



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING  
CORPORATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on September 14, 2020, wherein the Landlord requested monetary compensation from the Tenants for the cost of repairs and damage to the rental unit, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 5, 2021. 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 Landlord was represented by the Property Manager, K.O. and both Tenants called into the hearing.

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. Should the Landlord be entitled to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee.

### Background and Evidence

The Property Manager, K.O., testified as follows. He confirmed that the tenancy began June 1, 2018. Monthly rent was \$485.00 when the tenancy ended. K.O. stated that the rental unit is a “rent geared to income” and as such the security deposit was \$375.00.

The Landlord file a monetary orders worksheet wherein they set out their claim for compensation as follows:

Painting	\$1,250.00
Replacement of linoleum and carpet	\$1,400.00
Replacement of drapes	\$400.00
Cleaning	\$240.00
<b>TOTAL CLAIMED</b>	<b>\$3,290.00</b>

The Landlord provided a copy of the move in and move out condition inspection report in evidence before me. K.O. stated that although the Tenants gave notice to end their tenancy, they moved out early and did not participate in the move out inspection.

K.O. testified that the rental unit was completely redone shortly before the tenancy began and it was essentially a brand-new unit. He confirmed the unit was completely painted in 2018, shortly before the tenancy began. K.O. further stated that the entire unit needed to be repainted as a result of damage, including extensive colouring and handprints on the walls. Photos of the rental unit submitted by the Landlord confirmed the damage to the walls.

K.O. further confirmed that the carpet was installed in April of 2018. Photos submitted by the Landlord showed extensive damage to the carpets.

K.O. also testified that the linoleum was installed in April of 2018. He testified that when the tenancy ended, the linoleum was severely damaged with chips and gouges and had to be replaced.

K.O. also stated that the drapes were so stained they could not be cleaned. The cost to cleaning was going to be as much as replacement and the Landlord had no guaranteed that the stains would come out.

The Landlord also claimed the cost to clean the unit.

A.G. responded to the Landlord's claim as follows.

A.G. stated that the rental unit did not look as it does in the Landlord's photos. He claimed they cleaned the rental unit, although he agreed to compensate the Landlord for the cleaning of the unit in the amount of \$240.00.

A.G. claimed that the rental unit was not in good shape when they moved in. He stated that it was clean, but it was not new as claimed by the Property Manager. He denied that the carpet and drapes were new. A.G. stated that the Landlord's foreman, J., told them not to clean the carpets as he stated that they were going to change the carpet as it had not been changed for 10 years.

A.G. noted that the Landlord did not claim the linoleum were new on the move in condition inspection report, rather that they were "fair". He also noted that move in condition report indicates the floors were "good" not "new".

A.G. admitted that his children made the colouring marks and handprints.

### 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.

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.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The Tenants agreed to the Landlord's request for the cost to clean the rental unit in the amount of **\$240.00**. I therefore award this sum to the Landlord.

I accept the Property Manager's testimony that the rental unit was repainted shortly before the tenancy began. The photos submitted by the Landlord confirm the walls required repainting at the end of the tenancy as the walls were covered in colouring marks and significantly damaged. The Tenants conceded that their children damaged

the walls and did not dispute the amounts claimed. It is notable that although the Landlord incurred the cost of \$6,565.13 to repaint the entire unit (as evidenced by the receipt provided to me), the Landlord claimed a reduced amount, presumably taking into account the age of the paint. I find the Landlord's request for \$1,250.00 to be reasonable. I also find the Tenants breached section 37 of the *Act* by damaging the walls to the rental unit and I therefore award the Landlord the **\$1,250.00** claimed amount to repaint the unit.

The Landlords sought the cost to replace the linoleum and carpet. The total cost of replacement was \$4,597.27 based on the invoice provided in evidence before me. The Landlord claimed a reduced amount, namely \$1,400.00. Again, this reduction was noted as a "pro-rated" amount and likely took into account the age of the flooring at the time the tenancy ended.

The Property manager testified that the carpet and linoleum were installed in 2018, shortly before the tenancy began. The Tenant disputed this and submitted that they were not new.

A copy of the move in condition inspection report was provided in evidence before me. This report indicated that the flooring in the entry, kitchen, bathroom half bathroom and laundry was "fair"; all other rooms were noted as "good". It is notable that the Landlord's agent, when completing the report, wrote "new" next to the countertops and cabinets in the kitchen and bathrooms, yet did not make a similar notation with respect to the floors.

Pursuant to section 23 and 35 of the *Act*, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and Tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

In this case I accept the move in condition inspection report as evidence of the state of the floors at the start of the tenancy. I do not accept the Property Manager's assertion that the Landlord's agent made an error when noting the condition of the floors and failed to indicate they were new. A review of this document confirms that the agent first wrote fair in some of the areas only to change the condition to good. Similarly, when a building element, such as cabinets and counters were new, the agent specifically wrote the word "new" next to the applicable box. This suggests that great care was taken in completing the report accurately.

The photos of the linoleum and carpet confirm that they were significantly damaged at the end of the tenancy and required replacement. However, I am not satisfied based on the evidence before me that they were new at the start of the tenancy.

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, reference can be made to normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements*. *Guideline 40* provides that carpet and tile have a 10 year life span. The tables do not provide a line item for linoleum.

I find the Landlord's claim of \$1,400.00 to be reasonable when considering the total cost of replacement, as well as the uncertainty of the age of the flooring. I therefore award the Landlord the **\$1,400.00** claimed.

The move in report indicated that the drapes in the window were in good condition. Again, there was no notation to suggest the drapes were "new". The photos submitted by the Landlord showed significant staining on the drapes. I accept the Property Manager's testimony that the drapes were replaced at the end of the tenancy. I was not provided any evidence to support a finding as to the age of the drapes. *Guideline 40* also provides that drapes have a 10 year useful life. Notably the total amount spent by the Landlord to replace the window coverings was \$1,327.20. I find the **\$400.00**

claimed to be reasonable considering the uncertainty of the age of the drapes and I award the Landlord the amount claimed.

The Landlord has been substantially successful in this application. As such, I find they are entitled to recover the **\$100.00** filing fee from the Tenants pursuant to section 72 of the *Act*.

(On the Landlord's application they indicated they sought the sum of \$300.00 for removal of a stove. During the hearing before me the Landlord's agent made no submissions regarding this sum, nor did they provide any evidence to support this claim. Similarly, the Landlord's claim totalled \$4,090.00 on their application; this was inconsistent with the Monetary Orders Worksheet filed in evidence as well as the Property Manager's testimony. As noted earlier in this my Decision, I relied on the Monetary Orders Worksheet as well as the Property Manager's testimony when considering the Landlord's monetary claim.)

### Conclusion

The Landlord's claim for monetary compensation from the Tenants is granted in part. The Landlord is entitled to the sum of **\$3,390.00** for the following:

Painting	\$1,250.00
Replacement of linoleum and carpet	\$1,400.00
Replacement of drapes	\$400.00
Cleaning	\$240.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$3,390.00</b>

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenants \$375.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,015.00**. 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: January 28, 2021

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Residential Tenancy Branch