



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL (landlord);
FFT, MNSD, MNDCT (tenant)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with a cross-application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended with her spouse and agent MS ("the landlord"). The landlord

called BH as a witness and BH provided affirmed testimony; witnesses CG and GV were available and were not called by the landlord. The tenant attended. The hearing lasted 105 minutes.

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The landlord provided testimony and I find that the tenant was served with the landlord's documents.

The tenant acknowledged that he did not provide copies of the tenant's uploaded evidence to the landlord; accordingly, the tenant's evidence will not be considered in the Decision.

I have only considered and referenced in the Decision relevant evidence to which I was referred that was served and submitted in compliance with the Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Is the tenant entitled to:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant

to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on July 1, 2016 for monthly rent of \$1,400.00 payable on the first of the month. The tenant provided a security deposit of \$700.00 which the tenant agreed the landlord could retain in partial compensation for damages.

The landlord testified as follows:

1. The tenant occupied the unit with an adult in a wheelchair;
2. The tenant vacated on February 23, 2020;
3. The unit was damaged, primarily from the movement of the wheelchair;
4. The landlord filed an application for dispute resolution on April 7, 2020;
5. A condition inspection was conducted on moving in which indicated the unit was substantially in good condition although minor deficiencies were noted;
6. A condition inspection was conducted on moving out which indicated damages which were assessed from quotes at \$2, 817. 52;
7. The report on moving in and moving out was signed by all parties;
8. In the moving out report, the tenant agreed the landlord could retain the security deposit of \$700.00;
9. The landlord had the unit repaired and incurred greater expenses than estimated;
10. After the tenant vacated, the landlord was unable to rent the unit for the month of March 2020 during which time the repairs took place; the landlord claimed one month rent as compensation;
11. The landlord claimed reimbursement for the following:

	ITEM	AMOUNT
Flooring	Kitchen flooring - 6.5/10 x \$1,148.83	\$746.74
	Carpet – 3 bedrooms – 50% x \$1,544.00	\$772.00
Walls	Wall repair	\$750.00
Doors	Front door replacement - 5/20 x \$148.00	37.00
	Front door - installation	\$516.00
	Screen door – 11/20 x \$249.00	\$136.95
Kitchen	Kitchen counter – replacement 10/25 x \$840.00	\$336.00
	Kitchen tap - replacement	\$106.00
	Refrigerator – drawer replacement (2)	\$235.00
Bathroom	Bathroom – fan switch replacement	\$37.00

Curtains	Curtains - replaced	\$279.00
	TOTAL CLAIM	\$4,377.97

The landlord submitted copies of receipts with respect to all expenses claimed except for the kitchen counters for which a quote was submitted. The landlord submitted photographs in support of each claim.

Each claim is addressed in turn.

Flooring	Kitchen flooring - 6.5/10 x \$1,148.83	\$746.74
	Carpet – 3 bedrooms – 50% x \$1,544.00	\$772.00

The landlord claimed that the kitchen flooring was “click vinyl” and was damaged requiring replacement. The landlord called as a witness the flooring installer BH who inspected the flooring at the time the tenant vacated. BH testified that the movement of the wheelchair damaged the flooring, it could not be repaired, and it was replaced at the cost of \$1,148.83. A receipt was submitted.

The landlord testified the flooring was 3.5 years old and accordingly estimated its remaining life according to Policy Guideline 40 – Useful Life of Building Elements. The landlord requested reimbursement of the sum of 6.5/10 x \$1,148.83, being \$746.74.

The landlord claimed that when the tenant vacated, the carpeting in the unit was stained, could not be cleaned, and had to be replaced. The landlord requested reimbursement for the 3 bedrooms only as the carpeting was 5 years old and in the rest of the unit it was over ten years old. The witness BH testified that the bedroom carpet was stained and damaged beyond cleaning, it could not be repaired, and it was replaced at the cost of \$1,544.00. A receipt was submitted.

The landlord testified the carpet in the bedrooms was 5 years old and accordingly estimated its remaining life according to Policy Guideline 40 – Useful Life of Building Elements. The landlord requested reimbursement of the sum of \$772.00, being 50% x \$1,544.00.

The tenant acknowledged that one bedroom’s carpet needed replacing. The tenant denied that any of the other flooring needed replacing.

Wall repair - \$750.00

The landlord claimed that the walls throughout the unit were damaged by the wheelchair. The photographs indicated they were gouged, scraped, and scratched in multiple locations. The landlord had the damage repaired at a cost of \$750.00 for which a receipt was submitted. The landlord stated that they ended up painting the entire unit but only request reimbursement of the actual repairs, not the surface repainting throughout.

The tenant denied that the wheelchair did the damage and denied that the repairs to the extent claimed were necessary.

Doors	Front door replacement - 5/20 x \$148.00	\$37.00
	Front door - installation	\$516.00
	Screen door – 11/20 x \$249.00	\$136.95

The landlord submitted photographs in support of their claim the front door was damaged by the wheelchair as well as one screen door and both required replacement. The landlord estimated the front door was 15 years old and its remaining life according to Policy Guideline 40 – Useful Life of Building Elements was 5 years; the landlord requested reimbursement of 5/20 of \$148.00, being \$37.00, as well as the labour cost of \$516.00. the landlord submitted a receipt.

The landlord estimated the screen door was 9 years old and its remaining life according to Policy Guideline 40 – Useful Life of Building Elements was 11 years; the landlord requested reimbursement of 11/20 x \$249.00, being \$136.95. The landlord submitted a receipt for the original purchase of the door.

The tenant denied that they had damaged either item and refused to acknowledge the landlord had any claim for compensation.

Kitchen	Kitchen counter – replacement 10/25 x \$840.00	\$336.00
	Kitchen tap - replacement	\$106.00
	Refrigerator – drawer replacement (2)	\$235.00

The landlord submitted photographs and a quotation in support of their claim the kitchen countertops were damaged irreparably by knife marks from cutting on the surface. The landlord estimated the counter tops were 15 years old and the remaining life according to Policy Guideline 40 – Useful Life of Building Elements was 10 years; the landlord requested reimbursement of 10/25 x \$840.00, \$336.00.

The tenant denied that they had damaged the counter tops and refused to acknowledge the landlord had any claim for compensation.

The landlord claimed that the tenant damaged a portion of the kitchen tap which is manually adjusted to control water flow. As well, the landlord claimed the tenant broke two drawers in the refrigerator. The landlord claimed reimbursement in the amount of \$106.00 and \$235.00 respectively.

The tenant denied that they had damaged either item and refused to acknowledge the landlord had any claim for compensation.

Bathroom	Bathroom – fan switch replacement	\$37.00
Curtains	Curtains - replaced	\$279.00

The landlord claimed that the tenant damaged a fan switch which is manually adjusted to control ceiling fan operation time. As well, the landlord claimed the tenant damaged or failed to return curtains provided in the unit. The landlord claimed reimbursement in the amount of \$37.00 and \$279.00 respectively.

The tenant testified he did not know that any such switch was broken. He denied failing to return most of the curtains, although he did acknowledge damage to one set.

Tenant's claim

The tenant summarized the tenant's counterclaim as follows:

ITEM	AMOUNT
Wheel chair ramp	\$1,200.00
Lawn mowing	\$7,200.00
Cleaning expenses	\$1,089.00
Security deposit	\$700.00
TOTAL CLAIM	\$10,189.00

Each claim is addressed.

Wheel chair ramp

The tenant acknowledged he did not incur any expenses for the construction of the wheel chair ramp which was built by the landlord. However, the tenant claimed the

landlord was supposed to give him the receipt for the lumber so the tenant could claim the expense on his income tax return.

Both parties acknowledged they forgot about the receipt until just recently, when the landlord provided it, albeit delayed by several years. The tenant said he could not say how much he claimed because of the landlord's failure to give him the receipt.

The landlord denied he had any responsibility to pay the tenant anything as the tenant had incurred no loss.

Lawn mowing

The tenant stated that he mowed the lawn for the 3.5 years of the tenancy even though he was not required to do so. The tenant testified that the other tenant in the building received a rent reduction for mowing which he, the tenant, in fact looked after. The tenant stated he used the landlord's mower and occasionally bought gas. The tenant calculated the number of times he mowed the lawn over the years and concluded the landlord owed him. The tenant acknowledged that he never claimed reimbursement for this work from the landlord.

The landlord stated that they never agreed with the tenant that the tenant would mow the lawn and the landlord would pay the tenant. They denied receipt of any invoice or request for payment.

Cleaning expenses and security deposit

The tenant calculated the time he spent cleaning which he estimated had a value of \$1,089.00 for which he requested reimbursement. The tenant acknowledged he agreed the landlord could keep the security deposit; nevertheless, the tenant claimed entitlement to its return.

The landlord stated that they did considerable cleaning after the tenant left and had no obligation to reimburse the tenant for doing what he was required to do. They also stated that the tenant signed the condition inspection report on moving out agreeing that the landlord could retain the security deposit.

Analysis

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

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

...

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I acknowledge each party has a different version of events and assessments of the condition of the unit at the end of the tenancy.

In considering the credibility of the parties, I found the landlord to be well-prepared, organized and believable. I found their evidence to be well supported by photographs and documentary evidence, such as receipts and quotations.

I found the tenant's general denial of any responsibility to be out of keeping with the facts as I understand them; I determined that his testimony lacked reliability and believability.

Because of my observations, I prefer the landlord's testimony to the tenant's, and I give the landlord's evidence greater weight. Where the versions of events differ, I prefer the landlord's version.

Each of the four tests are considered separately with respect to the landlord's claims.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

The Act sets out the obligation of the tenant at the end of the tenancy:

Leaving the rental unit at the end of a tenancy

37 (1)...

(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) ...

The tenant acknowledged some damage to one bedroom's carpet requiring replacement but asserted that all the rest of the damage was in keeping with normal wear and tear.

Normal wear and tear means the declining condition of the rental premises that occurs over time, even though the tenant has been regularly cleaning and maintaining the premises. A tenant is not responsible for reasonable wear and tear to a rental unit from normal usage over time. They are responsible for repairing substantial damage that they, their guests or pets cause. The tenant must also maintain a reasonable standard of health and cleanliness throughout the rental unit, common areas or manufactured home site (mobile home).

Residential Tenancy Policy Guideline #1 explains that the damage must be more than reasonable wear and tear:

"The tenant is...generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The

tenant is not responsible for reasonable wear and tear to the rental unit or site...reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion...an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear...or neglect by the tenant."

In consideration of the testimony, the Act and Guideline, I find the landlord has met the burden of proof under the first factor with respect to each of the claimed damaged items. Given the extent of the damage, I find it reasonable that the unit would remain unoccupied for a month to allow the work to take place.

I find the damage as described and illustrated in the photographs not to be normal wear and tear. I find the evidence more in keeping with the landlord's than the tenant's testimony.

I therefore find the landlord has met the first test on a balance of probabilities that the tenant failed to comply with the Act and tenancy agreement.

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

I accept the landlord's evidence that time and expenses were necessary to repair the

unit as damaged by the tenant.

I find that the landlord would not have incurred the losses and damage claimed without the breach by the tenant of their obligations. I find the unit remained vacant for one month because of the damages caused by the tenant. I therefore find the landlord has met the burden of proof with respect to all items claimed under the second heading.

3. Has applicant proven amount or value of damage or loss?

Having found the landlord has met the burden of proof with respect to the first and second headings, I now turn to whether the landlord has proven the amount or value of the damage or loss.

I find the landlord has credibly provided the age of the building elements for which compensation is requested and has accurately determined remaining life expectancy. I find the landlord's calculation of the value of the claims to be convincing and in compliance with the Act and Guidelines.

I find the landlord has met the burden of proof on a balance of probabilities that the landlord has incurred expenses as claimed and that the one quotation for the kitchen countertop is an accurate, reasonable estimate. I find the receipts provided by the landlord to be documentary evidence which supports the landlord's testimony in all respects. I find the landlord has established the amount of rent for one month as acknowledged by the tenant.

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4. Has applicant done whatever is reasonable to minimize damage or loss?

In considering the landlord's testimony, I determine the landlord took reasonable steps to minimize the damage or loss with respect to repairs. The landlord provided credible, matter-of-fact testimony about the damages, the repairs, the expenses and the estimate. I give weight to this testimony as supported by documentary evidence and find it believable. I find the landlord's testimony reasonable that the unit would remain empty for one month to allow the repairs to take place.

Taking into consideration the testimony and evidence, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all the four criteria as required with respect to all items claimed.

Conclusion – Landlord's claims

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit was damaged when the tenant vacated as described by the landlord, the landlord was unable to rent the unit for the month after the tenant left in order to complete the repairs, the tenant is responsible for the damage, the landlord incurred the expenses claimed, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested to the claim.

I grant a monetary order to the landlord in the amount of ~~\$4,377.97~~ **\$4,651.69 including rent for one month and granting the landlord authorization to apply the security deposit of \$700.00 to the award.** My award to the landlord is summarized as follows:

	ITEM	AMOUNT
Flooring	Kitchen flooring - 6.5/10 x \$1,148.83	\$746.74
	Carpet – 3 bedrooms – 50% x \$1,544.00	\$772.00
Walls	Wall repair	\$750.00
Doors	Front door replacement - 5/20 x \$148.00	\$37.00
	Front door - installation	\$516.00
	Screen door – 11/20 x \$249.00	\$136.95
Kitchen	Kitchen counter – replacement 10/25 x \$840.00	\$336.00
	Kitchen tap - replacement	\$106.00
	Refrigerator – drawer replacement (2)	\$235.00
Bathroom	Bathroom – fan switch replacement	\$37.00
Curtains	Curtains - replaced	\$279.00
Rent	One month rent	\$1,400.00
(Less)	(Security deposit)	(\$700.00)
	AWARD to LANDLORD	\$4,651.69
		\$4,377.97

Tenant's claim

I find the tenant has not met the burden of proof with respect to the first test regarding all claims.

The first test, as outlined above, requires that the tenant establish that the landlord failed to comply with Act, regulations, or tenancy agreement.

In considering the testimony and evidence of the parties, I find the landlord did not fail in any obligation under the Act or agreement by not providing a receipt for construction materials in order that the tenant could falsely claim the expense as an income tax deduction.

I similarly find that the tenant has an obligation under the Act to leave a unit clean and undamaged; the landlord does not have an obligation to reimburse the tenant for his expenses in meeting his own, the tenant's, obligations.

I also accept the evidence in the condition inspection report on moving out that the tenant agreed that the landlord could keep the security deposit in partial compensation of the landlord's anticipated expenses.

Finally, with respect to compensation for lawn mowing, I find the tenant voluntarily undertook this duty. Both parties acknowledged that the tenant never requested reimbursement in the 3.5 years of the tenancy. I find the claim for compensation has no basis in the Act or the agreement.

As the tenant has failed to meet the burden of proof with respect to the first test, I need not consider the remaining tests. I therefore dismiss all the tenant's claims without leave to reapply.

Filing Fee

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

Summary

The landlord is granted a monetary order in the amount of **~~\$4,751.69~~ \$4,477.97**.

ITEM	AMOUNT
<i>Monetary Award (above)</i>	<i>\$4,651.69</i>
Reimbursement filing fee	<i>\$100.00</i>
<i>TOTAL MONETARY ORDER</i>	<i>\$4,751.69</i>

Conclusion

The landlord is granted a monetary order in the amount of **\$4,751.69** ~~**\$4,477.97**~~. This order may be filed and enforced in the Courts of the Province of British Columbia. This Order must be served on the tenant.

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: August 12, 2020

Residential Tenancy Branch