



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord AL and tenants JT (the tenant) and DS attended the hearing. Witnesses for the tenants BS and MB and for the landlord RB also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – Jurisdiction

The landlord's application is for a monetary compensation in the amount of \$35,000.00. The landlord also applied for an authorization to recover the filing fee. Thus, the total amount of the landlord's application is \$35,100.00.

Residential Tenancy Branch (RTB) Policy Guideline 18 states:

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

I advised the landlord that the claim exceeds \$35,000.00 and is therefore outside of the jurisdiction of the RTB.

The landlord amended the application to reduce the amount of the monetary application to \$34,900.00.

Pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's application for a monetary claim to \$34,900.00. Thus, the total amount of the landlord's application is \$35,000.00 (34,900.00+100.00) and I have jurisdiction to hear this matter.

#### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on April 1, 2016 and ended on July 31, 2022. Monthly rent when the tenancy ended was \$2,750.00, due on the last day of the prior month. The tenants served and the landlord received the forwarding address in writing on September 11, 2022. The landlord returned the security deposit of \$1,375.00 on September 25, 2022. The tenancy agreement was submitted into evidence. It states: "7.

No more nails, picture hangers or drilling in walls are permitted than existing ones as the house is recently painted. Tenants are responsible for the cost of repainting.”

Both parties inspected the rental unit when the tenancy started and signed the condition inspection report (the report). The report indicates the parties agreed the rental unit was in good condition when the tenancy started, except for scratches on the bedrooms’ walls and a dirty exterior walk.

Both parties agreed they started the move out inspection on July 31, 2022, the parties had an argument and the tenants left the rental unit before the end of the move out inspection. The landlord completed the move out inspection alone and submitted the report into evidence. Later the tenant affirmed that she did not have a chance to conduct the move out inspection. The landlord emailed the tenants on August 2, 2022:

I appreciate you tried to come [tenant] down a few times but at the end when I asked you to stay and complete the inspection report with me, you both left. Although I was not feeling well after that [the tenant] did to us, I stayed 4 hours to see if you would call and come back to complete the inspection but I did not hear from you.

The landlord stated the rental unit is a 3 bedroom, 1,5 bathroom suite with approximately 1,000 square feet built in 1979, fully renovated and in very good condition when the tenancy started. The tenant testified the rental unit is a 2 bedroom plus den, 1,5 bathroom suite with approximately 1,200 square feet in reasonable condition when the tenancy started.

The landlord is claiming \$2,650.00, as the tenants damaged the sundeck renovated in 2014. The landlord said the plants left by the tenant on the sundeck leaked and the wood rotted. The landlord submitted an invoice for the amount claimed: “Demolition and transferring of all rotted parts of sundeck include vinyl, flooring, rotted plywoods, all wooden railing and stairs”. The report states: “damaged deck surface and stairs handrails”.

The tenant affirmed the sundeck wood was peeling off, as the sundeck is very old. The tenant informed the landlord during the tenancy about the damaged wood and the landlord asked the tenant to put duct tape on the damaged wood. The tenant kept the plants on the sundeck’s railing, not the wood structure. The tenant does not know what damaged the wood. The tenant stated the damaged wood is normal wear and tear.

The landlord testified the tenant did not inform him the sundeck was damaged.

The landlord is claiming \$1,200.00, as the tenants are responsible for mould in the bathroom drywall and ceiling. The landlord submitted one photograph showing the bathroom drywall and ceiling. The report states: "mould in bathroom ceiling". The landlord submitted an invoice for the amount claimed: "Demolition molded drywall in bathroom ceiling, installing new drywall and painting". The landlord believes the tenant did not clean the bathroom during the tenancy and did not turn on the bathroom fan.

The tenant said she always turned on the bathroom fan and that she kept the rental unit clean during the tenancy. The tenant is not responsible for mould in the bathroom. The tenant submitted 4 photographs showing the rental unit clean in February 2022. The tenant's witness BS, the tenant's next-door neighbour during the tenancy, affirmed the rental unit did not have mould. The tenant stated the bathroom ceiling mould could be caused by the mould found in the attic by the landlord when the tenancy ended.

The landlord is claiming \$1,350.00, as the tenants damaged the closet doors. The report states the second bedroom closet door was broken when the tenancy ended and the front door had a "missing key/damaged". The landlord testified the closet door was missing a latch and a lock. The landlord submitted an invoice for the amount claimed: "Repairing all damaged closet doors and replacing broken hardware".

The tenant said the closet door did not have a lock or a latch when the tenancy started and that she did not damage the closet door.

The landlord is claiming \$8,500.00, as the tenants damaged the walls and are responsible for an excessive amount of nail holes. The landlord affirmed the amount claimed also includes repainting the garage walls contaminated by mould. The report indicates nail holes damages in the entry and living room walls and drywall damage in the dining room wall. The landlord submitted an invoice for the amount claimed: "Repairing damaged drywalls and painting". Witness for the landlord RB stated that he was hired by the landlord to repair the rental unit, including: "painting, some patches on the wall and repair some damages".

The tenant testified she did not damage the walls and that she only hung two pictures on the walls. The tenant used the nail holes that existed when the tenancy started.

The landlord is claiming \$2,800.00, as the tenants damaged the living room window, which measures 68 x 68 inches. The landlord submitted a photo taken during the move

out inspection showing a large crack in the glass window. The report indicates: "Broken window in living room". The landlord submitted an invoice for the amount claimed: "Replacing broken window".

The tenant and witness BS said the window was not broken when the tenancy ended. The tenant's witness MB, a letter carrier for Canada Post, affirmed the window was not broken until August 19, 2022.

Witness for the landlord RB stated that he entered the rental unit on July 31, 2022 between 10:00 AM and 12:00 PM and notice the living room window was broken. The tenant testified the landlord and his contractors only entered the rental unit at 1:00 PM, as they did not have the rental unit's key. The landlord said he is not sure at which time RB arrived in the rental unit.

The landlord is claiming \$500.00, as the tenants did not clean the frames of 10 to 12 windows. The inspection indicates the rental unit needed cleaning when the tenancy ended. The landlord submitted one photograph showing a dirty window frame. The tenant affirmed the photograph submitted by the landlord was taken six weeks after the tenant moved out. The landlord stated it was taken on the move out date. The landlord submitted an invoice for the amount claimed: "cleaning window frames from molds".

The tenant testified that she hired professional cleaners, but they may have missed cleaning one window frame. The cleaning receipt indicates: "Detailed clean top level of the house. 1,100 sq ft. [...] 8.17h x \$75/h + GST. Bill for \$700 including tip".

The landlord is claiming \$800.00, as the tenants did not remove nails, gas tanks, old carpets, paint cans and "many items" from the rental unit. The inspection indicates the tenants left belongings in the rental unit. The landlord submitted an invoice for the amount claimed: "transferring disposals". The landlord submitted three photographs showing abandoned items.

The tenant said that she left in the rental unit a closet door, a bed, and some furniture because these items were in the rental unit when the tenancy started.

The landlord is claiming \$19,219.56, as the tenants are responsible for mould contamination in the attic. The landlord submitted a quotation for the amount claimed.

The landlord affirmed the attic is part of the rental unit.

The tenant stated the landlord never informed her that the attic is part of the rental unit and that she did not have access to the attic. The tenant testified that she is not responsible for mould in the attic and the landlord did not inspect the rental unit during the tenancy. The landlord said that he did the necessary maintenance during the tenancy, but he did not conduct inspections.

The landlord affirmed that he used a spray to treat the mould in the attic. The landlord does not know if the spray properly treated the mould.

The landlord is also claiming GST expenses in the amount of 5% on all his expenses.

The landlord submitted a monetary order worksheet.

The tenant stated the landlord's claims are retaliation because the tenants refused to sign a mutual agreement to end the tenancy.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

#### Move out inspection

Section 35 of the Act states:

**(1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit**

**(a)on or after the day the tenant ceases to occupy the rental unit, or**

**(b)on another mutually agreed day.**

**(2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.**

**(3)The landlord must complete a condition inspection report in accordance with the regulations.**

**(4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

**(5)The landlord may make the inspection and complete and sign the report without the tenant if**

**(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or**

**(b)the tenant has abandoned the rental unit.**

(emphasis added)

I accepted the uncontested testimony that the parties agreed to conduct the move out inspection on July 31, 2022.

Based on the landlord's more convincing testimony and the email dated August 2, 2022, I find the tenants breached section 35(4) of the Act, as the tenants left the rental unit before the end of the inspection and did not sign the report.

Regulation 21 provides:

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.

I find the landlord completed the report in accordance with the Regulation.

### Sundeck

Section 32(3) of the Act states: "A tenant of a rental unit 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."

I find the landlord's testimony about the sundeck's damage more convincing than the tenant's testimony.

Based on the landlord's more convincing testimony and the report, I find the landlord proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by keeping plants on the sundeck and not informing the landlord about the rotten wood.

Based on the invoice, I find the landlord suffered a loss of \$2,782.50 (\$2,650.00 + 5% GST).

Based on the landlord's more precise testimony, I find the sundeck was renovated in 2014.

RTB Policy Guideline 40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

RTB Policy Guideline further states the useful life of a wood deck is 20 years.

As the sundeck was 8 years old when the tenancy ended, I award the landlord 60% of the repair cost.

As such, I award the landlord compensation in the amount of \$1,669.50 (60% of \$2,782.50).

### Bathroom mould



Based on the report and the invoice, I find the landlord proved, on a balance of probabilities, that there was mould in the bathroom drywall and ceiling and the landlord suffered a loss.

RTB Policy Guideline 5 explains the duty of the party claiming compensation to mitigate their loss:

#### B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

#### Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I accept the uncontested testimony the landlord did not inspect the rental unit from April 2016 to June 2022. I find the photograph submitted does not clearly show if there is mould in the bathroom drywall and ceiling.

I accept the landlord's uncontested testimony that the landlord learned there was mould contamination in the attic when the tenancy ended.

Based on the above, I find the landlord failed to mitigate his losses by not inspecting the rental unit from April 2016 to June 2022. I find the landlord could have mitigated the bathroom mould losses if the landlord had inspected the rental unit.

I dismiss the landlord's claim, as the landlord did not mitigate his losses.

#### Closet doors

Based on the report and the landlord's testimony, I find the landlord proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by damaging the closet doors and the landlord suffered a loss.

I find the invoice is vague, as it shows a charge of \$1,350.00 for "all damaged closet doors and broken hardware". The report only indicates two door damages. The landlord did not sufficiently explain expenses in the amount of \$1,350.00. I find the landlord failed to prove, on a balance of probabilities, a loss in the amount claimed.

Based on the report and the landlord's testimony, I find it reasonable to award \$400.00 in compensation for the closet doors.

I award the landlord \$400.00 in compensation for the closet doors.

#### Damaged walls

RTB Policy Guideline 1 states the tenant must pay for an excessive number of nail holes:

##### Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

**2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.**

**3. The tenant is responsible for all deliberate or negligent damage to the walls.**

##### PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

**The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**

(emphasis added)

Based on the report and the landlord's testimony, I find the landlord failed to prove, on a balance of probabilities, that the tenants are responsible for deliberate or negligent damage to the walls or an excessive number of nail holes. The report only indicates damages to three walls. The landlord did not inform how many nail holes the tenants are responsible for. The testimony offered by witness RB was vague.

I dismiss the landlord's claim.

#### Living room window

I find the landlord's convincing testimony, the photograph and the report outweigh the testimony offered by the tenants and witnesses BS and MB. I find the tenants damaged the living room window.

Based on the invoice, I find the landlord suffered a loss of \$2,940.00 (\$2,800.00 + 5% GST) because the tenants breached section 32(2) of the Act by not repairing the living room window.

RTB Policy Guideline states the useful life of a window is 15 years.

Based on the landlord's convincing testimony, I find the window was 6 years old when the tenancy ended, as the rental unit was fully renovated in 2016. I award the landlord 60% of the repair cost.

As such, I award the landlord compensation in the amount of \$1,764.00 (60% of \$2,940.00).

#### Windows frames cleaning

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

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

RTB Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused,

either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the report and the landlord's testimony, I find the landlord proved, on a balance of probabilities, that the tenants breached section 37(2) of the Act by not cleaning the windows frames and the landlord suffered a loss.

The landlord did not explain how many hours of cleaning were needed to clean the windows frames. I find the invoice submitted by the landlord is vague, as it does not indicate the number of cleaning hours, or the number of windows cleaned. I find the landlord failed to prove, on a balance of probabilities, a loss in the amount claimed.

Based on the report, the photograph and the testimony offered by both parties, I find it reasonable to award \$150.00 in compensation for cleaning windows frames.

I award the landlord \$150.00 in compensation for cleaning windows frames.

#### Removal of belongings

The report does not indicate that there were items stored in the rental unit when the tenancy started.

Based on the report, the landlord's testimony and the photographs, I find the landlord proved, on a balance of probabilities, that the tenants breached section 37(2) of the Act by not removing all their belongings from the rental unit and the landlord suffered a loss.

The landlord did not explain how many hours of cleaning were needed to remove the belongings. I find it is not reasonable to pay \$800.00 to remove nails, gas tanks, old carpets and paint cans. I find the invoice submitted by the landlord is vague, as it does not indicate the number of cleaning hours to remove the belongings. I find the landlord failed to prove, on a balance of probabilities, a loss in the amount claimed.

Based on the report, the landlord's testimony and the photographs, I find it reasonable to award \$200.00 in compensation for the removal of belongings.

I award the landlord \$200.00 in compensation for the removal of belongings.

#### Attic mould

As explained in the topic bathroom mould, the landlord has the onus to mitigate the losses. I find the landlord failed to mitigate his losses because he did not inspect the rental unit from April 2016 to June 2022.

Furthermore, the landlord admits that he does not know if the mould in the attic needs further treatment after the landlord treated it with a spray.

I dismiss the landlord's claim, as the landlord did not mitigate his losses.

#### Filing fee and summary

Per section 72(1) of the Act, as the landlord was partially successful, I award the recovery of the filing fee.

In summary, the landlord is entitled to:

<b>Expenses</b>	<b>\$</b>
Sundeck	1,669.50
Closet doors	400.00
Window replacement	1,764.00
Windows cleaning	150.00
Removal of belongings	200.00
Filing fee	100.00
<b>Total</b>	<b>4,283.50</b>

#### Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$4,283.50.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. Should the tenants 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 01, 2023

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Residential Tenancy Branch