



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S (landlord); MNSD, FFT (tenant)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to sections 67 and 72 of the *Act*;

This hearing also dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended ("the tenant"). The landlord attended. All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. 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.

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. No settlement was reached and the hearing continued to conclusion.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order? Is the tenant entitled to return of the security deposit and reimbursement of the filing fee?

Background and Evidence

This is a claim by the landlord for compensation for damages allegedly caused by the tenant. The tenant denied responsibility for any damage and requested reimbursement of the security deposit and filing fee.

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.

Tenancy Background

A copy of the tenancy agreement was submitted. The parties agreed to the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	February 1, 2020
Date of ending	April 1, 2021

Length of tenancy	14 months
Monthly rent payable on 1 st	\$2,000.00
Security deposit	\$1,000.00
Pet deposit	0
Forwarding address provided	End of tenancy
Date of landlords' Application	April 16, 2021 (within 15 days)

Condition Inspection

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

The parties agreed they did a “walk through” at the beginning and end of the tenancy. That is, they both walked through and inspected the unit.

The parties agreed the tenant brought a condition inspection report form to the walk through at the beginning of the tenancy, but the landlord said it was not necessary to complete the form.

The tenant testified that the landlord approved of the condition of the unit during the walk through at the end of the tenancy. They said that they anticipated full return of their security deposit.

The landlord testified she noticed certain deficiencies but just wanted the tenant to leave and not come back. She said she always intended to make a claim for compensation.

Claims for Damage and Compensation by the Landlord

The landlord requested compensation for the following:

	ITEM	AMOUNT
1.	Wall repair – labour and materials	\$430.00
2.	Disposal cost	\$150.00
3.	Stove – replacement (13/15 x \$900.00)	\$780.00
4.	Cleaning	\$100.00
	TOTAL CLAIM BY LANDLORD	\$1,460.00

The landlord requested that the security deposit be applied to the award and a Monetary Order issued for the balance as follows:

ITEM	AMOUNT
Award (above)	\$1,460.00
(Less security deposit)	(\$1,000.00)
TOTAL AWARD CLAIMED AGAINST TENANT	\$460.00

Each item is addressed in turn.

1. Wall repair – labour and materials \$430.00

The parties agreed as follows. The tenant was responsible for holes in the wall made to hang shelves, a spice rack and so on. The tenant filled many of the holes with drywall compound before they moved out and left the repairs incomplete.

The landlord submitted photographs of the filled holes; she testified she spent several hours sanding the holes and repainting the walls. The landlord submitted a receipt for the materials.

The tenant said that the landlord agreed to look after anything remaining although they

told her they would return to complete the work. The landlord refused their offer to finish the job.

2. Disposal cost \$150.00

The landlord stated that she paid \$150.00 to have items removed that were left by the tenant, such as garden fencing and curtains. The landlord submitted pictures of the items which she removed. She testified she paid cash for the removal and did not submit a receipt.

The tenant stated that any items left, such as the curtains, improved the unit or were inconsequential. As well, the tenant testified that the landlord said she would look after anything that needed to be taken away. The tenant said they assumed the landlord did not want them to take the items away and would either keep them or not charge them. They expected no claim for disposal compensation and expected return of the security deposit.

3. Stove – replacement (13/15 x \$900.00) \$780.00

The landlord testified the stove was two years old at the beginning of the tenancy and claimed a portion of the replacement cost based on the remaining useful life of the appliance. No receipt of purchase was submitted. The landlord submitted an estimate of the replacement cost. The landlord claimed compensation of \$780.00.

The landlord submitted photographs of a stove in a “before” condition and in an “after condition” with scratched surface and pitted interior lining. The landlord testified that the damages were caused by the tenant and made the stove unusable.

The tenant stated that the stove was 10 years old and dirty when they moved into the unit. They testified they left the stove in as good, or better, condition when they moved out. They said the photographs submitted by the landlord were not reliable and did not reflect the condition of the appliance when they moved in.

4. Cleaning \$100.00

The landlord claimed two hours of cleaning for a total of \$100.00. The cleaning was necessary after the tenant moved out.

The tenant testified that they had worked with a team of friends to clean the unit before they left, and it was in reasonably clean condition. They also stated that the tenant did not complain about any aspect of the condition of the unit when they moved out.

Summary of Claims

The landlord requested compensation as stated above.

The tenant requested return of the security deposit.

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.

I find the tenant has created doubt about the landlord's claims which were inadequately supported by documentary evidence such as the required condition inspection report on moving in and moving out.

I find the tenant has provided a reasonable and believable version of events. For example, I accept the tenant's testimony that the tenant cleaned the unit before they left and that it was "reasonably clean". I also accept their testimony that the landlord said she would look after anything that remained to be done. The tenant stated they interpreted this to mean that the unit's condition was acceptable to the landlord. While the landlord may have intended to claim damages from the tenant, I find the tenant's

expectation they would get their security deposit back to be reasonable and plausible in the circumstances.

Therefore, considering the evidence and testimony, where their version of events differs, I prefer the tenant's version.

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 any damages.

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.

Such a report provides clarity and certainty about the condition of a rented unit at the

beginning and end of a tenancy.

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 retain the security deposit for damage to the rental unit was extinguished. Therefore, the landlord was not entitled to retain the \$1,000.00 from the pet deposit or the \$450.00 of the security deposit.

The tenant is therefore entitled to a doubling of the security deposit as follows:

ITEM	AMOUNT
Security deposit	\$1,000.00
Doubling	\$1,000.00
TOTAL DEPOSIT	\$2,000.00

I accordingly award the tenant the amount of \$2,000.00 for the return of the deposits.

Each of the landlord's claims is addressed.

1. *Wall repair – labour and materials* \$430.00

As agreed by the parties, the tenant damaged the walls of the unit and caused holes of varying size.

I accept the tenant's testimony as credible and plausible that they offered to come back if the landlord wanted them to return to complete the repairs. I also accept the tenant's evidence that the landlord agreed to finish the repair job herself. I find the landlord did not accept this offer. I find the tenant's conclusion that the wall damage was not an issue to be reasonable in the circumstances.

As stated, the landlord failed to complete a condition inspection report as required. I find the landlord did not complain about any damage at the time of the walk through and cannot later assert that she intended all along to make a claim for compensation.

I therefore find the landlord has failed to meet the burden of proof with respect to the first step of the 4-part test. I also find the landlord has failed to mitigate losses by refusing the tenant's offer to finish the repairs.

I therefore dismiss the landlord's claim under this heading.

2. Disposal cost \$150.00

As stated, I accept the tenant's testimony that the landlord inspected the unit on the final day and consented to the condition of the unit. I find the landlord did not ask the tenant to remove any items. I accept the tenant's evidence as reasonable and credible that they believed that the landlord either wanted the items left behind or stated she would look after the removal herself.

I also find the landlord has submitted no convincing evidence of the expense of disposal.

I therefore find the landlord has failed to meet the burden of proof with respect to the first step of the 4-part test with respect to this part of the claim.

I therefore dismiss the landlord's claim under this heading.

3. Stove – replacement (13/15 x \$900.00) \$780.00

In the absence of a condition inspection report, I find the landlord has not submitted reliable or convincing evidence of the age or value of the stove or its condition at the time the tenant moved in or moved out. I find the tenant has cast doubt on the landlord's evidence of the like-new condition at the beginning of the tenancy. I accept the tenant's testimony that the stove was in the same condition when they vacated as when they moved in, reasonable wear and tear excepted.

I find the landlord has not met the burden of proof under this heading with respect to the first step of the 4-part test.

Therefore, I dismiss the landlord's claim under this heading.

4. Cleaning \$100.00

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 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 the condition and state of repairs, the opportunity of the landlord to fully inspect the unit in the tenant's presence, and the absence of a condition inspection report.

I find the landlord has failed to meet the burden of proof under the first step of the 4-part test and dismiss the claim under this heading. Accordingly, I find the landlord is not entitled to reimbursement of their time for cleaning.

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

Filing fee

As the tenant has been successful in the claim, I award reimbursement of the filing fee.

Summary of Award

I grant the tenant a doubling of the security deposit as set out above in the amount of \$2,000.00 and reimbursement of the filing fee of \$100.00 as follows:

ITEM	AMOUNT
Award to tenant – doubling of deposit	\$2,000.00
Reimbursement of filing fee	\$100.00
MONETARY ORDER TO TENANT	\$2,100.00

I therefore grant a Monetary Order in favour of the tenant against the landlord in the amount of **\$2,100.00**

Conclusion

I grant a Monetary Order in favour of the tenant against the landlord in the amount of **\$2,100.00**

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: October 20, 2021

Residential Tenancy Branch