



# 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 recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant 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.

SM attended on behalf of both landlords (the landlord"). The tenant attended with the agent CAC ("the tenant"). Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The parties confirmed they were not recording the hearing.

The parties confirmed the email addresses to which the Decision shall be sent.

*Preliminary Issue: Service*

No issues of service were raised by the landlord.

The landlord testified as follows. They served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail on November 8, 2021, and deemed received by the tenant five days later, that is, on November 13, 2022. The materials included photographs of the unit at the end of the tenancy submitted as evidence by the landlord.

The tenant acknowledged they had received the landlord's Notice of Hearing by registered mail.

During the hearing, the tenant provided affirmed evidence they had *not* received part of the evidence, being the photographs, which the landlord stated was included in the evidence package and upon which the landlord relied to establish the claim for interior cleaning.

Section 90 of the Act sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

*Residential Policy Guideline 12. Service Provisions* provides guidance on determining deemed receipt, as follows:

*At the dispute resolution hearing, if service or the time frame for having responded is in dispute, an arbitrator may consider evidence from both the party receiving the document and the party serving the document to determine the date of service and the calculation of time a respondent had for responding.*

*S. 71 (2)(b) gives an arbitrator the authority to order that a document has been sufficiently served for the purposes of the Act on a date the arbitrator specifies, upon consideration of procedural fairness and prejudice to the affected party.*

*For example, an arbitrator may consider evidence from the party serving the documents that proves the date of service (such as an email from the party served with the documents referring to the material that was served or a registered mail tracking document confirming delivery on a specified date). The arbitrator may then determine that the date of service is the date the evidence proves service (e.g., the email or tracking document dated April 11th) and is earlier than the deeming provisions (e.g., documents deemed received on April 14th).*

*In the event of disagreement between the parties about the date a document was served and the date it was received, an arbitrator may hear evidence from both parties and make a finding of when service was effected.*

*The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done.*

...

*A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received.*

...

*It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.*

*The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.*

The tenant did not deny receipt of the registered mail, merely that the landlord overlooked including copies of the photos. As the tenant attended the hearing, there is no dispute that the tenant was made aware of the time and date of the hearing, as well as the teleconference access codes and process for submitting evidence.

The landlord submitted the photographs in support of her request for reimbursement of cleaning expenses in the amount of \$138.60. The landlord did not solely rely on the photographs to establish this claim. She submitted an invoice and letter from the cleaner describing the cleaning that took place after the tenant moved out.

After hearing the testimony of the parties, I find that it is possible the tenant did not receive the photographs and that the landlord overlooked including them in the evidence package. I find that the landlord has not met the burden of proof that the photographs were included in the evidence package. Accordingly, I will not consider the photographs in my Decision.

#### Issue(s) to be Decided

Is the landlord entitled to 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.

Is the tenant entitled to 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.

#### 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.

The parties agreed on the background of the tenancy as follows:

<b>INFORMATION</b>	<b>DETAILS</b>
Type of Tenancy	Monthly
Beginning Date	September 15, 2018
Vacancy Date	March 31, 2021
Rent payable on first of month	\$1,500.00
Security deposit	\$750.00
Forwarding Address	Provided October 5, 2021
Date of landlord's application	May 10, 2021
Date of tenant's application	October 6, 2021

#### *Condition Inspection*

No Condition Inspection Report on moving in was submitted.

A Condition Inspection Report on moving out signed by the parties was submitted. The landlord noted cleaning required. The tenant wrote objections to the landlord's observations and wrote that some stains were present on the floor when they moved in and that they had cleaned all floors.

#### *Claims for Damage and Compensation by the Landlord*

The landlord requested compensation for the following:

	<b>ITEM</b>	<b>AMOUNT</b>
1.	Cleaning	\$138.60
2.	Yard repair and clean up	\$1,732.50
	<b>TOTAL CLAIM BY LANDLORD</b>	<b>\$1,871.10</b>

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 Claimed (above)	\$1,871.10
(Less security deposit)	(\$750.00)
<b>TOTAL AWARD CLAIMED BY LANDLORD</b>	<b>\$1,121.10</b>

#### *Landlord's Claim – Cleaning*

The landlord claimed for cleaning of the interior of the unit for a total of \$138.60. The landlord testified the cleaning was necessary after the tenant moved out. The landlord submitted a copy of the invoice and a signed letter from the cleaner stating she cleaned the unit. The condition inspection report on moving out noted some cleaning required and also noted the objections of the tenant to the landlord's observations.

The tenant testified that they cleaned the unit before leaving, and it was in reasonably clean condition.

#### *Landlord's Claim – Yard Work*

The landlord stated the tenant left the unit's yard in need of work for which she incurred an expense of \$1,732.50.00. The landlord testified that the tenant left the unit and failed to clean up the yard which contained waste wood, rocks and piles of leaves/branches. A fence had to be moved to get the work done.

In support of this claim, the landlord submitted an invoice dated April 23, 2021, from a company. The amount of the invoice was primarily for "landscape contract". No details were listed.

The tenant denied that they left the yard requiring clean up. They testified that the yard was the same when they moved out as when they moved in. Any deficiencies were

present when they started the tenancy, it was reasonably clean, and the invoice did not relate to anything for which they were responsible.

### *Tenant Claim - Security deposit*

The landlord did not have written permission to keep any amount from the tenant's security deposit.

The tenant claimed the doubling of the security deposit as the landlord did not conduct a condition inspection on moving in and failed to return the deposit as required by the Act.

### 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 claiming party 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.

### *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.*

### *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.*

#### *Landlord's Claim for Cleaning*

I have considered all the evidence submitted by the landlord including the receipt and the letter from the cleaner. I have also considered that the landlord marked the condition of the unit dirty and unsatisfactory on the Condition Inspection Report on moving out although I acknowledge the tenant's written dispute notes on the Report. I have considered the tenant's testimony that the unit was reasonably clean.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed some cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord incurred \$138.60 in cleaning expenses, and the landlord took all reasonable steps to mitigate expenses. I find the expense is reasonable in the circumstances as I understand them.

Therefore, I find the landlord is entitled to a monetary award in the amount requested.

#### *Landlord's Claim for Yard Work*

I have considered the evidence of the landlord including the receipt for the amount claimed for yard work. I find the receipt unhelpful as it contains no details of what work

was done. I acknowledge the tenant's assertions that they did not cause any damage. I have considered the lack of a condition inspection report on moving in which would have assisted in determining whether the tenant was responsible for any deterioration in the condition of the year.

Considering the evidence and testimony, I find the landlord has not met the burden of proof on a balance of probabilities that the yard needed repairs or cleaning when the tenant vacated for which the tenant is responsible. While I accept the landlord incurred the expense, I am unable to conclude that the tenant has breached any aspect of her obligation to the landlord for which they could be accountable to reimburse the landlord under this heading.

For these reasons, I dismiss this aspect of the landlord's claim without leave to reapply.

#### *Tenant's Claim – Security deposit*

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 \$750.00 of the security deposit.

The tenancy ended on March 31, 2021. The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord brought an Application for Dispute Resolution claiming against the security deposit on May 10, 2021. The tenant provided a written forwarding address to the landlord on October 5, 2021. The landlord did not return the deposit to the tenant.

The tenant is therefore entitled to a doubling of the security deposit/

In accordance with section 38(6)(b) of the *Act* and *Residential Tenancy Policy Guideline 17*, I find that the tenant is entitled to receive double the value of their security deposit of \$750.00 totalling \$1,500.00.

There is no interest payable on the deposit during the period of this tenancy.

*Filing Fee*

As the tenant was primarily successful in this application, I find that they are entitled to recover the \$75.00 as partial reimbursement of the filing fee.

*Award to Tenant*

I grant the tenant a doubling of the security deposit as set out above in the amount of \$1,500.00 and reimbursement of the filing fee of \$75.00 as follows:

ITEM	AMOUNT
Award to tenant – doubling of deposit	\$1,500.00
Reimbursement of filing fee	\$75.00
<b>MONETARY AWARD TO TENANT</b>	<b>\$1,575.00</b>

*Summary*

I award the tenant a Monetary Order of **\$1,436.40** calculated as follows:

ITEM	AMOUNT
Award to tenant (above)	<b>\$1,575.00</b>
(Less award to landlord (above))	(\$138.60)
<b>MONETARY ORDER TO TENANT</b>	<b>\$1,436.40</b>

Conclusion

I grant the tenant a Monetary Order of \$1,436.40.

This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced in the Courts of the Province of BC.

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: March 12, 2022

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Residential Tenancy Branch