



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDCT MNDL-S FFL

### **Introduction**

The landlord seeks \$3,500.00 in compensation (and an authorization to retain the tenant's security deposit) pursuant to sections 38 and 67 of the Residential Tenancy Act (the "Act"). By way of cross-application the tenant seeks the return of her \$3,500.00 security and pet damage deposits pursuant to section 38 of the Act. Both parties seek to recover the cost of the \$100.00 application filing fee.

A dispute resolution hearing was first convened on February 17, 2022. The matter was adjourned to permit the landlord to re-serve her evidence. (See Interim Decision dated February 17, 2022 for more information.) The parties confirmed at the hearing on May 30 that evidence had been served and received. The hearing on May 30, 2022 was attended by the landlord, her agent, and the tenant.

The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

### **Issues**

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recover the cost of the filing fee?
3. Is the tenant entitled to the return of her security and pet damage deposits?

### **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 in August 2017 and ended on July 31, 2021. Monthly rent was \$5,500.00 and the tenant paid a \$3,000.00 security deposit and a \$500.00 pet damage deposit.

The landlord seeks compensation for a damaged floor, and they referenced an invoice for \$18,000.00 (which I note, is significantly higher than the original claim). They also sought compensation related to damage on a wall and painting in the amount of \$500.00. There is also a claim for compensation related to a broken oven door; there is no related invoice or estimate for that claim, however. Last, the landlord seeks \$350.00 for the cost of having to remove duct tape to a window.

Various photographs of the interior of the rental unit were submitted into evidence by the landlord, along with estimates from a contractor. There was also a condition inspection report completed when the tenancy began in 2017. And there is a condition inspection report regarding a different tenant for a tenancy beginning October 1, 2021.

The tenant testified that the only condition inspection report ever done was when the tenancy began. She expected a move out inspection to occur on July 31 (or August 1) in 2021, but the landlord's agent said that "everything was fine" and was reluctant to do any sort of inspection. The tenant handed over the keys to the agent and thought it was the end of the matter. However, two days later, she received an email from the landlord regarding various damages and compensation being requested.

The tenant testified that the floors were already scratched when she moved in and that any subsequent damage was caused by ordinary wear and tear. They were softwood floors, she explained, and were easily scratched. As for the oven, the tenant testified that "I'm the world's worst cook" and that the oven cracked when put into a self-cleaning mode. The oven is old, and its performance is not, the tenant argued, the responsibility of a tenant.

In rebuttal, the landlord argued that the scratched floors were not caused by wear and tear but were due to a dog that she permitted the tenant to have.

In rebuttal, the tenant submitted that she would have been happy to have a condition inspection report completed when she acquired the dog; no report was done. Moreover, the tenant remarked that she is "happy to be responsible for things that are documented."

## Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act.

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 32(3) of the Act states that a tenant “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.” And subsection 32(4) of the Act states that a “tenant is not required to make repairs for reasonable wear and tear.”

Subsection 37(2)(a) of the Act states that “When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

In this application, the landlord argues that the tenant caused various damage to the rental unit, including the floors, walls, duct tape on a window, and the oven. They submitted a completed condition inspection report done at the start of the tenancy. Also submitted were various photographs presumably taken at the end of the tenancy. (Though, neither the landlord nor her agent provided any explanation or clarification about when the photographs were taken.)

The tenant commented that she is “happy to be responsible for things that are documented.” I would agree. What is missing from the landlord’s claim is a condition inspection report completed at the end of the tenancy. This is crucial, and the absence of such a report is fatal to the landlord’s claim.

Section 21 of the *Residential Tenancy Regulation* states the following:

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.

It is noted that the tenant denied the landlord's claims in their entirety and did not acknowledge or otherwise admit to any liability.

Without a condition inspection report completed at the end of the tenancy, or a preponderance of evidence (for which there is none), I am unable to find that the landlord has proven, on a balance of probabilities, that the tenant breached subsections 32(3) and 37(2)(a) of the Act. As such, no compensation may flow, and the landlord's application must be dismissed in its entirety.

Conversely, the tenant's application is granted in its entirety. The landlord is hereby ordered, pursuant to sections 67 and 72 of the Act to pay to the tenant a total of \$3,600.00 (comprising the security and pet damage deposits and the application filing fee). A copy of a monetary order in this amount is issued with this decision, to the tenant. Should the landlord not pay the tenant the above-noted amount within 15 days of receiving this decision, the tenant may then serve a copy of the monetary order on the landlord and enforce the order in the Provincial Court of British Columbia.

#### Conclusion

**The landlord's application is dismissed, without leave to reapply.**

**The tenant's application is granted.**

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: May 30, 2022

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Residential Tenancy Branch