



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

Decision:

I grant the landlord an award for outstanding rent of \$600. I grant the tenant a doubling of the security deposit of \$600.00 for a total award of \$1,200.00. The awards are offset and I grant the tenant a Monetary Order of \$600.00..

My award to the tenant for a Monetary Order of \$600.00 is calculated as follows:

ITEM	AMOUNT
Security deposit	\$600.00
Security deposit doubled	\$600.00
(Less amount owing for rent)	(\$600.00)
TOTAL MONETARY ORDER TO TENANT	\$600.00

Attendance:

All parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The parties are referenced in the singular.

Each party confirmed their email addresses to which the Decision will be sent.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the unit and outstanding rent? Is the landlord entitled to reimbursement of the filing fee of \$100.00?

Background and Evidence

This is an application by a landlord for a Monetary Order for the following:

1. Compensation for damage to the unit
2. Outstanding rent
3. Reimbursement of filing fee

The tenant denied the landlord was entitled to any compensation and requested the application be dismissed.

Tenancy

The parties testified that the tenancy began on in February 2007 and is on a month-to-month basis. Rent in the amount of \$1,750.00 was payable by the first

day of each month. The tenant paid a security deposit of \$600.00 which was held by the landlord.

The tenant testified they provided their forwarding address to the landlord in compliance with the Act by text on July 5, 2022 after they moved out. The landlord acknowledged receipt of the forwarding address.

Condition Inspection Reports

The parties agreed that no condition inspections on moving in or moving out took place and no reports were submitted as evidence.

Previous Decisions

This is the third dispute between the parties. The first two disputes are referenced by number on the first page.

The first Decision is dated November 3, 2021.

The hearing was a cross-application. The landlord had brought an application for an Order of Possession under a Two Month Notice. The tenant had brought an application with several claims:

- for a rent reduction
- to dispute a rent increase
- to suspend or set conditions on the Landlords right to enter the rental unit
- for an order that the Landlord repair the rental unit
- for an order regarding locks and access to the unit
- for an order that the Landlord comply with the Act, regulation, or tenancy Agreement

The tenant's claims were severed (dismissed with leave to reapply) so the Arbitrator could decide the main issue, that is, whether the tenancy should continue.

The Arbitrator dismissed the landlord's Two Month Notice to end the tenancy, stating (emphasis added):

I have turned my mind to whether or not the Landlord has an ulterior motive or is trying to avoid obligations under the Act, and I have considered that the Landlord approached the Tenants and attempted to have them sign a new tenancy agreement with an illegal increase in the monthly rent.

It appears to me that the Landlords feel they are missing out on rent they could be receiving under current market conditions.

I have also considered that the Tenants asked for repairs to the rental unit a short period before the Landlords issued the Two Month Notice. The Landlord admittedly did not take any action to repair a rotten deck railing.

I find that the Tenants also requested other repairs to the unit. With respect to repairs, based on the evidence before me, I find that the Landlord is avoiding an obligation to make repairs to the rental unit.

I find that the Landlord's recent attempts to illegally increase the rent suggests that the Landlord has an ulterior motive to end the tenancy and I also find that the Landlord does not want to fulfil their obligations under section 32 of the Act to maintain and repair the rental property.

I find that it is more likely than not that the Landlords are attempting to end the tenancy to avoid obligations under the tenancy agreement and the Act.

The Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 26, 2021 is granted. The Two Month Notice is cancelled.

The second Decision is dated May 11, 2022. An Order of Possession was issued because of the tenant's failure to allow the landlord to inspect the unit. The tenant explained that relations between the parties had broken down and they only

wanted a third-party inspector in the unit. The landlord testified to repeated efforts to inspect the unit.

The Order of Possession was effective June 30, 2022.

Overview of Landlord's Claim

The landlord clarified their claim as follows:

	ITEM	AMOUNT
1.	Rent outstanding for June 2022	\$600.00
2.	Plumbing and heating repairs	\$2,940.00
3.	Flooring	\$5,174.00
4.	Closet shelving	\$200.00
5.	Blinds	\$1,050.00
6.	Kitchen cabinets	\$158.00
7.	Tipping fees	\$245.00
8.	Lost rent	\$2,000.00
	TOTAL	\$12,367.00

The landlord testified they incurred the expenses listed and submitted supporting invoices. They also submitted photographs which they stated were taken when the tenant moved out. The photographs showed a unit in poor condition in all aspects requiring considerable repairs and maintenance.

The landlord's claims are discussed.

1. *Rent outstanding for June 2022* *\$600.00*

The parties agreed the tenant did not pay the balance of \$600.00 for the last month of the tenancy, June 2022, and only paid rent until they day the moved out..

The landlord claimed entitlement to rent for the entire month and requested an award of \$600.00. The tenant denied the landlord was entitled to this amount and claimed they were required to pay to the date they moved out only.

2.	<i>Plumbing and heating repairs</i>	<i>\$2,940.00</i>
3.	<i>Flooring</i>	<i>\$5,174.00</i>
4.	<i>Closet shelving</i>	<i>\$200.00</i>
5.	<i>Blinds</i>	<i>\$1,050.00</i>
6.	<i>Kitchen cabinets</i>	<i>\$158.00</i>
7.	<i>Tipping fees</i>	<i>\$245.00</i>

The landlord has an obligation to repair and maintain the rental property pursuant to section 32 of the Act:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The landlord testified as follows. They claimed the tenant caused considerable damage to the unit during the 14-year tenancy requiring substantial expense for which they requested compensation. They made reasonable efforts to repair and maintain.

In their written submissions, the landlord described the condition of the unit when the tenant moved out:

Washroom Cabinets/ceiling both ruined, Bedroom #2 walls/closet ruined (paint/glue), carpet dirty (hot iron press mark), bsmt kitchen window broken, screen protectors missing, majority of all blinds broken/damaged, holes in walls/bedroom doors from pictures hung, fireplace tiles broken, stove (2 burners not working), downstairs kitchen counter/cabinets broken due to water leak, lots of MOLD under the sink, door broken, water tank broken, lots of cable wiring (exterior of home), unsafe electrical

The landlord carried out considerable repairs after the tenant moved out and submitted supporting documentary evidence such as invoices. For example, the landlord replaced the water tank, toilet, shower, faucets, flooring, closet shelving, blinds throughout the unit and kitchen cabinets. They claimed the tenant left items behind which they removed for tipping fees.

The landlord claimed compensation from the tenant for all these expenses.

The landlord did not carry out a condition inspection on moving in or moving out. They did not submit photographs of the unit at the time of moving in. They did not submit documentary evidence showing the age of the various components in the unit, such as flooring or blinds, at the start of the tenancy. They did not provide testimony of fulfilling their obligation to repair and maintain the unit.

The landlord testified the tenant would not let them into the unit to do repairs.

Tenant's Response

The tenant testified as follows.

The unit had been well-used and was starting to deteriorate when they moved in. Nothing was new or in like-new condition. For example, the deck was rotting, and parts disintegrated during the tenancy. The tenant submitted substantiating photographs.

The tenant testified they asked the landlord and wrote to them many times during the tenancy asking for repairs and the landlord refused. For example, the tenant

submitted a copy of a letter to the landlord dated May 3, 2021, listing 11 items that needed attention.

The tenant testified to the landlord's pressure to pay more rent beginning in March of 2021 combined with refusal to carry out any repairs despite the tenant's many requests. Only when the landlord wanted more rent, did they show any interest in responding to the request for repairs.

The relationship between the parties broke down and animosity arose. The tenant refused to let the landlord into the unit and requested that only a third party enter for the purposes of inspection.

The tenant said they had looked after the unit to the best of their ability. At their own expense, they replaced the washer/dryer, painted the basement, repaired the roof, and paid electricians to fix light connections.

The tenant submitted photos of the unit when they left which indicated a clean and tidy space, although components were clearly well worn. They also submitted photos of the deck showing rotten wood and said it was a safety hazard.

The tenant submitted a spreadsheet setting out 18 building elements in the unit, such as appliances, hot water tank, flooring, the deck and window coverings estimating the age of all items at the time they moved out and concluding that all were past their useful life by the end of their tenancy.

8. Lost rent \$2,000.00

The landlord stated as follows in their written submission:

the reason why we have requested \$2000.00 (1 month rent) is for the amount of time it will take us to fix this house and rent it out. This house is going to take us at least 2 month (all summer). We all work full time jobs and after work we go and fix the house. Our whole summer is going to be spent fixing the excessive amount of damages tenants have caused. We

were not allowed in the house after April 2021 after out inspection because tenant denied us access.

The landlord did not submit evidence of when the unit was rented again or the amount of the rent.

The tenant stated the landlord's repairs were necessary after a 14-year tenancy in which they neglected basic maintenance which was their responsibility. The tenant claimed they are not responsible for this expense. The landlord's efforts at the end of the tenancy to inspect were too little, too late. The landlord must bear the costs of the repairs and any loss of rent while the repairs were taking place.

Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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 their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (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.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Credibility

In considering the application, I weighed the credibility of the parties.

The tenant claimed that the unit had well used components when the tenancy started, the landlord failed to carry out the basic maintenance/repairs, and the unit aged from normal wear and tear over the tenancy period. The tenant said they were not responsible for any aspect of repairs to the unit after they moved out. All these assertions were denied by the landlord.

I find it is likely that the unit needed substantial repairs when the tenant moved out because the landlord ignored obligations under the Act to maintain and repair the unit. I find the landlord failed to dispel the tenant's assertions about the landlord's failure to carry out repairs and maintenance during the tenancy.

I find the landlord's version of events that the tenant caused the damage and should pay for all repairs to be disingenuous and self-serving. The landlord submitted no documentary evidence of the age of the unit's components at the start of the tenancy or their cost at that time. The landlord failed to conduct condition inspections as required.

I accept as likely the previous Arbitrator's remarks that the tenant requested repairs to the unit throughout their tenancy, the landlord avoided and failed to fulfil their obligations, and they sought to end the tenancy without carrying out any repairs to obtain increased rent from a new tenant.

In short, I find that the landlord is seeking to pass expenses onto a tenant for which the landlord is responsible.

I therefore give little credence to the landlord's testimony that the tenant's failed in their responsibility to take care of the unit or are in any way responsible for the worn out and poor condition of the unit at the end of the tenancy.

So, where the versions of events differ, I give greater weight to the tenant's evidence.

Each claim is addressed.

1. *Rent 600.00*

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant is required to pay rent for the entire final month of the tenancy, even though they moved out early. The tenant had no right to deduct a portion of the rent.

Accordingly, I award the landlord the sum of \$600.00 which I find the parties agreed was the unpaid portion for the final month of the tenancy.

2.	<i>Plumbing and heating</i>	<i>\$2940.00</i>
3.	<i>Flooring</i>	<i>\$5174.00</i>
4.	<i>Closet shelving</i>	<i>\$200.00</i>
5.	<i>Blinds</i>	<i>\$1050.00</i>
6.	<i>Kitchen cabinets</i>	<i>\$158.00</i>
7.	<i>Tipping fees</i>	<i>\$245.00</i>
8.	<i>Lost rent</i>	<i>\$2,000.00</i>

("the group")

I consider these items as a group of claimed expenses for compensation.

I accept the tenant's testimony as the most likely version of events. That is, I find the unit was not new when the tenant moved in, the building elements were of indeterminate age, they lived there for 14 years, and the landlord did little or no maintenance/repairs during that time. I find the use by the tenant was reasonable wear and tear. I accept the tenant's testimony that building elements and components of the unit were past their useful life when they moved out and

considerable repairs/replacement were necessary because of predictable deterioration.

I do not accept as a likely interpretation of events that the landlord provided a like-new unit at the beginning of the tenancy, carried out their obligations to repair, and holds no accountability for the worn-out nature of the unit's components.

I have considered *Policy Guideline 40 – Useful Life of Building Elements*. This guideline is a general guide for determining the useful life of building elements for determining damages.

Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances have considered the useful life of the building elements and the likely age of the elements.

A table is attached to the Guideline listing the useful life of many building components, such as:

- Carpets – 10 years
- Interior painting – 4 years
- Washer/dryer – 15 years
- Kitchen cabinets, counters – 25 years
- Blinds – 10 years
- Bathtubs, toilets, sinks – 20 years
- Hot water tank – 10 years

The Guideline states:

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.

I accept the landlord carried out considerable repairs in the unit *after* the tenant moved out.

I find the building components for which the landlord seeks compensation, to have been used at the beginning of the tenancy. I find subsequent use to be no more than wear and tear. I find the landlord has not met the burden of proof that the tenant is responsible for any of the claimed expenses.

Accordingly, all claims in this group of claims are dismissed without leave to reapply.

Security deposit

I find the tenant is entitled to a doubling of the security deposit as the landlord's right to claim against the deposit was extinguished as they did not carry out the required condition inspections on moving-in or moving-out.

The parties agreed there was no condition inspection on moving in or out.

Section 38 of the Act requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the provision of a forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, under section 38(6)(b) of the Act, equivalent to double the value of the deposit.

However, this provision does not apply if:

- the tenant consented in writing that the landlord could keep some or all the deposit to offset damages (Section 38(4)(a)), or
- the tenant has been ordered to pay an amount to the landlord (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on June 30, 2022. The tenant provided a written forwarding address by way of a text dated July 5, 2022, which was received by the landlord.

The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

The landlord applied for dispute resolution to claim against the deposit for damages on July 12, 2022 which is within 15 days of the end of tenancy date and the deemed forwarding address receipt date.

However, I find that the landlord extinguished their right to claim against the security deposit for damages, under sections 24 and 36 of the Act, for failure to complete move-in and move-out condition inspection reports.

Section 19 of the *Residential Tenancy Regulation* ("Regulation") requires that condition inspection reports must be in writing. Section 20 of the Regulation requires detailed, specific information to be included in the condition inspection reports.

Both parties agreed that no written condition inspection reports were completed for this tenancy, and none were provided for this hearing.

Residential Tenancy Policy Guideline 17 states the following, in part:

1. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

I find the landlord's right to retain the security deposit was extinguished.

In accordance with section 38(6)(b) of the Act and Policy Guideline 17, I find that the tenant is entitled to receive double the value of their security deposit of \$600.00 totalling \$1,200.00.

I grant the tenant an award of \$1,200.00.

Filing fee

The landlord has been largely unsuccessful in their application and I accordingly do not award reimbursement of the filing fee.

Award

I grant the landlord an award of \$600.00 for outstanding rent.

I grant the tenant an award of double the security deposit for a total award of \$1,200.00.

Offsetting the awards, I grant the tenant a Monetary Order of \$600.00 as follows:

ITEM	AMOUNT
Security deposit	\$600.00
Security deposit doubled	\$600.00
(Less amount owing for rent)	(\$600.00)
TOTAL MONETARY ORDER TO TENANT	\$600.00

Conclusion

I grant the parties awards as set out above. After offsetting, the tenant is granted a Monetary Order of \$500.00.

The Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced in the courts of BC.

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: April 07, 2023

Residential Tenancy Branch