



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL, MNDL, MNRL, 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 recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. After discussion, the tenant acknowledged receipt of the Application for Dispute Resolution and Notice of Hearing.

The hearing process was explained. The parties were given an opportunity to ask questions.

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.

The email addresses to which the Decision would be sent were confirmed.

### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

### Background and Evidence

This is a claim by the landlord for outstanding rent and monetary compensation for damages allegedly caused by the tenants. The landlord submitted many documents, photographs, and videos as well as considerable disputed testimony in a hearing that lasted 81 minutes.

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 tenant stated that he lived in the unit with his family which included a child who required medical attention and ongoing support surrounding behaviour which included disruptiveness and noise. The tenant said the family did its best to control the child and reduce disruptiveness to others.

The parties submitted a copy of the tenancy agreement and agreed to the background as follows:

<b>INFORMATION</b>	<b>DETAILS</b>
Type of tenancy	Fixed term
Date of beginning	September 1, 2020
Date of ending	Disputed – February 15, 2021 (tenant); February 28, 2021 (landlord)
Length of tenancy	5 months
Monthly rent payable on 1 <sup>st</sup>	\$3,050.00
Security deposit	\$1,525.00
Pet deposit	none
Date of landlord's Application	March 15, 2021

The parties acknowledged during the hearing that they agreed at the time the tenancy

ended that the landlord could apply the security deposit to rent owing from February 1-15, 2021.

The landlord clarified their claim as follows:

Item(s)	Amount Claimed	Total
	0	
Rent February 15 – 28, 2021	\$1,525.00	
Rent March 1 to March 15, 2021	\$1,525.00	
	0	
Subtotal	\$3,050.00	\$3,050.00
Damages		
Strata fines	\$1,900.00	
Wall repair and painting	\$1,000.00	
Common area repair	\$650.00	
Carpet cleaning	\$175.00	
Replacement guest pass	\$25.00	
	0	
Subtotal	\$3,750.00	3,750.00
Total		\$6,800.00

#### *Condition Inspection Report*

The parties agreed that a condition inspection was conducted at the beginning of the tenancy. A copy was submitted which indicates that the unit is in good condition in all material respects.

The parties did not conduct a condition inspection on moving out. The parties provided conflicting explanations.

The landlord stated that on the final day, February 28, 2021, the landlord was ready and willing to carry out the planned inspection. Instead, the tenant refused and drove away. The landlord submitted a video of the tenant driving off.

The tenant testified he was ready and willing to conduct the inspection with the landlord that day. However, the landlord started yelling at him, humiliating the tenant in front of others. The tenant therefore drove away.

Each of the landlord's claims are discussed below.

<i>Rent February 15 – 28, 2021</i>	<i>\$1,525.00</i>
<i>Rent March 1 to March 15, 2021</i>	<i>\$1,525.00</i>

The landlord claimed that he lost rent from mid-February to mid-March and claimed one month's rent as compensation.

The parties agreed on the following. The tenant provided notice at the end of January 2021 that they were moving out February 15, 2021. The landlord agreed to the early end of the fixed term tenancy. He explained that the tenant was a problem in the building, creating noise and disturbances. Many other tenants had complained. The strata had imposed several fines. The landlord testified that he tried to resolve issues with the tenant and all efforts failed. The landlord wanted the tenant to move out as soon as possible.

The tenant stated that they moved out on February 15, 2021 and he used the last two weeks of February to clean the unit. He said they had rented another place to live although he acknowledged that he slept "one or two nights" in the unit in the last two weeks. He testified that the landlord agreed that the tenant did not have to pay rent for the last two weeks of February 2021. He also stated he is not responsible for the landlord's failure to rent the unit until mid-March 2021.

The landlord testified that he did not agree that the tenant could stay until the end of February 2021 without paying rent.

The landlord testified as follows. He expected the tenant to vacate on February 15, 2021. He did not agree the tenant could stay longer. The tenant occupied the unit until February 28, 2021. As a result, the landlord was not able to do repairs on the unit until March 1, 2021 or to have anyone move in. In the meantime, the landlord entered a tenancy agreement with a new occupant who was not able to move in until mid-March 2021 which coincided with the availability of the repaired unit.

The landlord submitted copies of substantial correspondence from the strata including the following dated February 26, 2021 stating the tenant moved out February 25, 2021:

*Well [the tenant is] going out with a bang. He proceeded to move stuff yesterday*

*typing up elevators, no pads up etc. [A person named] has video and a complaint came in from an owner. Looks like some damage. Will send to you when we have it.*

*Strata fines*

*\$1,900.00*

The landlord submitted documentary evidence that he paid strata fines of \$1,900.00 during the tenancy. The landlord provided testimony of the dates and reasons for the fines which included noise, storage violations, and unscheduled use of the elevator for moving out. Correspondence from the strata confirmed the landlord's claims in all respects.

The landlord submitted copies of texts between the parties. In one text, the landlord described the tenant's conduct which resulted in fines as follows:

*You have been disrespectful to your neighbours at [building]. The management is also appalled by your conduct.*

The tenant said that he was not responsible for any of the incidents. He blamed others, saying he did his best, never created any noise unnecessarily, and any disturbance was either fabricated by other occupants or caused by someone else over whom he had no control, such as his child.

*Wall repair and painting*

*\$1,000.00*

The landlord stated that he spent \$2,000.00 to repair the walls and repaint the unit because of the tenant's damage. The damage included marks and holes in walls, trim, and doors. The landlord submitted considerable visual evidence documenting the damage.

The landlord submitted a copy of the receipt and testified the unit had been previously painted in 2019, two years previously. The landlord recognized that the painting life of four years, as set out in the *Policy Guideline # 40 - Useful Life of Building Elements*. The landlord therefore claimed ½ of the repair and painting costs in the amount of \$1,000.00 to cover repairs and repainting of the damaged/repainted areas.

The tenant denied that the landlord is entitled to anything for repairs and painting. He stated that he left the unit in good condition, wear and tear excepted. He submitted a copy of a text from the landlord dated February 13, 2021 following a showing of the unit by the landlord to a prospective tenant. In the text, the landlord thanked the tenant for a “clean apartment” and referred to “good décor”. The tenant stated it was unreasonable that the landlord wanted reimbursement as claimed after a 5-month tenancy.

The landlord acknowledged sending the text. However, he stated that the damage to the walls and door were noted only upon inspection when the tenant moved out and his belongings were gone.

<i>Common area repair</i>	<i>\$650.00</i>
<i>Carpet cleaning</i>	<i>\$175.00</i>

The landlord stated that the tenant damaged a wall while moving out requiring repairs in the amount of \$650.00. The landlord submitted a copy of a quotation from a repair company. The quote states:

*...wall damaged by tenant while moving out. Mainly hallway on 4<sup>th</sup> floor has quite bit of damage near the elevator and around suite 407. .... The wall will be patched up and sanded to smooth surface to cover with new paint.”*

The landlord stated that he had the carpet professionally cleaned when the tenant vacated as it required cleaning. A copy of the receipt was submitted.

The tenant denied the landlord is entitled to these expenses.

The tenant acknowledged that he had not had the carpet professionally cleaned. However, he stated that he had adequately cleaned the carpet with a cleaning machine.

<i>Replacement guest pass</i>	<i>\$25.00</i>
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The landlord testified that the tenant did not return the guest pass to the unit when he moved out. As a result, the landlord had to pay the strata \$25.00 for a replacement.

The tenant acknowledged being provided with a guest pass which he did not return.  
*Security Deposit*

*Filing fee and security deposit*

The landlord requested reimbursement of the filing fee and that the security deposit be applied to the award as follows:

ITEM	AMOUNT
Compensation for damages and outstanding rent	\$6,800.00
reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,525.00)
<b>TOTAL CLAIM - DAMAGES</b>	<b>\$5,375.00</b>

The tenant requested return of his security deposit and dismissal of the landlord's claims.

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 the landlord was well prepared, believable and reliable, submitting substantial convincing evidence in support of every aspect of his claim.

I found the tenant denied all key facts, even the facts that were indisputable, such as



the date of moving out (recorded on video).

I therefore give most weight to the landlord's testimony. Where their evidence differs, I prefer the landlord's version. I give little weight to the tenant's evidence.

#### *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 and end 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.

I accept the landlord’s testimony and I find the parties agreed on a scheduled inspection on the last day of the tenant’s moving out. I find the tenant refused to do the inspection and drove away.

As I have found that the tenant left the unit at the time of a scheduled inspection, I place considerable weight on the landlord’s comprehensive and complete documentary evidence showing the condition of the unit on moving out. I do not accept the tenant’s testimony.

Each of the landlord’s claims is addressed.

<i>Rent February 15 – 28, 2021</i>	<i>\$1,525.00</i>
<i>Rent March 1 to March 15, 2021</i>	<i>\$1,525.00</i>

I find the tenant overstayed in the unit after the parties agreed that the tenant could move out February 15, 2021. I accept the landlord’s credible evidence that the tenant was observed and filmed moving out on at the end of the month. I do not give any weight to the tenant’s testimony that all he was doing was cleaning up in the last two weeks of February. In any event, I find the tenant acknowledged occupying the unit for this period.

I therefore find that the tenant has failed to comply with the agreement, the landlord has lost rental income, and he could not start repairs to the unit to re-rent it. I find the landlord is entitled to compensation for the last half of February 2021 in the amount claimed.

Because of this finding, I also find that the landlord was not able to do the repairs to the

unit in the first half of the following month. I find the tenant damaged the unit and the landlord carried out repairs and painting in the first two weeks of March in order that the unit was ready for occupancy on March 15, 2021. I find the landlord lost rental income for the first two weeks of March 2021 because of the tenant's failure to move out when he said he would. I find the landlord made reasonable efforts to accommodate the delay in moving out by the tenant and the desire to see the unit occupied again as soon as possible.

I also find the tenant left the unit in such a state of disrepair that the landlord required the first two weeks of March to fix/repaint the unit to get it ready to be occupied. I find the landlord did everything reasonable to reduce expenses and quickly get the repairs done.

In summary, with respect to both outstanding rental claims, I find the landlord has met the burden of proof on a balance of probabilities on all aspects of the claims including the 4-part test above.

I therefore award the landlord the amounts claimed under both these headings for compensation for loss of rent.

<i>Strata fines</i>	<i>\$1,900.00</i>
<i>Wall repair and painting</i>	<i>\$1,000.00</i>
<i>Common area repair</i>	<i>\$650.00</i>
<i>Carpet cleaning</i>	<i>\$175.00</i>
<i>Replacement guest pass</i>	<i>\$25.00</i>

The above claims are considered together.

I find the landlord has met the burden of proof with respect to all aspects of each of these claims. I find the landlord incurred the expenses for which he seeks compensation. I find the compensation requested is reasonable and supported by the landlord's credible testimony and comprehensive, supporting documents. I find the landlord acted reasonably in attempting to reduce and minimize expenses.

I do not accept the tenant's explanation that the damage to the walls was reasonable wear and tear. The photographs show deliberate or careless damage including holes in the drywall, marks, and breakage. The landlord's request for half of the costs to paint the entire unit is reasonable. I find the landlord would not have incurred this expense

except for the actions of the tenant.

I find the tenant was repeatedly warned about noise and other disturbances for which he is responsible. I find the strata imposed fines in the amount claimed which the landlord paid. I find the fines resulted from the tenant's behaviour which the landlord described as appalling and about which he issued multiple warnings.

In summary, with respect to all claims under this heading, I find the landlord has met the burden of proof on a balance of probabilities on all aspects including the 4-part test above.

I therefore award the landlord the amounts claimed under all these headings for compensation.

### *Summary*

I grant the landlord an award as follows:

Item(s)	Amount Claimed	Total
	0	
Rent February 15 – 28, 2021	\$1,525.00	
Rent March 1 to March 15, 2021	\$1,525.00	
	0	
Subtotal	\$3,050.00	\$3,050.00
Damages		
Strata fines	\$1,900.00	
Wall repair and painting	\$1,000.00	
Common area repair	\$650.00	
Carpet cleaning	\$175.00	
Replacement guest pass	\$25.00	
	0	
Subtotal	\$3,750.00	3,750.00
Total Award		\$6,800.00

I grant the landlord reimbursement of the filing fee and authorize the security deposit to applied to the award as follows:

ITEM	AMOUNT
Compensation for damages and outstanding rent	\$6,800.00
reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,525.00)
<b>TOTAL Monetary Order</b>	<b>\$5,375.00</b>

### Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$5,375.00**. This Monetary Order must be served on the tenant. If the tenant fails to comply with this Monetary Order, the landlord may file the Order in the Courts of the Province of British Columbia to be 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: August 17, 2021

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Residential Tenancy Branch