



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding URBAN PACIFIC PROPERTY MANAGEMENT  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

This hearing originally convened on November 3, 2020 and resulted in an Interim Decision dated November 3, 2020. The Interim Decision should be read in conjunction with this decision. In the Interim Decision I ordered the landlord to re-serve the tenant with the landlord's application for dispute resolution and evidence and I provided the landlord with restricted leave to amend his application for dispute resolution.

The landlord amended this application to increase the monetary award sought.

Both parties agree that the tenant was served with the landlord's original application for dispute resolution, evidence and amendment via registered mail. I find that all of the above documents were served in accordance with section 89 of the *Act*.

The tenant and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called two witnesses and the tenant's advocate provided submissions on behalf of the tenant.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and ended on June 30, 2020. Monthly rent in the amount of \$1,464.50 was payable on the first day of each month. A security deposit of \$690.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant gave the landlord notice to end this tenancy at the end of May 2020 and was substantially moved out early June 2020. Both parties agree that June 2020's rent was paid.

Both parties agree that the tenant emailed the landlord with the tenant's forwarding address on June 29, 2020. The agent testified that the email was received on or around that day.

Both parties agree that the tenant and an agent of the landlord completed a move in condition inspection report together on December 1, 2017. The move in condition inspection report was entered into evidence.

Both parties agree that the tenant and the agent met at the subject rental property on June 29, 2020 to complete the move out condition inspection report. The agent testified that the tenant and her father were disruptive and confrontational and did not participate in the move out inspection. The tenant did not dispute that things got heated but

disputes the level of aggression the landlord testified to. The move out condition inspection report, completed by the landlord alone, was entered into evidence.

The landlord filed this application for dispute resolution on July 13, 2020.

The landlord is seeking the following damages from the tenant:

Item	Amount
Painting	\$1,407.00
Cleaning	\$252.00
Repair hardwood floors	\$472.50
Replace bathtub stopper	\$54.43
Replace closet door	\$898.10
July rent	\$1,464.00
<b>Total</b>	<b>\$4,548.03</b>

#### Painting and cleaning

The agent testified that the subject rental property was last painted in full approximately one year before the tenant moved in. The landlord testified that the paint in the subject rental property was touched up in the bedroom and living room approximately three months before the tenant moved in.

The agent testified that the walls of the subject rental property were in good condition when the tenant moved in and were dirty and full of nicks and scrapes when the tenant moved out. The move in and move out condition inspection reports confirm same. The agent testified that the property was clean when the tenant moved in and dirty when the tenant moved out. The move in and move out condition inspection reports confirm same. The landlord entered into evidence photographs of the subject rental property that show dirty and damaged walls and many dirty areas in the subject rental property. The agent testified that the photographs were taken on June 29, 2020.

The agent testified that a painter was hired to repair the walls and paint the subject rental property. A receipt for \$1,407.50 was entered into evidence. The agent called witness N.L. who completed the above painting and repair work. Witness N.L. testified that the walls of the subject rental property looked "heavily lived in". Witness N.L. testified that poor patch jobs were present on the walls and that in his opinion, the property could not be rented in that condition.

The agent testified that a cleaner was hired to clean the subject rental property. The landlord entered into evidence a cleaning invoice in the amount of \$252.00.

The tenant entered into evidence a video of the subject rental property which she testified was taken on June 25, 2020. The video shows an overview of the subject rental property and that from the vantage point of the videographer the subject rental property looks clean. The photographs entered into evidence by the tenant do not show damage or dirt.

The advocate submitted that the photos from the landlord and the tenant are not congruous and that the clean photos taken by the tenant were taken after the dirty photos from the landlord. The advocate submitted that the landlord's photos were taken before June 25, 2020. The agent denied the above submissions.

The advocate submitted the tenant did not damage the walls and that in any event, the useful life of the paint at the subject rental property was expired as the last time the property was fully painted was more than four years ago.

The advocate submitted that the subject rental property was clean at the end of this tenancy.

#### Repair hardwood floors and closet door.

The agent testified that the tenant damaged the hardwood floors in the subject rental property. The agent testified that the following areas required repairs:

- Living room- water damage caused cupping of floorboards;
- Scratch to floors near closet in bedroom; and
- Scratch to floor in bedroom where tenant's bed used to be.

The move in condition inspection report states that the floors are all in good condition. The move out condition inspection report notes the above listed damage.

The agent testified that he had the floors repaired at a cost of \$472.50. An estimate for same was entered into evidence. The agent entered into evidence photographs of the scratches in the bedroom but not the living room.

The advocate submitted that the landlord did not prove that there was damage to the living room as no photographs of same were entered into evidence.

The tenant testified that the scratches to the floor in the bedroom were caused by the closet door falling off its rails. The tenant entered into evidence emails between herself and the landlord from February to March (the year is unclear though likely 2020) in which the tenant continuously asks the landlord to repair the closet door as it has been coming off the track and is difficult to open and close. The advocate submitted that had the landlord fixed the closet doors, the damage would not have occurred.

The agent testified that the tenant damaged the closet door by leaving a 6-8 inch puncture hole in the door. A photograph of same was entered into evidence. The landlord testified that the door was new when the subject rental property was renovated in December of 2015.

The tenant submitted that the hole in the door was caused by the door falling off its track and falling into something in the bedroom. The advocate submitted that had the landlord fixed the closet doors, the damage would not have occurred.

The agent testified that the closet door falling off the rails would not cause the hole because the trim prevented the door from falling forward, the door just popped off its tracks, but remained upright. The agent testified that a new door had to be custom ordered because it is an unusual size and that the other closet door also required replacement or else the closet doors would not match. The agent entered into evidence an estimate for a new closet door in the amount of \$898.10.

The agent called witness A.K. who testified that the landlord ordered the closet doors through her company and that it cost \$898.10 for the new doors and installation. Witness A.K. testified that the doors were installed by the end of August 2020.

The advocate submitted that the landlord's claim for repairs to the floor and door replacement should be dismissed because the landlord failed to submit the invoices for the repairs/replacement prior to the first hearing and therefore failed to prove an actual loss.

Replace bathtub stopper

The agent testified that the bathtub cap was present when the tenant moved in and missing when the tenant moved out. The move in condition inspection report does not note the bathtub cap's absence. The move out condition inspection report states that the bathtub cap is missing. The agent entered into evidence a receipt for a new bathtub cap in the amount of \$54.43.

The tenant testified that the bathtub cap was missing when she moved in.

July rent

The agent testified that the subject rental property was not in a rentable condition at the end of the tenancy and required significant repair. The agent testified that due to the condition of the property left by the tenant, the landlord was not able to rent the subject rental property for July 2020. The agent testified that the landlord is seeking July's rent in the amount of \$1,464.50.

The tenant testified that the subject rental property was in rentable condition at the end of this tenancy.

The tenant testified that she saw the landlord advertise the subject rental property for over \$1,500.00 per month. The advocate submitted that the landlord failed to mitigate its damages by advertising the subject rental property for over \$1,500.00 per month. The landlord denied advertising the property for over \$1,500.00 per month.

The advocate submitted that the subject rental property was clean at the end of this tenancy, the landlord was responsible for the damage to the floor and closet doors and the useful life of the paint had expired. The advocate submitted that the tenant was not responsible for the repairs and cleaning claimed by the landlord and is therefore not responsible for July 2020's rent.

## Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

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.

### Painting and Cleaning

Based on the testimony of both parties, I find that the subject rental property was fully painted approximately one year before the tenant moved in and was touched up approximately three months before the tenant moved in. I find that touch ups are not the same thing as the entire subject rental property being painted. For the purposes of Policy Guideline #40, I find that the subject rental property was last fully painted approximately 50 months before the tenant moved in.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was no useful life left on the paint. Therefore, the tenant is not required to reimburse the landlord for this expense.

I do not accept the advocate's submissions that the incongruous photographs prove, on a balance of probabilities, that the landlord's photographs were taken before June 29, 2020. I find that the tenant did not include photographs of damage and dirt in her evidence and the video does not provide close up imagery of the damage and dirt, which was supplied by the landlord's photographs. In further support of my above finding, I note that the photograph of the inside of the oven, entered into evidence by the landlord shows that the oven appears to have been cleaned in some spots, the spots visible when, for example, the door is opened. The photograph entered by the landlord shows that the top of the inside of the oven and corners are not properly cleaned. The white/ off white grout in the bathroom also appears black in the video.

I note that I was not able to locate duplicate images, where the same item was dirty in one picture and clean in the other, nor were any such images identified in the hearing.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants

must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the tenant did not properly clean the unit, contrary to section 37(2) of the *Act*, I therefore find that the tenant is required to reimburse the landlord for the cost of cleaning in the amount of \$252.00.

Repair hardwood floors and replace closet doors.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The tenant testified that both scratches in the bedroom were caused by the closet door falling off the track. From the photographic evidence, it is clear that one of the scratches is not close enough to the closet door to be caused by a closet door coming off the rails. I find the tenants testimony regarding the cause of the scratches to the hardwood floor not to be credible.

As noted above, the burden of proof required by the landlord in this application for dispute resolution is on a balance of probabilities, not beyond a reasonable doubt. I find that the estimates coupled with the landlord's testimony is sufficient evidence of the landlord's loss, on a balance of probabilities.

I find that the lack of photographs of the damage to the living room floors does not diminish the landlord's claim as the estimate clearly states that the estimate pertains to damage to the floors of the subject rental property. The move in condition inspection report states that the floors were in good condition at the start of this tenancy. I find that all the damage to the floors were caused by the tenant and the tenant is therefore responsible for their repair in the amount of \$472.50.

I accept the landlord's testimony that the closet doors could not fall out of the closet. I find, on a balance of probabilities, that the tenant caused the damage to the closet door. I accept the landlord's testimony that the doors were new in December of 2015.

Policy Guideline #40 states that the useful life for a door is 20 years (240 months). Therefore, at the time the tenant moved out, there was approximately 185 months of useful life that should have been left for the closet doors of this unit. I find that since the unit required new closet doors after only 55 months, the tenant is required to pay according to the following calculations:

$\$898.10$  (cost of new doors) / 240 months (useful life of doors) =  $\$3.74$  (monthly cost)

$\$3.74$  (monthly cost) \* 185 months (expected useful life of doors after tenant moved out) =  $\$691.90$ .

#### Replace bathtub stopper

In this instance I rely on the move in condition inspection report as both parties participated in its creation and signed it. I find that the bathtub was in good working order at the start of this tenancy and was missing a bathtub cap at the end of this tenancy. I find that the tenant is responsible for the cap's replacement in the amount of  $\$54.43$ .

#### July 2020 rent

Residential Tenancy Branch Policy Guideline #3 states:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Pursuant to the findings made thus far in this decision, I find that the subject rental property was not in a rentable condition on July 1, 2020 because of the damage caused by the tenant and the necessity to repair and clean the subject rental property before the start of a new tenancy. I find that the repairs were completed in a timely manner, with most completed in July of 2020. I find that since the property was not ready for rent on July 1, 2020, the likelihood of finding a tenant mid month is greatly reduced as most tenancy start of the first of every month. I therefore find that the tenant is responsible for July 2020's rent in the amount of  $\$1,464.50$ .

I note that this was a periodic or month to month tenancy and so the amount of money the landlord seeks to rent the subject rental property out for after the tenancy ended is of no consequence. The landlord is being awarded July's rent because of the damage to the unit and the need to repair, not for loss of rent for breach of a fixed term tenancy.

Security deposit and filing fee

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$690.00.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Repair hardwood floor	\$472.50
Cleaning	\$252.00
Replace bathtub cap	\$54.43
Replace closet door	\$691.90
July 2020's rent	\$1,464.50
Filing Fee	\$100.00
Less security deposit	-\$690.00
<b>TOTAL</b>	<b>\$2,345.33</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 27, 2021

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Residential Tenancy Branch