



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding GEC MARINE GATEWAY LIMITED  
PARTNERSHIP and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL MNDL-S

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for damage or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord was represented in the hearing by his agent, HH ("landlord"). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began as a fixed-term tenancy on or about November 27, 2020. After August 31, 2021, the tenancy continued on a month-to-month basis until the tenancy ended on May 31, 2022. Monthly rent was set at \$1,979.25, payable on the first of the month. The landlord collected a security deposit of \$975.00, which the landlord still holds.

The landlord filed this application on June 15, 2022 seeking the following monetary orders related to the tenant's failure to leave the rental unit in reasonably clean and undamaged condition.

<b>Item</b>	<b>Amount</b>
Suite Deep Cleaning	\$300.00
Carpet Cleaning	100.00
Drapes	200.00
Upholstery	75.00
Painting labour	900.00
Disposal Fee (study desk)	150.00
Painting materials	120.00
Replacement of Study Desk	189.00
GST (5%)	101.70
PST (7%)	189.00
<b>Total Monetary Order Requested</b>	<b>\$2,157.33</b>

The landlord submitted a copy of the move-in and move-out inspection reports to support the condition of the rental unit and beginning and end of the tenancy. The landlord testified that the above claims relate to the tenant's failure to leave the rental unit in clean and undamaged condition. The landlord submitted a copy of the invoices in support of their claims. The landlord testified that much of the referenced damage was caused by the tenant smoking on the premises, which is not allowed. The landlord also notes that the caretaker had attended the rental unit on March 19, 2022, with the tenant's permission, to attend to an issue with the smoke detectors. While inside the

rental unit, the caretaker made several observations, including the condition of the rental unit, which the caretaker described as “very messy and dirty”, “a very heavy smell of cigarettes as I opened the door”, and cigarettes on the balcony. The caretaker also took several photos of the rental unit and a bowl of cigarette butts on the balcony.

The tenant disputes all the claims made by the landlord, and argued that they had thoroughly cleaned the rental unit, as supported by the photos submitted in evidence. The tenant denies the smell of cigarettes inside the home, and testified that they always smoked on the balcony with the door closed. The tenant also took issue with the caretaker’s photos and observations as the tenant did not give authorization for the caretaker to enter the rental unit for this purpose. The tenant argued that their photos represented the condition of the rental unit, and disputed the accuracy of the condition inspection reports. The tenant further argued that there is no mention of any odour or cigarette smoke on the condition inspection report.

### **Analysis**

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear.

In consideration of the landlord’s photos, I note that the photos were taken on March 19, 2022, and not at the end of the tenancy. As section 37(2)(a) of the *Act* relates to the tenant’s obligations at the end of the tenancy, I do not find the photos taken on March 19, 2022 to be an accurate or reliable depiction of the state of the rental unit at the time the tenant moved out on May 31, 2022. For future reference, I note the landlord’s right to enter the tenant’s rental unit is restricted:

*Section 29 of the Act prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:*

*(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

*(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*

*(d) the landlord has an order of the director authorizing the entry;*

*(e) the tenant has abandoned the rental unit;*

*(f) an emergency exists and the entry is necessary to protect life or property.*

As noted above, the photos submitted by the landlord were taken over two months before the end of the tenancy, and cannot be used as an accurate assessment of the state of the rental unit when the tenant moved out. Regardless, the landlord's purpose for entry was to inspect or repair the smoke detector, and not to inspect the rental unit.

I note that the tenant's evidence and testimony reference the conduct and noncompliance with the landlord. The Compliance and Enforcement Unit (CEU) ensures compliance the residential tenancy laws of BC. I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act* nor do I have authority to investigate such matters. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, no findings can be made in relation to any alleged misconduct or noncompliance on part of the landlord.

I will now address the landlord's claims for cleaning. I note that the tenant disputed that they had smoked inside the rental unit, but did testify to smoking on the balcony. I note that the written tenancy agreement signed by both parties states the following under "House Rules":

*"3.5 All types of smoking through means of inhalation, including the smoking of cannabis, are prohibited on the Property and within 6 metres of any door or window that opens or air intake, as required by municipal bylaws. Violation is subject to a cleaning fee of minimum \$250 and any additional damage claims as necessary."*

Furthermore, RTB Policy Guideline #1 states the following about carpet cleaning:

*"The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. "*

*"The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises. "*

In this case, I am satisfied that not only did the tenant smoke on the balcony, which contravenes municipal bylaws and the House Rules, the tenant resided in the rental unit for a period of over one year, and therefore can reasonably be expected to steam clean or shampoo the carpet at the end of the tenancy. As the tenant did not provide any proof to show that they had undertaken this cleaning on their own, I allow the landlord's monetary claim for carpet cleaning, as claimed in this application.

I note that the landlord had included a cleaning fee clause of a minimum \$250.00 as part of the tenancy agreement. The onus is still on the landlord to support that the value of their loss. Although the tenant disputes the accuracy of the inspection reports, and the weight that can be placed on the reports, section 21 of the Residential Tenancy Regulation states the following about the evidentiary weight of a condition inspection report:

***Evidentiary weight of a condition inspection report***

***21 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.*

In this case, the tenant submitted their own photos of the suite, which the tenant argued was an accurate representation of the rental unit. In this case, I find that the move-out inspection report completed on May 31, 2022 noted that the toilet was not clean. I note that the tenant had responded that on the inspection report that “it is very clean. The sediment(sic?) won’t go away”. It was like this from the beginning”. The tenant’s photos show a toilet, but with the lid down.

I find that the landlord has met their evidentiary burden on a balance of probabilities that the tenant did not thoroughly clean the rental unit. The landlord provided an invoice for cleaning which amounted to \$300.00 plus GST. I find the evidence to be sufficient to show that the landlord incurred this loss as a result of the state of the rental unit and that this loss is attributable to the tenant.

I do not find the tenant’s submissions to be convincing nor persuasive. Although the tenant claims that the toilet was “like this from the beginning”, the tenant did not provide any clear photos of the toilet that contradict the landlord’s observations at the move-out inspection. I also note that the move-in inspection report does not make any reference to issues with the toilet at the beginning of the tenancy. I do not find the tenant’s position to be supported in the evidence. As noted above, the completed inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection. Although the tenant referenced “unfair” practices on part of the landlord, I do not find the evidence supports that the inspection reports were complete in a manner that contravenes the *Act*. I accept the evidence of the landlord that the tenant failed to leave the rental unit in reasonably clean condition, and accordingly, I allow the landlord’s claim for cleaning in the amount of \$300.00 plus GST.

In consideration of the landlord’s claim for required cleaning due to the smoke odour, I find the landlord’s evidence falls short. Although the tenant did admit to smoking on the balcony, I do not find the evidence sufficiently supports that any lingering odours were present upon move out on May 31, 2022. Although the caretaker did observe a heavy smell of cigarettes on March 21, 2022, there is no mention of any odours on the move-out inspection report completed on May 31, 2022. As the onus is on the landlord to support their claim, I am not satisfied that the landlord had provided sufficient evidence to that these additional steps were necessary due to the tenant’s contravention of the *Act*. Accordingly, I dismiss the landlord’s claim for upholstery cleaning, and painting.

The landlord also claimed losses associated with the yellowing of the drapes and damage to the study desk, which the tenant attributed to wear and tear. As noted in *Residential Tenancy Policy Guideline #40* “when applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

*If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”*

As per the Policy Guideline, the useful life of drapes is 10 years. As noted in Policy Guideline #40, the onus is on the landlord to support the age and maintenance of an item, especially when the item has exceeded its useful life. Although I am satisfied that the drapery may have yellowed during the duration of this tenancy, I am unable to ascertain how much of this damage can be attributed to wear and tear, and the general age of the item rather than the neglectful or intentional actions of the tenant. I am not satisfied that the landlord has proven, on balance of probabilities, that the tenant had caused the drapes to yellow. I therefore dismiss the landlord’s claim related to the drapes without leave to reapply.

Similarly, the useful life of a desk is approximately 10 years. I find the landlord has not met the onus to support that the damage to the desk was caused by the tenant beyond regular wear and tear. For this reason, I dismiss this portion of the landlord’s application without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord’s application did have some merit, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants’ security deposit of \$975.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant’s security deposit plus applicable interest in satisfaction of the monetary awards granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the

period of this tenancy, \$3.39 is payable as interest on the tenant's security deposit from the beginning of this tenancy, until the date of this decision, March 6, 2023.

### **Conclusion**

I find that the landlord is entitled to recover \$400.00 plus GST for carpet and suite cleaning, as well as \$100.00 for recovery of the filing fee.

The remaining portion of the landlord's application is dismissed without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit plus applicable interest in satisfaction of the monetary awards granted to the landlord. I issue a Monetary Order in the amount of **\$458.39** in the tenant's favour for the return of the remaining portion of their security deposit.

<b>Item</b>	<b>Amount</b>
Carpet Cleaning	\$100.00
Suite Cleaning	300.00
GST	20.00
Filing Fee	100.00
Less Security Deposit Held plus applicable interest	-978.39
<b>Total Monetary Order to Tenant</b>	<b>\$458.39</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 06, 2023

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Residential Tenancy Branch