



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MNDL-S, FFL  
Tenant: MNSDS-DR, FFT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's Application for Dispute Resolution was made on October 14, 2021 (the Landlord's Application). The Landlord applied for the following relief, pursuant to the Act:

- a monetary order for the cost to repair damage caused by the Tenant, their pets, or their guests caused during the tenancy;
- an order permitting the Landlord to retain the security deposit paid; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was made by Direct Request on November 8, 2021, pursuant to section 55(4) of the Act (the Tenant's Application). However, that matter was adjourned to a participatory hearing, which was scheduled to be hearing at the same time at the Landlord's Application. The Tenant applied for the following relief:

- an order granting recovery of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing. The Tenant attended the hearing and was accompanied by DE, a witness.

The Landlord testified the Landlord's Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. The Tenant acknowledged receipt.

The Tenant testified the Tenant's Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. At the end of the hearing, the parties were given a further opportunity to provide evidence or make submissions related to their respective claims. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issues**

1. Is the Landlord entitled to a monetary order for the cost to repair damage caused by the Tenant, their pets, or their guests caused during the tenancy?
2. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Is the Tenant entitled to an order granting recovery of the security deposit?
5. Is the Tenant entitled to an order granting recovery of the filing fee?

### **Background and Evidence**

The parties agreed the tenancy began on October 1, 2020 and ended on September 30, 2021. During the tenancy, rent of \$1,700.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$850.00, which has been retained by the Landlord pending the outcome of this hearing. A copy of the tenancy agreement between the parties was submitted into evidence.

### ***The Landlord's Claim***

The Landlord claimed \$310.00 for painting costs. The Landlord testified that the Tenant asked to paint the walls white during the tenancy. The Landlord granted permission to do so. However, the Landlord testified she inspected the unit at the end of the tenancy and noted the painting was "very poorly done".

The Landlord testified that she initially asked the Tenant to pay just for paint supplies but subsequently obtained quotes and discovered the cost would be much higher. In any event, the Landlord is only claiming for paint supplies.

In support, the Landlord submitted a receipt for \$450.86 from The Home Depot, dated October 12, 2021. The Landlord confirmed that \$310.00 was for paint costs and the remainder was unrelated to the tenancy. I was referred to no additional documentary or digital evidence during the hearing.

In reply, the Tenant acknowledged that some rooms in the rental unit had been painted white. However, she disagreed that she did a poor job. The Tenant also noted that neither a move-in nor a move-out condition inspection report was completed; the Landlord acknowledged this was the case.

DE testified she has been a building manager. She saw the Tenant's paint job and stated the Tenant "did a relatively ok job".

The Landlord also requested recovery of the filing fee paid to make the Landlord's Application.

### ***The Tenant's Claim***

The Tenant claimed \$850.00 in recovery of the security deposit. The Tenant testified that the Landlord was given a forwarding address in writing. The Tenant submitted a type-written and signed letter dated October 4, 2021. The Tenant testified the letter was given to the Landlord by leaving the letter in the Landlord's mailbox. The Landlord acknowledged receipt.

As noted above, the parties agreed that neither a move-in not a move-out condition inspection report was completed

Finally, the Tenant claimed \$100.00 in recovery of the filing fee.

### **Analysis**

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

### ***The Landlord's Claim***

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, Residential Tenancy Regulation, and/or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find there is insufficient evidence before me to grant the relief sought. The Landlord granted permission to the Tenant to paint the rental unit white. Further, there was insufficient evidence – such as might be contained in a condition inspection report or photographic evidence – to establish the quality of the Tenant's painting. As a result, I find I am unable to confirm that the Tenant breached the Act.

Considering the above, I find that the Landlord's Application is dismissed without leave to reapply.

### ***The Tenant's Claim***

Section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

In this case, I find the Landlord received the Tenant's forwarding address in writing on October 4, 2021. As a result, the Landlord had until October 19, 2021, to return the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord made the Landlord's Application on October 14, 2021, within the 15 days granted under section 38(1) of the Act. As a result, I find the doubling provision in section 38(6) of the Act does not apply.

However, the Tenant remains entitled to the return of the \$850.00 security deposit held by the Landlord.

Having been successful, I also find the Tenant is also entitled to recover the \$100.00 filing fee paid to make the Tenant's Application.

**Conclusion**

The Landlord's Application is dismissed without leave to reapply.

The Tenant is granted a monetary order in the amount of \$950.00 in recovery of the security deposit and the filing fee. The monetary order must be served on the Landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 2, 2022

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Residential Tenancy Branch