



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Georgian House  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND-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 keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agents and the tenant's daughter attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all 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.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant, to apply the security deposit against a monetary award, and recovery of the filing fee?

### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of January 1, 2007, a fixed term through December 31, 2007, monthly rent of \$1,075, due on the 1<sup>st</sup> day of the month, and a security deposit of \$537.50 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord retained the tenant's security deposit, having made this claim against it.

The evidence was that the tenant no longer resides in the rental unit as she is now in a care home. The evidence was that the tenancy was officially over by June 30, 2020.

The landlord's monetary claim is as follows:

<b>WORK</b>	<b>LABOUR HOURS</b>
1. Rip 2.5" board to 1.5", chop 2.5 off length. Move hinges, screw into cabinet	4
2. Doors find and install	3
3. Paint 2 coats over yellow	3
4. DR light	2
5. Remove intercom	1
6. Fill all holes	1
7. Patch and caulk baseboard	1
8. Eye piece front door	0.5
9. Door slot, remove and clean	0.5
10. Deck cleaning	2
11. Tub rust-enamel	2
12. 1 tub grab bar, silicone properly	1
13. Reinstall bifolds BR	3
<b>TOTAL</b>	<b>\$24 hours @ \$50per hour = \$1200</b>

The landlord additionally claimed \$45 for paint, \$100 for a dining room light, \$20 to patch and caulk the baseboard, \$5 for the eye piece, \$100 for the curtain cleaning, \$15

for enamel for the tub, \$10 to repair the tub grab bar, \$800 for a new front door, for a total of \$1,095.

In support of the landlord's application, landlord's agent, BM, submitted that the kitchen cupboard doors were not re-hung properly and he was required to install them correctly. The landlord said the work took four hours.

In explaining the rest of the claim, BM submitted that it took a long time to find all the doors and re-install them. The tenant painted the kitchen yellow and the tenant was therefore responsible for putting the rental unit back to its original state.

The agent submitted the kitchen light was missing, and although it has not been replaced, the sum of \$100 was reasonable for the replacement.

The agent submitted that the tenant had put paper over the eye hole in the door and he had to reattach the mail slot.

The agent submitted that the curtain cleaning was a nominal charge.

The agent submitted that there was a great deal of rust around the drain hole in the tub, and it should not be rusty as the tub was enamel.

The agent submitted that the front door was cut off 2", and although it has not been replaced, the value is \$800, as it is the only door in the residential property that was cut.

The agent submitted the tenant should be responsible for the reinstallation of the bifold doors and the labour associated with it.

The agent submitted that there were excessive holes which had to be filled.

The landlord's additional evidence was a condition inspection report (CIR), a table listing a breakdown of their claim and photographs of the rental unit taken at the move-out.

In response to my inquiry, BM said the rental unit had a complete renovation in 1993, which would have been the age of the relevant building elements.

**Tenant's agent's response –**

The agent submitted that her mother moved into the rental unit on January 1, 2007, having moved from another unit in the building. Shortly after, the tenant had back surgery and became a paraplegic. Due to her disability, changes were required to accommodate her needs.

The former property manager agreed to the changes, which included removal and storage of the internal doors. The agent said she requested permission to paint the colour of the kitchen, to lighten the rental unit for the tenant.

Subsequently, according to the agent, the tenant received permission to extend the enter-phone cable to allow access to her caregivers. No work was ever done without the knowledge and consent of the managers at the time, according to the agent.

The agent submitted that on April 7, 2020, her mother was hospitalized and subsequently had to move to an extended care home, where she remains.

The agent said she provided a notice to vacate to the landlord's agent, CH, who refused to accept it as the notice did not come from the tenant. On May 8, 2020, the social worker at the hospital was able to obtain a signature from the tenant, and it was delivered. CH said the notice to vacate was insufficient and the tenancy could not end until the end of June 2020. The monthly rent for May and June were paid.

The agent submitted she represented her mother at the move-out inspection.

As to individual claim items, the agent submitted the following:

As to the kitchen paint color, the agent submitted that the rental unit was last painted in 2007 and the tenant had the landlord's permission to paint the kitchen yellow, to help brighten her mood.

The agent submitted that the kitchen doors and hardware were stored in the kitchen pantry and left undisturbed. After the tenancy, they were re-installed by a friend who is a professional contractor; all doors opened and closed as they were intended.

The agent submitted a photo of the kitchen and cupboards.

As to the bathtub drain, the agent said that for most of the tenant's tenancy, she was not able to use the bathtub and she had a cleaner come in every two weeks to clean the rental unit, including the tub. The agent submitted the tub is over 50 years old. The agent submitted a photo of the bathtub.

As to the balcony, the agent submitted the balcony was north facing and subject to moss growth. The balcony was thoroughly swept up and cleared of all dirt, dust and debris. The agent submitted a photo of the balcony.

As to the mail slot, the agent submitted that the basket underneath to collect the mail was removed, and she offered to come back to correct this to the landlord's satisfaction; however, CH refused as it was not done prior to the inspection, according to the agent. The agent submitted a photo of the mail slot.

As to the front door threshold, it was removed to accommodate the tenant's wheelchair and simply required screwing it back in place, which was done. The rubber insert was stored and undamaged by the tenant, and if it was not correct, it was due to the age of the insert, according to the agent. The agent submitted a photo.

As to the claim for wall damage, there is a slight gap at the baseboard in the bedroom, but claimed it was not damage, but wear and tear over a 13 year tenancy, according to the agent. The agent submitted a photo of the wall.

As to the screw hole in the wall, the agent submitted that she had left over spackle and paint from her mother, which was stored. CH told her it was the tenant's responsibility to remove these items, but since it was the same colour, it could be used to make the repair. CH agreed to keep it, according to the agent. The agent argued the hole was reasonable wear and tear and denied there were excessive nail holes. The agent submitted a photo of the room.

As to the second enter-phone handset, this was done with the permission of the former property manager and was professionally installed. Both handsets worked and the removal was not necessary, according to the agent. The agent submitted a photo.

As to the landlord's claim the bedroom door was not installed properly, the doors were removed by management and remained in their custody and control at all times. The agent said there was nothing identifying the door as having come from the rental unit and the first door brought up was not the proper door, according to the agent. The agent submitted a photo of the door hinges.

As to the bifold doors, the agent submitted that the doors the agents brought up from storage were damaged and had none of the hardware required to hang the closet doors. The agent said none of the damage was the fault of the tenant. The agent submitted a photo showing the holes in the doors and parts.

The agent wrote that she did not remove the closet organizer and mirror, as she thought they were fixtures in the rental unit. At no time did CH inform her otherwise.

The agent denied there were excessive holes and asserted the responsibility for filling them was on the landlord.

The agent said that when her mother moved into the rental unit, there was no dining room light, but she was told by the former property managers that she could install one. At the end of the tenancy, the agent removed the light since the tenant bought it.

As to the cleaning claims, the agent submitted that the rental unit *“had been maintained in a meticulous manner and that a cleaning lady came every two weeks. Upon move-out, the interior doors were washed, kitchen cabinets were wiped out and Upon move out the interior windows were washed, the kitchen cabinets were wiped out and the cabinet doors wiped down, the fridge and stove were cleaned the shelving in the closets was wiped down, the bathroom was thoroughly cleaned with the cabinets wiped out, doors wiped down and mirrors cleaned as well, the floors were vacuumed and mopped.*

*The drapes had been washed and rehung in mid-February and had been vacuumed. My mother was hospitalized on April 7<sup>th</sup> and no one lived in the unit subsequent to that. During the period prior to my mother’s hospitalization, there was only minimal cooking done – meals were brought in from local restaurants with some reheating of any left overs. There had never been any smoking in the unit.”* [reproduced as written]

The agent submitted photos of the entire rental unit at the time of move-out.

Finally, as to the style under the sink, the agent submitted that it was removed to allow access to the sink for her mother while in her wheelchair. Although she thought the original style was stored, the piece that was there did not fit. Thereafter she was unable to arrange for someone to install it, but she did purchase a piece of painted stock to cut and measure and provided that along with the original magnetic clips. The agent submitted that her contractor friend said the entire install would take under an hour.

### Analysis

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

#### Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/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 whatever was reasonable to minimize the damage or losses that were incurred.

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 onus to prove their claim and the claim fails.

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.

Upon review of the tenant's undisputed photographic evidence, I find the rental unit was left extremely clean and tidy.

Upon review of the landlord's close-range photographs intending to depict damage caused by the tenant, the landlord failed to provide correlating close-range photographs

from the beginning of the tenancy. I therefore determined that the landlord's photographs were of no probative value to support the landlord's claim for damage.

Further, in consideration of a 13-year tenancy, I find any damage was due to reasonable wear and tear. Also, in consideration that all the building elements were 27 years old at the time the tenancy ended, I also find that all the building elements included in the landlord's claim had surpassed their useful life and were fully depreciated, as outlined in Tenancy Policy Guideline 40.

The evidence also showed that the previous property managers altered the state of the rental unit to accommodate the mobility needs of the tenant and therefore, I find that the tenant did not breach the act as to the removal of interior doors and is not responsible for the acts of the landlord's agents.

Finally, I find the landlord's evidence not credible, as part of their claim was \$800 for a door not purchased or replaced and \$100 for a light fixture not purchased or replaced, substantiating a loss has not been incurred.

For these reasons, I dismiss the landlord's application, without leave to reapply, including their request to recover the filing fee.

As I have dismissed the landlord's application claiming against the tenant's security deposit, I order the landlord to return the tenant's security deposit of \$537.50, plus interest of \$16.25, or a total of **\$553.75**, 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 of **\$553.75**, 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 **cautioned** 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 \$537.50, plus interest of \$16.25, or a total of **\$553.75**, immediately. The tenant is granted a monetary order in the amount of **\$553.75** 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: November 16, 2020

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Residential Tenancy Branch