conditions, I find support for the tenant's claim that he left the rental unit clean. For instance, inside a cabinet showed that it being clean and tidy. If there was a mark at all, I find this to be reasonable wear and tear for a 7-year tenancy.

In other instances, when the landlord showed what looked to be nail holes patched, I could not determine if this is work the landlord took on or were the patched marks something the tenant worked on.

On at least one photograph, the landlord showed some chipping from a sharp corner of a wall. I find this to be reasonable wear and tear from a 7-year tenancy.

Conversely, the landlord failed to provide up-close photographs of the same area or item from the beginning 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.

I likewise did not find the invoice evidence of the landlord, with the exception of the carpet invoice, to be compelling or believable. The invoices were all on the landlord's generic letterhead, showing the cost claimed, a description, a total and a signature of the landlord's agent here. There was no detailed explanation or breakdown of hours spent and all those invoices looked exactly the same.

I do not accept the landlord's claim that the tenant signed his approval for the landlord to keep his security deposit. I have reviewed the landlord's condition inspection form, which was not on the standard Residential Tenancy Branch (RTB) form and find that the tenant signed it only. On the RTB form, there is a place for the tenant to sign whether they agree with the landlord's deduction.

In looking at the landlord's claim for drapery cleaning, the landlord has claimed for damage to a drape that has been replaced by a blind. On the invoice, the landlord has claimed for reinstalling the curtain.

I find this has caused me to doubt the credibility of all the landlord's evidence.

I find the tenant to be consistent and believable with his testimony. On the other hand, I find the landlord to have inflated their claim.

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

As I have dismissed the landlord's application, I order the landlord to return the tenant's security deposit of \$382.50, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$382.50, which is included with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit of \$382.50, immediately, and the tenant is granted a monetary order in the amount of that deposit in the amount of \$382.50 in the event the landlord does not comply with this order.

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 10, 2020

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Residential Tenancy Branch