



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDL-S, MNDCL-S, FFL**

### **Introduction**

This hearing dealt with the Landlord Application for Dispute Resolution, made on September 15, 2022 (the “Application”). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- a monetary order for unpaid rent or utilities;
- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord’s Agent D.T. and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord’s Application and documentary evidence package. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Tenant provided some evidence to the Residential Tenancy Branch in response to the Landlord’s Application, however, during the hearing, the Tenant confirmed that they did not serve a copy of their evidence to the Landlord prior to the hearing.

### **Preliminary Matters**

#### **3.15 Respondent’s evidence provided in single package**

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

As the Tenant did not serve a copy of their evidence to the Landlord, I find that I cannot consider the Tenant's evidence in this decision as it would be prejudicial against the Landlord considering they have not had time to review, consider, and respond to the Tenant's evidence. Only the Tenant's oral testimony will be considered.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 to be Decided

1. Is the Landlord entitled to a monetary order for damage, compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 17, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$2,951.00 which was due to the Landlord on the last day of each month. The Tenant paid a security deposit in the amount of \$2,000.00. The parties agreed that the Landlord continues to hold \$1,291.15 after having returned \$708.85 to the Tenant. The tenancy ended on August 31, 2022.

The Landlord is seeking compensation in the amount of \$235.00 for carpet cleaning. The Landlord stated that the Tenant was required to have the carpet professional cleaned at the end of the tenancy. The Tenant stated that he had rented a carpet

cleaner and cleaned the carpets himself. The Tenant stated that there were no stains, and that professional cleaning was not required.

The Landlord is claiming compensation in the amount of \$530.00 for cleaning. The Landlord's Agent stated that it took him and the Landlord 10 hours each to clean the rental unit at the end of the tenancy. They are charging \$25.00 per hour for their efforts. The Landlord's Agent provided two cleaning quotes in support of what it would have cost had they hired a professional cleaner. The Landlord provided many pictures in support of the rental unit requiring further cleaning.

The Tenant stated that he had cleaned the rental unit, however, may have missed some areas. The Tenant stated that there had been construction taking place nearby, therefore, the rental unit became dusty during the tenancy. The Tenant states that the Landlord's pictures are taken close up. The Tenant stated that he did not move the appliances and could not reach the kitchen hood range to clean it.

The Landlord is seeking compensation in the amount of \$97.68 for two replacement hood range filters. During the hearing, the Tenant agreed to compensate the Landlord this amount.

The Landlord is seeking compensation in the amount of \$34.08 for the cost associated with replacing light bulbs in the rental unit. During the hearing, the Tenant agreed to compensate the Landlord this amount.

The Landlord is seeking \$367.50 for wall repair and painting. The Landlord provided a quote in support. The Tenant stated that the majority of the wall damage is located in the garage, which had not been painted, only primed. The Landlord's Agent agreed that the damage was mostly found in the garage area.

The Landlord is seeking \$22.39 for laminate edge banding. The Landlord stated one of the steps was damaged during the tenancy which requires repair.

The Landlord is claiming \$4.50 which is the outstanding balance due on a water bill. During the hearing, the Tenant agreed to pay this amount.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

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*, regulations 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 as a result 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.

Section 37(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.

During the hearing, the Tenant agreed to compensate the Landlord totaling \$158.65 for the following claims;

- **\$97.68** for two replacement hood range filters.
- **\$34.08** for the cost associated with replacing light bulbs in the rental unit.

- **\$22.39** for laminate edge banding.
- **\$4.50** outstanding balance due on a water bill.

The Landlord is seeking compensation in the amount of \$235.00 for carpet cleaning. I find that the Landlord has provided insufficient evidence to demonstrate that the carpets in the rental unit required further cleaning, beyond what the Tenant had already cleaned with the rented carpet cleaner. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming compensation in the amount of \$530.00 for cleaning. I find that the Landlord has provided sufficient evidence to demonstrate that the rental unit required further cleaning in many areas of the rental unit. While the Tenant expressed that there was construction in the area which caused the rental unit to become dusty, I find that it was the Tenant's responsibility to ensure that they leave the rental unit reasonably clean. As such, I find that the Landlord is entitled to compensation in the amount of **\$530.00** for cleaning.

The Landlord is seeking \$367.50 for wall repair and painting. I find that the Landlord has provided sufficient evidence to demonstrate that the Tenant damaged some walls in the rental unit during the tenancy. While the Tenant stated that the damaged walls were mostly in the garage, I accept that they were not damaged at the start of the tenancy, therefore, it is reasonable that the Landlord is claiming for compensation to restore the walls, regardless of if the damage was mostly in the garage. I find the Landlord is entitled to compensation in the amount of **\$367.50**.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application.

I find the Landlord is entitled to monetary compensation the amount of \$1,156.15, which has been calculated below;

<b>Claim</b>	<b>Amount</b>
Mutually Agreed Deductions:	\$158.65
Cleaning:	\$530.00
Wall Repair:	\$367.50
Filing fee:	\$100.00
<b>TOTAL:</b>	<b>\$1,156.15</b>

I find it appropriate in the circumstances to order that the Landlord retain \$1,156.15 from the \$1,291.15 security deposit held in satisfaction of the claim ( $\$1,291.15 - \$1,156.15 = \$135.00$ )

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$135.00, which represents the remaining balance of their security deposit less the previously mentioned deductions.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$1,156.15 which has been deducted from the security deposit. The Tenant is granted a monetary order in the amount of \$135.00 which represents the remaining balance of the Tenant's security deposit. The order should be served to the Landlord as soon as possible and 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: December 15, 2022

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Residential Tenancy Branch