



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S FFL

### Introduction

The landlord seeks compensation pursuant to section 67 of the Residential Tenancy Act (“Act”) including recovery of the filing fee under section 72 of the Act.

Both parties attended the hearing on May 17, 2021 at 1:30 PM. At 1:46 PM, the tenant was unexpectedly disconnected from the hearing. After waiting several minutes for the tenant to reconnect (with no success), the hearing was adjourned at 1:53 PM.

The matter reconvened on September 13, 2021 at 9:30 AM and both parties were in attendance with no further technical issues.

### Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on March 15, 2019 and ended on December 31, 2020. Monthly rent was \$1,230.00. The tenants paid a security deposit of \$600.00 which the landlord currently holds in trust pending the outcome of this dispute.

The landlord seeks \$525.00 in compensation for damage to their son’s room, wear and tear in the main bedroom and living room, and for cleaning costs of the rental unit.

In addition, the landlord claims that the tenants did not provide keys back to the bolt lock, left damage in the fridge, and to the countertop.

Documentary evidence submitted by the landlord consisted of 13 colour photographs of various areas in the rental unit. Also submitted was a cleaning service invoice (for \$175.00), a drywall repair invoice, and a copy of the written tenancy agreement. What was not submitted into evidence is a copy of any condition inspection report.

The tenant testified that he, his wife, and their 11-year-old son are a low-income family. He explained that they have never missed a rent payment and always paid on time. Even, he added, when the restaurant at which he worked closed and during his six months of unemployment. He would like the return of his security deposit. (The tenant and landlord testified about various matters concerning showings of the rental unit and so forth. However, much of this information was not germane to the dispute before me.)

The tenant testified that they did lose the bolt key, and that they forgot a dirty dish in the rental unit. He also testified that he only later found out about the requirement of a condition inspection report. The landlord, he said, never showed, produced, or asked him to sign, any such report either at the start or end of the tenancy.

### Analysis

Section 7 of the Act states that if a party does not comply with the Act then the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

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.

Subsection 37(2)(a) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

The landlord gave evidence that there was a lot of damages done to the walls, and holes in the walls, and the entire rental unit required repainting. She noted that it was all renovated brand new at the start of the tenancy. Several photographs of the rental unit, as it was at the end of the tenancy, were submitted into evidence.

The tenants dispute the landlord's claim. The only aspect of the landlord's claim that the tenant conceded was that they did lose a bolt key.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide persuasive evidence of the state of repair and condition of the rental unit at the start of the tenancy. While the photographs submitted by the landlord show the state of repair and condition of the property at the end of the tenancy, there is no evidence showing what the property was like at the start of the tenancy. And it is this lack of evidence that prevents me from finding that the tenants breached section 37(2) of the Act.

Section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 234/2006, s. 16, sets out the evidentiary weight of a condition inspection report:

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.

In summary, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that the tenants breached section 37(2) of the Act. Accordingly, no award for compensation may flow and the landlord's claim must fail.

In respect of the missing key not returned, subsection 37(2)(b) of the Act requires that the tenant give a landlord all the keys or other means of access that are in the possession of the tenant when they leave the rental unit at the end of the tenancy.

As the tenant admitted to having lost a key, and as the landlord claims that it cost her to replace or rekey the bolts, it follows that the tenants breached subsection 37(2)(b) of the Act. However, the landlord did not provide a receipt of invoice for the associated costs and has thus not proven those costs. Therefore, I am only prepared to award a nominal award of \$1.00.

Last, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord did not, for all intents and purposes, succeed

in their application, I decline to award compensation for recovery of the application filing fee. That aspect of the landlord's claim is dismissed without leave.

Given the above, the landlord is hereby ordered, pursuant to sections 38 and 65 of the Act, to return \$599.00 of the security deposit to the tenants. A monetary order in this amount is issued in conjunction with this decision, to the tenants. The tenants must, if necessary, serve a copy of this order on the landlord.

### Conclusion

The landlord's application is granted, in part. The landlord is authorized to retain a nominal amount as explained above.

The tenants are granted a monetary order in the amount of \$599.00, which must be served on the landlord. If the landlord fails to return this amount of the security deposit within 15 days of receiving this decision, the tenants may file and enforce the order in the Provincial Court of British Columbia.

This decision is final and binding and is made on delegated authority under section 9.1(1) of the Act.

Dated: September 13, 2021

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Residential Tenancy Branch