



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 6, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?

3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed that the tenancy began on May 1, 2016. During the tenancy, the Tenant was required to pay rent in the amount of \$1,600.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$800.00 which the Landlord continues to hold. The parties also agreed that the tenancy ended on May 4, 2020 and that the Landlord received the Tenant's forwarding address on May 27, 2020.

The Landlord is claiming \$1,681.00 in relation to repairs and cleaning which were required and completed in the rental unit. The Landlord stated that the parties came together on May 9, 2020 to complete a move out inspection of the rental unit. The Landlord stated that she noted that the rental unit required further cleaning and employed a cleaner for 8 hours at a cost of \$294.00. The Landlord provided a receipt as well as photographic evidence in support.

The Landlord provided a monetary break down for repairs made to the rental unit. The Landlord is claiming \$6.92 to replace a florescent light bulb, \$8.61 to replace a hood range light bulb, \$176.92 to replace two cordless blinds which had been damaged. The Landlord is claiming \$170.18 to replace a scratched sink. The Landlord stated that she was required to replace a lift drain assembly in the amount of \$68.32, as well as washing machine door diaphragm for \$157.58. The Landlord is claiming a further \$277.20 to install the door diaphragm. Lastly, the Landlord is claiming \$130.79 in relation to repairing some broken refrigerator parts. The Landlord provided receipts and photographic evidence in support of the claims.

In response, the Tenant stated that the parties did not complete a condition inspection report at the start of the tenancy. The Tenant stated that the Landlord is not accurate with her claims and the Tenant denies causing any damage to the rental unit. The Tenant stated that the damaged items claimed by the Landlord were in that condition prior to the commencement of the tenancy. The Landlord agreed that there was no inspection of the rental unit completed at the start of the tenancy. The Tenant stated that she cleaned the rental unit at the end of the tenancy. The Tenant provided photographic evidence of the condition of the rental unit at the end of the tenancy.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also 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 (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

The Landlord is claiming \$294.00 in relation to cleaning costs as the rental unit required further cleaning at the end of the tenancy. In this case, I am satisfied based in the Landlord's testimony and documentary evidence that it is more likely than not that the rental unit required further cleaning. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$294.00**.

According to Section 23(1) of the Act; The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
  - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
  - (a) the landlord has complied with subsection (3), and
  - (b) the tenant does not participate on either occasion.

The Landlord has made several claims in relation to repairs made to the rental unit. The Landlord stated that the Tenant caused the damage to the rental unit which required repair. The Tenant stated that the damage was there prior to the start of the tenancy. I accept that the parties agreed that there was no condition inspection completed at the start of the tenancy.

I find that without a condition inspection being conducted at the start of the tenancy, it is difficult to compare the condition of the rental unit prior to the commencement of the tenancy, to the condition at the end of the tenancy. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the damage to the rental unit was caused by the Tenant. In light of the above, I dismiss the Landlord's claim for repairs without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain \$394.00 from the \$800.00 security deposit held in satisfaction of the claim ( $\$800.00 - \$394.00 = \$406.00$ )

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$406.00, which represents the remaining balance of their security deposit less the previously mentioned deductions.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$394.00 which has been deducted from the security deposit. The Tenant is granted a monetary order in the amount of \$406.00 which represents the remaining balance of the Tenant's security deposit. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 22, 2020

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Residential Tenancy Branch