



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0931291 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on June 11, 2020, wherein the Landlord sought monetary compensation from the Tenants for unpaid rent and damages to the rental unit, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on June 9, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which indicated this tenancy began August 1, 2017. Rent was initially \$1,100.00 and the Tenants paid a security deposit of \$550.00. At the time the tenancy ended monthly rent was \$1,243.99. The Landlord's Agent stated that the security deposit increased as the rent increased and at the time of the hearing they continue to hold \$622.00 as a security deposit.

The Tenants gave notice to end their tenancy on May 2, 2020. The Landlord claimed compensation for the month of June claiming they were not able to re-rent the unit for the month of June 2020. He also confirmed they had yet to re-rent the unit as of the date of the hearing.

The Agent stated that they advertised the rental unit on Craigslist as soon as they were given notice by the Tenants. The Agent confirmed that they showed the rental unit on May 5, 18 and 22, 2020. Copies of text messages between the Landlord's Agent and the Tenants were provided in evidence and which confirmed these dates.

The Landlord also sought monetary compensation for the cost to clean and repair the rental unit.

In the within action the Landlord sought monetary compensation for the following:

Rent for June 2020	\$1,243.99
Paint, countertop, lock	\$173.44
Repairs	\$340.00
Carpets	\$350.00
Blinds	\$44.74
Cleaning	\$236.25
Filing fee	\$100.00
<b>TOTAL CLAIMED</b>	<b>\$2,488.42</b>

A copy of the move in and move out condition inspection report was provided in evidence. The Tenants participated in the move out inspection although the document indicated they disagreed with the contents.

In terms of the amounts claimed for cleaning and repairs, the Agent testified as follows. The Agent stated that the counters were approximately five years old. Introduced in

evidence were photos of the countertops showing that the coating was coming off. The Agent stated that it was coming off when the tenancy started and worsened.

The Agent stated that they had to paint the window frames due to water damage caused by the Tenants when they left it open during rain. In support the Landlord provided photos of the window frames.

The Landlord claimed compensation for repairs including removing and replacing the countertop, repairs to the walls and door frames, replacing the lock and replacing the blinds.

The Landlord's Agent confirmed that the Tenants did not have the carpets professionally cleaned at the end of the tenancy. The Agent stated that it appeared as though they did not even vacuum.

The Landlord provided photos of the blinds showing that one was broken and the other was missing at the time the tenancy ended.

The Landlord also provided numerous photos of the rental unit in support of their claim for cleaning costs as well as a copy of the receipt for cleaning.

In reply to the Landlord's claims, the Tenant, J.M., testified as follows. He stated that they verbally told the Landlord's Agent that they intended to move out when they paid their rent. J.M. confirmed that on May 2, 2020 they emailed the office. He stated that they did not know that their notice was not accepted until May 20, 2020. He further stated that had they known the Landlord would not accept their notice for the end of May 2020 they would have stayed and not rented a new apartment until July 1, 2020.

In terms of the Landlord's claim for cleaning and repair. J.M. confirmed they did burn some of the carpet, but there was a burn there before they moved in. J.M. stated that the Landlord told them that the carpet would be replaced during the tenancy. J.M. also stated that the carpets were "really old", likely 7-10 years old.

In terms of the countertop, J.M. confirmed that it was already peeling off when they moved in. J.M. stated that the countertop needed to be replaced in any case and they were hoping that it would be replaced while they were in the rental unit.

In terms of the blinds, J.M., stated that they did break one of the blinds. He claimed that the other blind was working just fine.

In terms of the doors, J.M. stated that it was the Landlord's agent who removed the lock. In support the Tenants provided a copy of a text message from the Landlord's Agent from 2017 wherein the Landlord's agent confirms he broke the lock.

The Tenants disputed the Landlord's claim for cleaning costs as they claimed they cleaned the rental unit.

In reply, the Landlord's Agent testified that the rental unit was painted in 2016.

The Agent further stated that the carpets was changed six months before this tenancy began.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the 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 their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other 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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

I will first address the Landlord's claim for rent for the month of June 2020.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

#### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this case the Tenants gave written notice to end their tenancy on May 2, 2020. Pursuant to the above, the notice was effective June 30, 2020 and the Tenants are responsible for paying rent until that date. I accept the Property Manager's testimony that they immediately advertised the unit and attempted to re-rent it. I also accept his evidence as to the number of showings. In the circumstances I find the landlord fulfilled their obligation to minimize their losses and I award them recover of the June 2020 rent.

In terms of the balance of the Landlord's claim, section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord seeks the cost to repaint the rental unit. He stated that the rental unit was painted in 2016. Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I

have referred to normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

*Policy Guideline 40* also provides a table setting out the useful life of most building elements. This table provides that interior paint has a useful life of four years. As the rental unit was painted four years prior, I find that it was likely in need of repainting in any case. Accordingly, I dismiss the Landlord's request for painting costs.

The Property Manager claimed the countertop was five years old, however they failed to provide any evidence to support this testimony. The parties agreed the counter was damaged at the start of the tenancy and worsened when the tenancy ended. I find that the repairs were likely needed in any event of the tenancy and were more in the form of deferred maintenance. I therefore dismiss this portion of the Landlord's claim.

I accept the Tenant's evidence that the Landlord's agent broke the lock on the door and as such I find the Tenants are not responsible for this cost.

The Landlord sought compensation for the cost of repairs. I am satisfied, that some repairs were required. As I have denied the Landlord's request for compensation for painting, countertop repairs and replacement of the door lock, I award the Landlord the nominal sum of **\$100.00** towards the cost of repairs, which include replacing the blinds.

*Residential Tenancy Branch Policy Guideline 1* provides that tenants are responsible for cleaning carpets after a tenancy of more than one year. There was no evidence before me to suggest the Tenants had the carpets professionally cleaned; as such, I award the Landlord the **\$350.00** claimed for cleaning the carpets.

The Tenants conceded that they broke one blind. The photos submitted by the Landlord indicate one blind was broken and one was missing at the end of the tenancy.

I accept the Landlord's evidence in this regard and therefore award the Landlord the **\$44.74** claimed for the blinds.

The photos submitted in evidence confirm that the Tenants failed to clean the rental unit as required by the *Act*. I am satisfied, based on those photos, as well as the receipt for cleaning provided by the Landlord that the Landlord incurred the cost of **\$236.25** to have the rental unit cleaned. This amount is also recoverable from the Tenants.

Having been substantially successful in their claim, I award the Landlord recovery of the **\$100.00** filing fee.

### Conclusion

The Landlord's Application for monetary compensation is granted in part. The Landlord is entitled to the sum of **\$2,074.98** for the following:

Rent for June 2020	\$1,243.99
Repairs (nominal amount)	\$100.00
Carpet cleaning	\$350.00
Blind replacement	\$44.74
Cleaning	\$236.25
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$2,074.98</b>

I authorize the Landlord to retain the Tenants' \$622.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$1,452.98**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: July 17, 2020

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Residential Tenancy Branch