



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND-S, MNDC-S, FF

### Introduction, Preliminary and Procedural Matters-

This matter convened by teleconference on February 11, 2021, to deal with the landlord's application for dispute resolution for:

- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord, the landlord's agent/son, the landlord's witness, and the tenant attended both the original and reconvened hearings.

The original hearing proceeded on the landlord's application and the landlord provided testimony in support. By the end of the 61 minute hearing, the landlord had concluded their testimony.

The parties were informed by an Interim Decision dated February 12, 2021, and at the hearing, that the reconvened hearing would be held to provide the landlord's witness the opportunity to testify and the tenants the opportunity to provide their response to the landlord's application.

That Interim Decision is incorporated by reference herein and should be read in conjunction with this final Decision.

At both hearings, 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and to recover the cost of the filing fee paid for this application?

#### Background and Evidence

The written tenancy agreement shows the tenancy began on May 1, 2013, monthly rent listed was \$1,800, and the tenants paid a security deposit of \$900. The monthly rent at the end of the tenancy was either \$2,180, according to the tenant, or \$2,132, according to the landlord. Filed in evidence was a copy of the written tenancy agreement.

The tenancy ended on September 30, 2020, because of a Two Month Notice to End Tenancy for Landlord's Use of Property served to the tenants.

The landlord has kept the tenant's security deposit of \$900.

The landlord's application shows a total monetary claim of \$7,513.95.

The landlord is seeking monetary compensation as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Replace kitchen door (estimate)	\$315.00
2. Replace cracked window, junk removal (estimate)	\$1,286.25

3. 31 months carpet replacement (estimate)	\$3,090.70
4. Urine stain carpet removal (estimate)	\$1,260.00
5. Charge for loss of use of property	\$1,462.00
6. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$7,513.95</b>

The landlord claims that the tenant is responsible for damage to one of the windows, due to the crack in the window. The window has not yet been replaced, as their contractor is on paternity leave. The landlord submitted that the window was 28 years old, and that in 1992 when the family moved in, the whole house was renovated. The landlord submitted a copy of the contractor's estimate, which showed an estimated cost of \$675 for labour and materials.

The landlord claims that the tenant is responsible for junk removal from the front lawn, as they did not remove all their personal property. The landlord submitted a copy of an estimate from the contractor, which showed an estimated cost of \$550.

The landlord claims \$3,090.70 for carpet replacement at 31 months and \$1,260 for carpet removal.

To support this claim, the landlord said that the carpet was newly installed in July 2012 and that at the end of the tenancy, the carpet had to be fully replaced, due to the cat urine odours and stains. The landlord submitted that the carpet could not be cleaned and that the odour was not noticeable at the move-out inspection, as it was still wet from being shampooed.

The landlord submitted that they did not notice the odor until October 3, 2020, when the carpet started to dry.

The landlord confirmed that at the time of their application, they did not have a receipt as it was not ready and that subsequently, they forgot to provide a copy of the receipt for the hearing.

The landlord submitted that they are entitled to the costs of carpet removal, due to the need of having to replace the carpet due to cat urine.

The landlord submitted that they paid someone to remove it, that they did not have a receipt. The landlord confirmed that the estimate was to have the whole house re-carpeted, but the work has not been done yet.

As to their claim for an amount equal to a mortgage payment, the landlord submitted that the whole house had to be sanitized. As a result, the landlord's daughter had to postpone her move into the rental unit in October 2020.

The landlord said that the landlord's daughter moved into the rental unit in November or "thereabouts".

Evidence filed by the landlord included photographs, the move-in and move-out condition inspection report (Report), estimates for the claimed amounts, all dated in October 2020, email correspondence, and a receipt for the carpet replacement from 2012.

*Witness GL's testimony –*

GL said that during the move-out inspection, the carpet was being cleaned and there were no bad smells on that day.

In response to my inquiry, GL said the whole house was carpeted, with the exception of the bathrooms and kitchen.

GL also said that when he did periodic inspections during the tenancy, he did not see any cats, but a long time ago, he saw a pet food and water bowl. GL said the tenant was not allowed pets during the tenancy.

GL spoke of possible sub-tenants during the tenancy, but confirmed that the tenant was never issued a One Month Notice to End Tenancy for Cause due to having pets or sub-tenants.

*Tenant's response –*

The tenant agreed to the claim for a door replacement and for a window replacement.

The tenant disagreed that she is responsible for junk removal. The tenant submitted that she left some property at the rental unit for the landlord to enjoy, but when she was told to remove it, she returned, and all property left behind was removed. Filed into evidence were photographs.

The tenant denied she has ever had cats in the seven years she lived there, nor did anyone else have a cat. The tenant submitted she informed the landlord of this as well.

The tenant said she is a health care provider, owns a home care company, and would never have allowed the kind of damage or condition of the home as the landlord alleges. The tenant submitted that exposure to cat urine would create a serious health risk, and as she provides training in health and safety, she would never have allowed this to happen.

The said she left the entire home clean and had the carpets shampooed prior to leaving. The move-in condition inspection report (Report) showed that she left the home in a fair and acceptable condition. The tenant submitted that the landlord's agent, GL, and another agent completed a very thorough inspection.

The tenant submitted that she was never given an opportunity to come and inspect the carpet when she became aware of the issue. The tenant said that when she attended the rental unit, the carpets had already been ripped up and she was not provided evidence of cat urine, as she was given only a very small sample by the contractor.

The tenant said she believes the smell in the carpet was due to mold from a flood that occurred during the tenancy. The tenant claimed the carpet was replaced in 2012, due to a flood, but the receipt provided by the landlord shows that all carpets were removed, but only a part of the underlay was removed. This shows that some of the underlay presented by the landlord's contractor was from 1972, not 2012, or 50 years old.

The tenant wrote that the landlord never attempted to resolve the issue with her and was not told about it until after the carpets were ripped up and she was not given the opportunity to see the evidence.

The tenant wrote that she was not allowed back into the home until October 10, and she came with three witnesses. At that time, there were no bad smells and saw a full renovation of the home occurring. The tenant submitted that on October 10, 2020, the vinyl flooring, kitchen counters, bathtub and all floors of the home were already removed.

The tenant submitted that the carpet was not properly dried by leaving all doors open or turning on the heat, which would lead to a moldy smell.

Filed in evidence by the tenant was a written statement from a veterinarian, JM. This statement stated that the JM attended the rental unit with the tenant on October 10, 2020, did not smell cat urine and noticed water stain marks along the wood floors and walls, not the center, suggesting the water marks were from a flood.

JM also said he had visited the tenant many times in the rental unit and had never seen any pets or witnessed any smell caused by cats.

Also filed in evidence was the statement of the carpet cleaner who cleaned the carpets on September 30, 2020. The carpet cleaner stated that he has cleaned the tenant's carpets over 20 years, that during the cleaning, he did not find any cat hair or cat food, and there was not a cat urine smell in the carpet.

Filed in evidence was another written statement from AA, who has known the tenant for 30 years. AA wrote that on October 10, 2020, he accompanied the tenant to the rental unit, during which there was no cat urine smell, the house was undergoing a major renovation and there was no evidence or pieces of the carpet to inspect.

### Analysis

Based on the above, the testimony and 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, 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.

As such, the tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

*Door –*

I grant this portion of the landlord's application, as the tenant agreed to the claim. Therefore, the landlord is entitled to monetary compensation in the amount of \$315.00.

*Window –*

Although the tenant said she would agree to this claim, I do not award the landlord monetary compensation for window damage.

The landlord confirmed that the window was at least 28 years old, or from 1992, and the window has not been replaced as of the day of the hearing. I find the window was fully depreciated as windows have a useful life of 15 years and after this amount of time, I find there is no indication that the window will ever be replaced.

After reviewing the photograph of the window, I find the small and unrepaired crack in the window was reasonable wear and tear, at most.

For this reason, I dismiss the landlord's claim for a window repair.

*Junk removal –*

I find the landlord submitted insufficient evidence to support this claim. While the landlord submitted photographs, I find it just as likely as not that these were photographs taken before the tenant returned to remove the rest of her belongings. I find support for this conclusion by the tenant's witness' statement and the lack of a receipt showing a cost incurred by the landlord.

I dismiss the landlord's claim for junk removal.

*Carpet replacement –*

In this case, the landlord claims for a carpet replacement for the entire house, allegedly due to cat urine.

I find the landlord submitted insufficient evidence that the tenant ever had a cat in the rental unit during the over seven-year tenancy. The landlord's agent said he has never seen a cat in the rental unit, even though he has inspected the rental unit during the tenancy. The landlord has never issued the tenant with a One Month Notice to End Tenancy for Cause for violation of the no-pet clause in the written tenancy agreement.

The tenant and her witness statements all verify that the tenant has never had a cat in the rental unit. In particular, the owner of the carpet cleaning company verified that there was no cat hair when cleaning the carpet on the last day of the tenancy.

I likewise did not find the statements of a general contractor instead of a carpet professional that compelling.

In all cases, the landlord has failed to provide proof of a loss, as they failed to provide a receipt for a carpet replacement.

I find the landlord has failed to prove a violation of the Act by the tenant. Therefore, I dismiss this portion of the landlord's claim.

*Charge for loss of use of property –*

I find the landlord has submitted insufficient evidence to show how a tenant is responsible for a landlord's mortgage payment.

As the landlord claims that their daughter could not move into the rental unit due to carpet damage, and as I have found the landlord submitted insufficient evidence to show the tenant was responsible for carpet damage, I dismiss this part of the landlord's claim.



For the above reasons, I find the landlord has established a monetary claim of \$315, for a door replacement.

Awarding a filing fee is discretionary under the Act. In this case, I decline to award the filing fee to the landlord. The evidence showed that the tenant was amenable to returning to the rental unit to address any issues and find the evidence shows it just as likely as not that the tenant would have agreed to the door claim, without filing an application.

Further, I have dismissed the balance of the landlord's claim, other than for a door replacement, which the tenant agreed upon.

I direct the landlord to retain the amount of \$315 from the tenant's security deposit of \$900, in satisfaction of their monetary claim, and pursuant to section 62(3) of the Act, I order them to return the balance due of \$585, 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 \$585.

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 established a monetary claim of \$315 and has been ordered to retain this amount from the tenant's security deposit of \$900.

The landlord is ordered to return the balance due of \$585 to the tenant immediately.

The tenant is granted a monetary order in the amount of \$585.

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: May 19, 2021