



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1027971 BC Unlimited Liability Company  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant
- authority to retain the tenant's security deposit; and
- recovery of the filing fee.

The landlord's agent (landlord), the tenant, and his witness attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

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

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

The parties confirmed receiving the other's evidence; however, the landlord said she could not open the USB evidence sent by the tenant, as her computer was not available.

An applicant is required to file all available evidence with their application and serve to the other party in a single package. In this case, the landlord's application was made on December 5, 2019.

If the evidence is not available to be filed with the application, it must be filed with the Residential Tenancy Branch (RTB) and the other party as soon as it becomes available.

In this case, I have reviewed the evidence and find that it was not served as soon as it became available. Instead, the landlord did not serve her evidence until it was received by the RTB on April 22, 2020. This meant that the tenant was then compelled to file his evidence and it was received on April 24, 2020.

I find it reasonable that if the landlord had served her evidence when required, she would have time to view the tenant's evidence, or at least, find an available computer.

I determined that the tenant's evidence would be accepted as I find the landlord failed to comply with the Rules as to her requirement to submit evidence as described above.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for alleged damage to the rental unit by the tenant, to use the security deposit for the monetary compensation and recovery of the filing fee?

#### Background and Evidence

I heard undisputed evidence that the tenancy began on May 1, 2017 and ended on or about November 30, 2019, the date of the move-out inspection. The tenant paid a security deposit of \$650, which the landlord has retained, claiming against it in this application.

The landlord's monetary claim is \$334.95 for painting the damaged walls and \$40 for paint.

In support of her claim, the landlord submitted that she is entitled to the costs of repairing the walls in the rental unit and painting.

The landlord submitted that the tenant attempted to make the repairs himself, but that he left holes and did not match the paint. This required the landlord to hire a painter to make the repairs.

The landlord submitted that she keeps paint on hand, to match the existing paint, which the painter used.

The landlord submitted that the nail holes were not normal sized and some were quite large where the television was mounted.

The landlord referred to her photographic evidence to show where the nail holes were filled in. The landlord confirmed that she took the photos the day after the inspection.

In response to my inquiry, the landlord submitted that the rental unit was last painted in November 2016, and that the painting was not done until March 19, 2020, as there was no interest in renting the rental unit until that time.

The landlord's additional relevant evidence included a receipt from the painter, a receipt for the paint from 2018, and a condition inspection report (CIR).

*Tenant's response –*

The tenant disagreed that there was damage to the rental unit, stating that it was his home for 2 ½ years and he should be able to hang pictures.

The tenant said the marks were small and were from nail or picture hooks.

The tenant said the painter told him that the patching was done very well. The tenant submitted that there was no damage to the walls, it was only prepped for the painter.

In his written submission, the tenant said that he treated the apartment as his home, tastefully decorated it, took extremely good care of it and had a comfortable place to call his own.

The tenant submitted that the date on the painting invoice submitted by the landlord to show the last time the rental unit had been painted, prior to this tenancy, appears to have been altered. The tenant submitted that another tenant was living in that rental unit at the time shown on that invoice, and questioned why the walls would be painted with someone living there.

The tenant submitted that the landlord took pictures during the inspection, but she did not provide those.

The tenant referred to his video evidence to substantiate the clean and undamaged condition of the rental unit after the movers had removed their personal property.

*Tenant's witness –*

The witness, BK, said she was present when the painting contractor commented on how well the walls were patched.

BK also said that the painter talked about the paint and that upgrades were planned for the rental unit.

Analysis

Based on the relevant oral, written and photographic evidence, and on a balance of probabilities, I find as follows:

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 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove her claim.

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 burden to prove their claim and the claim fails.

Under section 37(2) of the Act, at the end of a tenancy, when the tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Residential Tenancy Branch (RTB) Policy Guideline 1 states that most tenants will put up pictures in their unit. A landlord may set rules as to how this can be done.

I have reviewed the written tenancy agreement supplied by the landlord and find that the tenant was prohibited from using adhesive and to use appropriately sized picture hangers.

In this case, there was no evidence that the tenant used adhesives and I could not determine from the landlord's photographic evidence that the holes were caused by picture hangers in an inappropriate size.

Policy Guideline goes on to state that if the tenant follows the landlord's instructions, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

In this case, from my viewing of the photographic evidence of both parties, I find on a balance of probabilities that the nail holes were reasonable wear and tear, considering the tenant lived in the rental unit for 2 and ½ years. I find it reasonable that a tenant would hang pictures in order to enjoy the rental unit as a home. As such, the walls most likely will need patching and painting after the tenancy, which is not considered damage. I also find the landlord failed to prove that the number of nail holes were excessive.

The tenant and his witness, who was excluded from the hearing until she testified, both said the painting contractor commented on how well the walls were patched.

Due to the above, I find the holes to the rental unit walls were reasonable wear and tear.

For all the above reasons, I find that the landlord has submitted insufficient evidence to support her application and dismiss the landlord's application in its entirety.

As I have dismissed the landlord's application, pursuant to section 62(3), I order the landlord to return the tenant's security deposit of \$650, 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 \$650, 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 \$650, immediately, and the tenant is granted a monetary order in the amount of \$650 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: May 15, 2020

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Residential Tenancy Branch