



# 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 was convened by way of conference call on March 7, 2022 concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The hearing was adjourned from January 17, 2022 to February 16, 2022 and again to March 7, 2022. Interim Decisions were provided to the parties after the January 17, 2022 and February 16, 2022 hearings.

An agent for the landlord and an agent for the tenant attended the hearing on all 3 dates. On March 7, 2022 the agents each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

No evidentiary material has been provided by the tenant, and the parties agree that the tenant has received all of the landlord's evidence. All evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on August 15, 2016 and ended on August 31, 2017, at which time the tenant was to vacate the rental unit.

However, the tenancy ultimately ended on May 31, 2019. Rent in the amount of \$8,200.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$4,100.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and the landlord does not reside on the rental property. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenant gave notice to end the tenancy effective on May 31, 2019.

A move-in condition inspection report was completed at the beginning of the tenancy and a copy has been provided as evidence. The landlord's agent testified that the tenant left the country prior to the landlord scheduling the move-out condition inspection.

The landlord has provided a Monetary Order Worksheet setting out the following claims totaling \$34,865.50:

- \$14,000.00 for wall nail removal, repairs, patching and painting;
- \$5,000.00 for master ensuite cabinets;
- \$262.50 for carpet steam cleaning;
- \$105.00 for a broken toilet upstairs;
- \$11,025.00 for hardwood re-finishing;
- \$1,575.00 for a broken fridge;
- \$168.00 for a dishwasher;
- \$105.00 for missing garage remotes;
- \$1,575.00 for light bulb replacing;
- \$1,050.00 for all garbage removal.

The rental unit was re-rented to a contractor offering to do the repairs in exchange for reduced rent. The quote was \$14,000.00 given to the landlord orally. A copy of the tenancy agreement for new tenants has been provided as evidence, and their rent was \$5,250.00, which is almost a \$3,000.00 rent decrease monthly.

The landlord had the carpets steam cleaned after the tenant had moved out. The toilet seat cover was broken at the end of the tenancy which cost \$100.00, plus tax to replace, and another \$40.00 or \$50.00 to repair. The repair to the toilet was not completed by the new tenant.

Hardwood refinishing has not yet been completed, and the quote was quite high. That is not something that the new tenant will do, but in addition to the claim.

The fridge was not functioning at the end of the tenancy and the cost to repair it was the same as purchasing a new one, so the landlord purchased a new fridge.

The dishwasher had a missing panel at the end of the tenancy, and the landlord had it repaired.

There were 2 garage remotes at the beginning of the tenancy, and none were left at the rental home at the end of the tenancy. The landlord purchased new ones at \$52.00 each.

The house is 6,000 square feet, and contains crystal chandeliers. The tenant didn't stay until the end of the tenancy, and the tenant has not been available to talk to the landlord's agent. There's a lot of light bulbs in the house and 25 foot ceilings, so are not easy to change. None were noted as burned out at the beginning of the tenancy, and the landlord's agent is not certain how many were burned out at the end of the tenancy, but testified that it was a big percentage.

The landlord also had to remove garbage and a lot of stuff in the garage, and the landlord claims \$1,000.00, plus GST.

**The landlord's witness** is the new tenant, who testified that he has lived on the rental property for about 2 ½ years. The witness pays \$5,500.00 or \$5,600.00 per month rent; the witness' spouse takes care of that.

At beginning of tenancy the witness and the landlord discussed work that the witness was going to do, such as repairs to damage to the property. The witness is a contractor who does home renovations. The witness completed painting, repair to wall damage, replaced a bathroom cabinet and countertops in the master bathroom, including sinks and faucets. There are 2 sinks in that bathroom, which cost the witness about \$5,000.00 and would have charged that much to anyone. The witness believes that's what the witness quoted the landlord. The witness and the landlord also discussed painting 2 walls in the basement, main floor kitchen, living room, dining room, foyer and upstairs hallway as well as 2 bedrooms. The work took about 10 days and the witness quoted the landlord around \$14,000.00.

The witness did not change the colors of the paint on the walls so that several coats would not be necessary. The door handles were falling apart, but the witness does not believe they were abused.

The cabinets in the upstairs level were damaged, likely by a water leak. The screws were out of the natural wood, and dry mold was on the sub-floor. The basement bathroom had the same issues, and the witness was able to repair them.

The witness and the landlord also discussed a problem with the fridge which was not working and needed to be replaced; the ice maker and water were not working.

A year after the witness moved in other things fell apart. The chandelier in the dining room was an older one, and got replaced. All door handles and door knobs, 1 by 1 fell apart and the witness' daughter got stuck in a room. Four more LED fixtures in the hall and in 1 bedroom needed replacing. An electrician said the chandelier was old and had to be replaced. The witness tried to have the carpets cleaned but ended up covering stains with a couch in the downstairs area.

The rental amount has been changed since the witness moved into the rental home, and the witness believes currently the rent is \$5,582.00. The witness also paid a security deposit in the amount of \$2,500.00.

When questioned about detailed invoices or quotes provided to the landlord, the witness testified that there's a paper trail and records somewhere, but does not recall what the records indicate; it was awhile ago.

**The tenant's agent** testified that he was never on the property but dealt with the landlord's agent and another agent of the landlord. The parties went over the landlord's list and the tenant's agent speaks with the tenant daily, giving the tenant's agent information with respect to this hearing.

The tenant never agreed that he was responsible for any damages. The tenant saw the landlord's list and claims and does not take responsibility for any of it. The claims are outrageous, unrealistic, and the list has very ball-park numbers without detailed invoices or quotes. The tenant's agent sent an email to the landlord's agent dated October 23, 2019 stating that there were no details, photographs or invoices provided. That was 2 ½ years ago and still none have been received. That's a red flag for the tenant.

The tenant's witness still doesn't know how the new tenancy with a new tenant relates to the tenant named in this application. The new tenancy agreement with the landlord's

witness makes no mention of damage by the prior tenant, but includes a schedule of a renovation plan without an amount or itemized cost for renovations. Whatever discount was agreed upon between the landlord and the landlord's witness has nothing to do with the prior tenant.

Speculating only, but research on tenancy agreements has been done by the tenant's witness and the total amount of the landlord's claim is suspiciously just under the \$35,000.00 limit. Anything above that would require a more robust court presence. This creates a pattern about how realistic the landlord's claim is.

The move-out section of the condition inspection reports have some parts filled in, but does not contain any signatures; the "Z" area on the report speaks of the end of the tenancy and damage for which the tenant is responsible, but is blank.

When the tenant's agent reached out to the landlord's agent in October, 2019, the tenant had instructed the tenant's agent that the landlord could keep \$262.50 of the security deposit for cleaning the carpets, and \$105.00 for the remote controls. The response of the landlord's agent was that he still wanted the entire amount.

The tenant's agent has communicated with the landlord's agent by email and he has the tenant's forwarding address in writing.

### Analysis

Firstly, the *Residential Tenancy Act* states that the onus is on the landlord to ensure that the move-in and move-out condition inspection reports are completed in accordance with the *Act* and the regulations. A landlord is required to provide the tenant with at least 2 opportunities to schedule the inspection, and at the end of a tenancy, if the tenant is not available for the first scheduled date, the landlord must provide a second opportunity in the approved form. If the landlord fails to do so, the landlord's right to make a claim against the security deposit for damages is extinguished.

In this case, the landlord's agent testified that the tenant gave notice to end the tenancy effective on May 31, 2019 but has not provided a copy for this hearing. The landlord's agent also testified that the tenant left the country prior to the landlord scheduling the move-out condition inspection, but did not provide a date that the tenant actually vacated. I can only conclude that at some point after the tenant gave notice to end the tenancy, the landlord could have scheduled the move-out condition inspection prior to the date the tenant actually vacated. The landlord did not post a notice in the approved

form to the door of the rental unit scheduling an inspection, and therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

However, the landlord's right to make a claim for damages is not extinguished. Where a party makes a monetary claim as against another party for damage or loss, the onus is on the claiming party to establish that: 1. the damage or loss exists; 2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement; 3. the amount of such damage; and 4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord relies largely on a tenancy agreement made with a contractor for a reduced rent in exchange for making repairs. The landlord testified that rent for the new tenant was reduced by \$3,000.00 per month, and the witness testified that he moved in 2 ½ years ago, which would be 30 months, or \$90,000.00 currently.

I have reviewed the photographs provided by the landlord, and I don't think there is any doubt that the walls in the rental unit required repair, patching and painting, but I am not satisfied that the interior paint hadn't already outlived its useful life. I refer to Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements, which puts the useful life of interior paint at 4 years. There is no evidence before me of when the rental unit was last painted, and therefore I find that the landlord has failed to establish that any damage was a result of the tenant's failure to comply with the *Act* or the tenancy agreement, or normal wear and tear. I dismiss the landlord's claim of \$14,000.00 for paint and wall repair.

The Guideline also puts the useful life of cabinets and countertops at 25 years. The landlord's witness testified that the cabinets were old, and so is the house. I am not satisfied that the bathroom cabinets had not already outlived their useful life and I dismiss the landlord's \$5,000.00 claim for master ensuite cabinets.

With respect to the \$105.00 claim for a broken toilet, the landlord has not provided any receipts for purchasing a new toilet, and the landlord has not established element 3 in the test for damages. Therefore, I dismiss the claim for a broken toilet.

With respect to hardwood re-finishing, again, no receipts, estimates or invoices have been provided, and the landlord has failed to satisfy element 3 in the test for damages, and I dismiss the \$11,025.00 claim.

The landlord's witness testified that the fridge required replacing because the water and ice maker didn't work. The Guideline puts the useful life of a refrigerator at 15 years

and a dishwasher at 10 years. I have no evidence of the age of the appliances at the beginning of the tenancy. Therefore, I am not satisfied that the appliances hadn't outlived their useful life, and I find that the landlord has failed to establish element 2 in the test for damages.

Although a tenant is generally responsible for replacing burned out light bulbs, however there is no evidence before me to satisfy that at least some of the bulbs were burned out prior, or any receipts for replacing bulbs. Therefore, I dismiss the landlord's claim of \$1,575.00 for light bulb replacement.

The landlord has provided numerous photographs of the rental unit for this hearing however none show any items that would satisfy a claim of \$1,050.00 for garbage removal. The landlord's witness did not mention any landfill runs or garbage removal. The landlord completed the move-out portion of the condition inspection report in the absence of the tenant without dating it, and although I do not find the move-out portion to be reliable, there isn't a notation anywhere of junk removal being required. I find that the landlord has failed to establish any of the elements in the test for damages, and I dismiss the claim for garbage removal.

The tenant agrees to the claims of \$262.50 for carpet cleaning and \$105.00 for missing remote controls, for a total of \$367.50.

The landlord currently holds a security deposit in the amount of \$4,100.00. The landlord's agent testified that no forwarding address has been received from the tenant, which is disputed by the tenant's agent, who testified that the landlord has been provided with a forwarding address in emails, but did not advise of the date. A landlord is required to return a security deposit and/or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15-day period. If the landlord fails to do either, the landlord must repay double the amount.

In this case, the tenancy ended on May 31, 2019 and the landlord made the application on May 31, 2021. However, without having a date that the landlord received a forwarding address in writing, I cannot determine whether or not the landlord has complied with the law. The tenant has not provided any evidence, and in particular no evidence of the date the landlord received the tenant's forwarding address in writing. Therefore, since the landlord has been partially successful with the application, the landlord is entitled to recovery of the \$100.00 filing fee.

Having found that the landlord is owed \$262.50 for carpet steam cleaning and \$105.00 for missing garage remotes and recovery of the \$100.00 filing fee, I order the landlord to keep the sum of \$467.50 from the security deposit held in trust. I order the landlord to return the balance of \$3,632.50 to the tenant, and I grant a monetary order in favour of the tenant as against the landlord in that amount. The tenant must serve the order upon the landlord, and the order may be enforced by filing it in the Provincial Court of British Columbia, Small Claims division for enforcement.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep \$467.50 from the security deposit held in trust, and I grant a monetary order in favour of the tenant as against the landlord for the difference totalling \$3,632.50.

This order is final and binding and may be enforced.

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 16, 2022

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Residential Tenancy Branch