



# 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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed their email addresses to which the Decision will be sent.

The hearing was scheduled for one hour. At the end of the hour, neither party had called their respective witnesses. The parties requested that the hearing continue in

order that presentation of evidence be completed. The Arbitrator agreed and accordingly the hearing continued. The total time for the hearing was 98 minutes.

*Preliminary Issue: Service*

The tenant acknowledged receipt of the landlord's Application for Dispute Resolution and Notice of Hearing.

The tenant submitted substantial evidence on August 10, 2021, three days before the hearing. The tenant stated that the evidence was not provided to the landlord.

The tenant is required to serve and submit evidence as soon as possible so that it is received not less than 7 days before the hearing.

New and relevant evidence may be considered by the Arbitrator. Rule 3.17 of the *Rules of Procedure* states:

*3.17 Consideration of new and relevant evidence*

*Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.*

*(emphasis added)*

The tenant explained that the evidence files were large media files and expensive to prepare for uploading; this was delayed because of her financial situation. The tenant also stated that the evidence related to events on the day the tenancy ended, February 28, 2021. The tenant stated that she had three witnesses to call to provide evidence at the hearing regarding the events of that day.

After hearing both parties, I find that the tenant's evidence was not submitted in compliance with the Rules. I also find the evidence is not "new" as the evidence was available to the tenant, or could have been available, at the time the tenancy ended or shortly thereafter. I find it was available at the time that the tenant was served.

I also find that the tenant is not prejudiced by the exclusion of the evidence. I find that the tenant intended to call three witnesses with respect to events of that day and the noncompliant evidence duplicates available witnesses' testimony.

I also find that it would unreasonably prejudice the landlord or result in a breach of the principles of natural justice to consider evidence not received and seen by the landlord.

After hearing the submissions of the parties and in consideration of the above, I therefore deny the tenant's application to consider the evidence filed August 10, 2021.

I informed the parties of my decision. I will not consider the evidence submitted by the tenant on August 10, 2021.

The hearing continued.

#### *Agreement During Hearing*

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute. The hearing was briefly placed on hold for five minutes to allow the landlord to consult with an advisor regarding a proposed settlement. During that time, the tenant and I remained silent on the teleconference call.

Before the conclusion of this hearing, the parties achieved a resolution of some aspects of their dispute.

This settlement was reached in accordance with section 63 and is described below.

The parties agreed the tenant would reimburse the landlord for the following claims:

ITEM	AMOUNT
Chair replacement	\$70.00
Dump fees	\$24.15
Knives replacement	\$22.39
Carpet cleaning	\$204.70
Repair of burn damage	\$50.00
<b>AMOUNT AGREED UPON</b>	<b>\$371.24</b>

I find the landlord has met the burden of proof with respect to all aspects of the above claims. I find that the tenant caused the above damages, the landlord incurred the expenses, and the request for compensation is acceptable and proven under the Act.

Further to the testimony and my findings, as well as the settlement agreed upon by the parties, I award the landlord a Monetary Order in the amount agreed upon of **\$371.24**.

#### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for the remainder of the landlord's claims?

#### Background and Evidence

This is a claim by the landlord for compensation for damages allegedly caused by the tenant. The parties submitted many documents and photographs as well as considerable disputed testimony in a 98-minute hearing. During the hearing, the landlord called one witness and the tenant called two witnesses all of whom provided affirmed testimony.

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agreed to the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	Furnished apartment, monthly
Date of beginning	February 1, 2020
Date of ending	Feb 28, 2021
Length of tenancy	13 months
Monthly rent payable on 1 <sup>st</sup>	\$915.00
Security deposit	\$450.00
Pet deposit	\$100.00
Forwarding address provided	February 28, 2021
Date of landlords' Application	March 15, 2021

The parties agreed that there was no condition inspection at the beginning or end of the tenancy.

On the final day of the tenancy, the parties agreed they did a “walk through”. That is, they both walked through and inspected the unit. Afterward, they agreed the tenant would forfeit the pet deposit of \$100.00. The tenant testified the payment was as compensation for damages to a chair and carpet caused by her cats. The tenant signed a typed document to this effect, a copy of which was submitted as evidence. The document is silent with respect to the balance of the security deposit of \$450.00.

The tenant and the witness JS testified that JS was present for the walk through and the subsequent communication about the deposits. The tenant testified that the landlord promised after the walk through to refund the balance of the security deposit the following day. Her evidence was supported by the witness JS who agreed with the tenant's version of what took place and testified there was “full agreement” about this between the parties.

JS testified that he is a property manager. JS also stated that his observations of the

unit during the walk through was that it was “100% ready to rent” and in “perfect condition”.

The tenant also called the witness AB who said that she had cleaned the unit with the tenant on the final day of the tenancy and it was clean throughout.

The landlord agreed that the walk through did not reveal any issues except for damage by the cats. The landlord confirmed the above agreement about the forfeiture of the pet deposit. However, the landlord testified that she did *not* promise to return the balance of the security deposit. She testified that she promised only *to consider* returning the security deposit.

The landlord testified that subsequent closer inspection of the unit revealed the unit needed more cleaning. She also discovered the tenant had left some items behind and some items were missing, such as bedding. One item of bedding, a blanket, was paint stained and damaged the washing machine which required an appliance repair cost.

The landlord listed the deficiencies with the unit in a letter of March 5, 2021, a copy of which was submitted. The tenant acknowledged receipt but denied responsibility for most of the items claimed.

As a result, the landlord did not return the security deposit and brought this application 15 days after the tenancy ended.

The landlord requested compensation for the following:

	ITEM	AMOUNT
1.	Cleaning (20 hours)	\$250.00
2.	Sheet set and duvet (replacement cost)	\$103.03
3.	Washing machine repair	\$126.00
4.	Shelf (anticipated replacement cost)	\$67.18
	<b>TOTAL CLAIM BY LANDLORD</b>	<b>\$917.45</b>

Each item is addressed in turn.

1. *Cleaning*                      \$250.00

The landlord testified as to the condition of the unit, which is repeated in the letter of March 5, 2021, a copy of which was submitted as evidence.

The landlord testified as follows. The letter stated the insufficiently cleaned unit required the witness JP and the landlord to each work 10 hours to clean. There was “significant debris” behind furniture. Certain items were not cleaned such as the baseboards, walls, stove, fridge, cupboards, and floors. The witness JP confirmed the landlord’s testimony as to the unclean condition of the unit and the time involved to remedy the situation.

The landlord submitted photographs in support of the condition of the unit.

The tenant stated the unit was in reasonably good condition when she left. She called the witness AB who confirmed that they worked together to clean the entire unit. As stated, the witness JS testified he observed that the unit was in good condition.

2. *Sheet set and duvet*                      \$103.03

3. *Washing machine repair*                      \$126.00

The landlord testified that bedding was provided with the unit, including a sheet set and duvet which was one year old and in good condition at the time the tenancy started. No evidence of the purchase price of the sheet set was submitted. As stated, there was no condition inspection report to affirm the provision of the bedding at the time the tenancy started. The landlord submitted an invoice in the amount claimed for replacement cost.

The tenant testified that when she moved in, she put all the landlord’s bedding in a storage area. She said she had brought all her own bedding and did not use any of the landlord’s. She denied using or taking bedding.

The landlord also stated that part of the provided bedding included a blanket which was in good condition when the tenant moved in. However, the blanket was paint stained when the tenant vacated. The landlord washed the item during which paint flakes came off. The landlord was concerned that the flakes of paint would damage the washer. Accordingly, she hired an appliance service person to check out the washer . The fee was \$126.00 for which she submitted an invoice.

As stated, the tenant denied that she used any of the landlord's bedding. She objected to paying for normal maintenance for the washer.

*4. Shelf                      \$67.18*

The landlord testified that the tenant broke a shelf which the landlord said was 22 years old. She submitted an estimate of the replacement cost of a new shelf.

The tenant acknowledged that a bracket broke on the shelf. She denied responsibility. She testified she tried to fix the shelf by buying a new bracket which did not fit. The tenant denied the old shelf had the value of a new one.

The landlord requested an award for the anticipated replacement cost of the shelf. The tenant denied any responsibility for this claim.

*Summary of landlord's claim*

The landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Award agreed upon (above)	\$371.24
Cleaning	\$250.00
Bedding	\$103.03
Appliance repair	\$126.00
Shelf replacement	\$67.18
Reimbursement filing fee	\$100.00
<b>TOTAL CLAIM - DAMAGES</b>	<b>\$1,017.45</b>

*Security Deposit*

The landlord requested the security deposit and pet deposit be applied to the award as follows:



ITEM	AMOUNT
Award (above)	\$1,017.45
(Less security deposit and pet deposit)	(\$550.00)
<b>TOTAL AWARD CLAIMED AGAINST TENANT</b>	<b>\$467.45</b>

The tenant agreed to pay **\$371.24** as stated above and requested that the remainder of the landlord's claim be dismissed without leave to reapply.

### Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

### *Standard of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state 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.

It is up to the landlord to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

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.

### *Obligations of Tenants and Landlords*

The obligations of the parties are set out in the Act and clarified in *Policy Guideline # 1. Landlord & Tenant – Responsibility for Residential Premises*.

Section 32 states as follows (emphasis added):

**Landlord and tenant obligations to repair and maintain**

**32 (1) ...**

(2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

(3) *A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

(4) *A tenant is not required to make repairs for **reasonable wear and tear**.*

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

(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.*

*Credibility*

When the tenant and the landlord give differing versions of events, the credibility of the parties must be considered. I found both parties to be well-prepared, articulate and firmly convinced of their point of view.

Each party has supported their version of events with witnesses who provided affirmed testimony.

I find the tenant has created doubt about the landlord's claims. I find the tenant has provided a reasonable and believable version of events. For example, I accept the tenant's testimony as supported by the witnesses JS and AB that the tenant cleaned the unit before she left and that it was "reasonably clean".

Therefore, considering the evidence and testimony, where their version of events differs, I prefer the tenant's version as supported by the witnesses JS and AB.

### *Four-part Test*

When an applicant, the landlord in this case, seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

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

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

...

*67 Without limiting the general authority in section 62 (3) [. . .] 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.*

### *Condition Inspection Report*

At the beginning of a tenancy, a landlord and tenant must inspect the rental unit together – this is sometimes called a “walk through.” It is the landlord’s responsibility to schedule the inspection.

The condition inspection report is a checklist that documents the condition of the unit when the tenant moves in and moves out. The document records any changes to the state or repair or condition of the unit on a room-by-room basis. This helps with the determination of damages, if any.

The requirements for a condition inspection when the tenant moves in is set out in section 23(1) and section 35(1) of the Act. Section 23(1) states (emphasis added):

***Condition inspection: start of tenancy or new pet***

**23** (1) *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 consequences of the failure to comply with the Act are set out in sections 24 and 36.

Section 24 states (emphasis added):

***Consequences for tenant and landlord if report requirements not met***

**24** (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

- (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and*
- (b) the tenant has not participated on either occasion.*

(2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

*Policy Guideline 17 - Security Deposit and Set Off* provides guidance to landlords and tenants on the obligations to carry out condition inspections and the consequences for the failure to do so. The Guideline states:

*The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rent unit is extinguished if:*

- The landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- Having made an inspection does not complete the condition inspection report in the form required by the Regulation or provide the tenant with a copy of it.*

The Act and Guideline provide that the landlord who has lost the right to claim against the security deposit retains the right to obtain the tenant's consent to deduct from the deposit **other than damage to the rental unit.** The landlord may still file a claim for damages. However, as the right to retain the security deposit is extinguished, if it is not returned, a doubling of the deposit occurs under section 38.

In this case, the landlord's right to deduct from the security deposit for damage to the rental unit was extinguished. Therefore, the landlord was not entitled to retain the \$100.00 from the pet deposit or the \$450.00 of the security deposit.

The tenant is therefore entitled to a doubling of the security deposit and pet deposit in the amount of \$1,100.00 as follows:

ITEM	AMOUNT
Pet deposit and security deposit	\$550.00
Doubling	\$550.00
<b>TOTAL DEPOSITS</b>	<b>\$1,100.00</b>

I accordingly award the tenant the amount of \$1,100.00 for the return of the deposits.

Each of the landlord's claims is addressed.

### *Cleaning*

Under section 37(2) of the *Act*, quoted above, the tenant must leave a rental unit *reasonably clean*. *Policy Guideline 1 - Landlord and Tenant, Responsibility for Premises* states:

*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 or Manufactured Home Park Tenancy Act (the Legislation).*

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary*

*standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.*

I accept the tenant's credible testimony as supported by the witness JS. I find the landlord agreed after the walk through to refund the balance of the security deposit after accepting the pet deposit as compensation for damage caused by the tenant's pets. I find the landlord accepted the condition and cleanliness of the unit.

I accept the landlord's and witness JP's testimony that they spent time cleaning the unit. However, I find that the landlord failed to provide sufficient evidence to meet the burden of proof on a balance of probabilities that the tenant failed to leave the unit *reasonably clean*. In reaching this conclusion, I have considered the testimony and evidence, the agreement by the landlord regarding only specified damage, the opportunity of the landlord to fully inspect the unit in the tenant's presence, and the absence of a condition inspection report. Accordingly, I find the landlord is not entitled to reimbursement of their time for cleaning.

I therefore dismiss the landlord's claim under this heading without leave to reapply.

*Bedding replacement and washing machine repair*

I accept the tenant's credible testimony that she did not use any of the bedding in the unit. I therefore find that she is not responsible for the replacement cost of any bedding as claimed. I find the landlord has failed to meet the burden of proof about this aspect of the claim.

As I find the tenant did not use any bedding, I similarly find that the tenant is not responsible for any washing of bedding or possible consequent required maintenance to the washing machine. I find the landlord has failed to meet the burden of proof that the tenant must reimburse for the landlord for an appliance repair which I find is more likely than not to be routine maintenance.

Accordingly, I find the tenant is not responsible for the cost of a service call to inspect/repair the washing machine.

I therefore dismiss the landlord's claim under both headings without leave to reapply.

*Shelf replacement*

The landlord seeks replacement cost of a shelf based on an estimate.

The landlord acknowledged the item was over 20 years old. I find the landlord has failed to establish that it had any value. I do not find it reasonable that the tenant would be required to compensate the landlord for the cost of a new shelf in these circumstances.

For these reasons, I therefore dismiss the landlord's claim under this heading without leave to reapply.

*Filing fee*

As the landlord has not been successful in her claim, I do not award reimbursement of the filing fee.

*Summary of Award*

I grant the tenant a doubling of the security deposit and pet deposit as set out above in the amount of \$1,100.00.

I grant the landlord an award of \$371.24 as the amount the tenant agreed to compensate the landlord.

I grant the tenant a Monetary Order in the amount of **\$728.76** for return of the balance of the deposits as follows:

ITEM	AMOUNT
Award to tenant – doubling of deposits	\$1,100.00
(Less agreed upon award)	(\$371.24)
<b>Monetary Order to TENANT</b>	<b>\$728.76</b>

I therefore grant a Monetary Order in favour of the tenant against the landlord in the amount of **\$728.76**



Conclusion

I grant a Monetary Order in favour of the tenant against the landlord in the amount of **\$728.76**.

This Order must be served on the landlord. This Order may be enforced and filed in the Courts of the Province of British Columbia.

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: August 14, 2021

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Residential Tenancy Branch