



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes: MNSD FFT MNDL MNDCL FFL

### **Introduction**

The landlord seeks compensation from their former tenant and the former tenant seeks the return of their security deposit under the *Residential Tenancy Act* (the “Act”). Both parties filed applications for dispute resolution, and both seek to recover the cost of their filing fees pursuant to section 72 of the Act.

### **Issue**

Is either the landlord or the tenant entitled to compensation?

### **Background and Evidence**

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issue of the dispute and explain the decision is included below.

The tenancy began August 15, 2019 and ended on March 31, 2022. Monthly rent was \$2,750.00 and was due on the first day of the month. The security deposit was \$1,375.00, later increasing to \$1,400.00, though \$1,145.54 of the deposit was returned to the tenant on April 7, 2022. The tenant was certain that the security deposit was never more than \$1,375.00, though the landlord was fairly certain that she must have collected an additional \$25.00 at some point. There were two back-to-back written tenancy agreements in evidence.

The tenant testified under oath that he seeks the full return of his security deposit, even though most of the deposit was already returned a week after his tenancy. At no point during the hearing did the tenant explain why this full return was warranted. However, the tenant did submit that an underlying purpose of his application is to ensure that this landlord does do this type of thing to future tenants.

The landlord seeks \$8,266.92 in compensation for various items. This includes (1) the cost of registered mail (\$12.27), (2) the cost to replace a lightbulb (\$0.66), (3) Flooring; yard/gardening; paint; lock; experts quote; equipment & materials; carpet cleaning; damaged items; removal and disposal of garbage [\$37.83 deducted from damage deposit], in the amount of \$4,559.24, and (4) \$3,494.75 for “gas; time (1710 repairs + 1800 dispute); copying [\$90 already deducted from damage deposit].” Receipts, invoices, and estimates in support of the landlord’s claim were submitted. Also submitted by the landlord was a detailed 66-page written submission and evidence package, along with a Monetary Order Worksheet. I will dive deeper into the above-noted claims in the Analysis section below.

A Condition Inspection Report was completed (albeit not in the presence of the tenant) and then signed by the tenant at the end of the tenancy. A copy of the Condition Inspection Report (the “Report”) was submitted into evidence.

The landlord gave evidence about the general condition of the rental unit at the end of the three-year tenancy and spoke about the need to repaint almost the entire unit, and about the cleaning. She explained that the \$90 per hour rate claimed for her own time was calculated on the basis that a cleaner would charge \$90, and that a contractor would charge even more. As an aside, it is noted that no work has been done on the floor and that other tenants moved into the rental unit within a week of the tenant leaving. At some point the landlord intends to do some work on the floor, which was damaged by the tenant.

The tenant argued that he did a good job of cleaning, though he apologized for not using the correct paint, and for not dealing with the plunger, the plug, and the lightbulbs. He rented a carpet cleaner and “got it down to perfection.” He further noted that while he agreed to some deductions on the Report, he did not approve an additional deduction for a shovel.

In respect of the tenant’s signing off on the Report, given that he was not there for the actual walk-through, the tenant acknowledged having looked at the Report and signing. But he was “just focussed on the charges.” He thought that the deductions—at that time—were fair.

## 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. A party claiming compensation must do whatever is reasonable to minimize their loss.

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 regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

Last, it is worth noting that in an administrative dispute such as this, the person making a claim must provide evidence that it is more likely than not that the facts occurred as claimed. This is known as the “balance of probabilities” standard of proof. The burden of proof is on the person making the claim.

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

Section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 234/2006, states that

[ . . . ] 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.

During the landlord's walk-through and the subsequent completion of the Report, the tenant was not present. However, the tenant did sign the Report without disputing its contents. Therefore, the tenant cannot later challenge the validity of the Report, which provides detailed descriptions of the rental unit's condition on the inspection date. The landlord's sworn testimony also supports the Report's findings. As a result, the tenant has breached section 37(2)(a) of the Act, insofar as some of the landlord's claims are made out.

Lightbulbs, plunger, and sink and tub stopper – the tenant did not dispute these claims and most of the amount claims were deducted from the damage deposit. As such, the landlord's 66 cent claim is awarded.

Shovel – while the tenant did not agree to this deduction in the Report, the tenant did not dispute the claim itself, and as such I am reluctantly inclined to grant this amount (as it has been deducted from the security deposit). However, the landlord should be aware that making deductions over and above a tenant-authorized amount on a Condition Inspection Report is in breach of the Act.

The claims for paint, wall filler, paint roller and pole, blind repair, cleaning and repair supplies, carpet cleaning, garbage removal, gardening and landscaping cleanup, backdoor lock replacement, lost key replacement, cost for tradesperson, and outdoor shed floor painting are straightforward claims established by the landlord on a balance of probabilities. They resulted from the tenant's breach of section 37(2)(a) of the Act, the costs are reasonable and have been proven, and the landlord bore the cost. As such, those claims in the amount of \$917.07 are awarded.

Regarding the claim for the floor replacement ("End of the Roll"), and for the expert opinion on floor damage, the landlord has not expended any monies on having work done to the floor. In any event, new tenants—who are now using the floor—have since moved into the rental unit. This claim is not, I conclude, something that may be granted.

As for the \$1,710.00 claimed for "cleaning, repairs, etc.," while I have no doubt that the landlord spent 2.5 days or 19 hours engaged in cleaning and repairing the property, I am not inclined to accept a \$90 per hour rate as a reasonable basis on which to calculate the landlord's time. Certainly, a general contractor would have charged much higher, but this does not mean that the landlord is thus entitled to charge \$90 per hour. Nor am I persuaded that a reasonable rate for a cleaner is \$90; the rate for the cleaner referenced by the landlord is far above the average hourly rate of \$25 for Victoria. In summary, I reduce the 19 hours spent at a more reasonable and acceptable rate of \$25 per hour for a total of \$475.00. This is the amount awarded for this aspect of the claim.

Last, as for the claims for gas (\$52.89), Staples (\$21.86), time to gather quotes and evidence for the dispute (\$1,800.00), and for the registered mail (\$12.27), these types of claims fall under what would be called "costs" in a court proceeding. They are not, with respect to the landlord, costs that may be recouped through the dispute resolution process and under the Act. Accordingly, they must be dismissed.

As the landlord was largely successful in their application, she is entitled to recover the cost of the application filing fee of \$100.00, pursuant to section 72.

In total, the landlord is awarded \$1,492.73.

Regarding the tenant's claim, I do not find that the landlord breached the Act, the regulations, or the tenancy agreement that would lead to compensation being awarded. Albeit for the minor, unauthorized deduction for the shovel (which I have addressed above), the tenant's claim for compensation must fail. The additional claim for the cost of the application filing fee must also, with respect, be dismissed.

### Conclusion

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

The landlord's application is granted, in part. The landlord is awarded \$1,492.73 for which a monetary order is issued with this Decision to the landlord.

This decision is final, binding, and 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 an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: January 5, 2023

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Residential Tenancy Branch