



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

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

1. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Section 38 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that she was not recording this dispute resolution hearing.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on July 15, 2022 by Canada Post registered mail (the "NoDRP package"). The Landlord referred me to the Canada Post registered mail

receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on July 20, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Landlord entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
2. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed?
3. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord uploaded a copy of the tenancy agreement. The Landlord testified that this periodic tenancy began on July 16, 2019. Monthly rent was \$1,500.00 payable on the first day of each month. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord testified that the rental unit was fully furnished, and had pots and pans, dishware, linens, and included cablevision and wifi. The Landlord stated that the Tenant totally destroyed everything. A condition inspection report was completed at move-in and at move-out. The June 30, 2020 move-out condition inspection notes that the rental unit, "STINKS", and there are many items that are either burned, or just not cleaned at the end of the tenancy. The Tenant did not participate in the move-out condition inspection.

The Landlord claimed the rental unit included a wood kitchen table and four chairs, and a set of wood tv tables. The Landlord claimed that the Tenant burned them in a number of different ways and also damaged them by letting water sit on top of the surface. The Landlord testified that the Tenant burned the table by putting hot pots directly on it, and she pointed out places where the table and chairs and the set of wood tv tables had

been burned with cigarettes. The Landlord claimed \$895.94 to replace this solid wood kitchen table and four chairs, and \$68.00 to replace the wood tv tables.

The Landlord stated that there was resin on the walls from the Tenant's cooking in the rental unit. It smelled of garlic, deep-fried food, cigarettes and marijuana. The Landlord testified that the advertisement for the rental unit said it was a non-smoking suite; however, the Landlord did not include this in her tenancy agreement. On September 10, 2020, one of the painters the Landlord hired to paint the ceiling wrote that the conditions were atrocious when the Tenant left. She also stated, *"I can say that not only had the once white ceilings of the apartment gone yellow, but also the cupboards and furniture were coated in a similar grime, which happened to reek a pungent odor very difficult to eliminate."*

The Landlord had the whole rental unit and ceiling painted. She claims \$1,265.50 for this ceiling paint work. The Landlord and a friend painted the walls of the rental unit themselves as the Landlord could not afford to pay for painters for the whole suite. She claimed for the cost of paint, paint supplies and a tub stopper totalling \$446.79. The tub stopper was completely broken.

The Landlord submitted that the Tenant damaged the laminate flooring in the kitchen. She claimed he blocked the freezer defrost valve, and water that leaked out permanently stained and warped the laminate flooring. The Landlord also submitted there is a chunk out of the laminate flooring, possibly caused by pots or pans dropped on the floor. The Landlord pointed to her picture evidence demonstrating the damage to the laminate flooring. The total estimate cost for new laminate flooring is \$665.28, and the installation and underlay cost is \$200.00.

The Landlord submitted that the carpets were completely covered with food, dishes and other garbage, and that it was impossible to see the burns in the carpet. The Landlord stated that the carpet was burned by the Tenant by putting hot pots and pans on it. The Landlord counted 15 cigarette burns in the carpet. The couch and automan were black with dirt and grime. The Landlord pointed to her picture evidence demonstrating the dirt and damage to the carpets, the couch and the automan. The Landlord claims \$4,215.43 to replace the carpet, and \$576.00 for a full cleaning of the couch and automan. The Landlord also seeks \$150.00 compensation for the couch and automan as, she said, they were brand new when the Tenant moved in.

The Landlord claims \$40.00 because the carpet layer had to cut down the bottom of the closet doors so they would open properly over the new carpet.

The Landlord claims \$111.99 to buy paint for the countertops because they were all ruined around the sink. The Landlord said the Tenant let water stand there and it pulled everything up. The Landlord provided picture evidence demonstrating the damaged countertops.

The Landlord had to purchase a new dust mite mattress cover totalling \$52.45.

The Landlord claimed \$90.70 for the cost to replace a mattress pad, salt and pepper grinders and a knife set. She testified that all the knives had been broken or ruined.

The Landlord stated that on three separate occasions the Tenant passed out while he was cooking food on the stove. The smoke detectors were going off because there were fires on top of the stove and the Tenant was not waking up. Every night after the third smoke detector warning, the Landlord would turn off the breaker for the stove as they were afraid to sleep in case the Tenant passed out again while cooking food. Pots and pans were ruined because of these fires. The Landlord claimed \$330.33 for the replacement of dishes as many were broken, other kitchen items, like a roaster, a lasagna pan with lid and plastic containers, and pots and pans. The Landlord also purchased a new toilet seat.

The Landlord's range had big gouges and permanent stains in the glass cooktop. On July 14, 2020, the parts manager at an appliance centre wrote the Landlord saying, "*As discussed, here is the information that you requested showing that the glass cooktop for that GE range is not available.*" Because the Landlord could not replace just the top of the stove, she had to replace the entire stove. The Landlord claims \$894.32.

### Analysis

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

**Consequences of not attending the hearing:** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

**Liability for not complying with this Act or a tenancy agreement**

- 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.*

**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, and*

...

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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 Landlord claims that the Tenant did not leave the rental unit reasonably clean, and undamaged and effectively breached Section 37(2)(a) of the Act. The Landlord explained that the rental unit was fully furnished and outfitted for the Tenant to occupy. The Landlord repaired the rental unit to bring it back up to a state of decoration and repair suitable for new tenants to occupy. The Landlord's undisputed claims follow:

*Wood table and four chairs, wood tv table*

The Landlord claimed the Tenant burned and water damaged the table, chairs and tv tables. The Landlord demonstrated the damage and loss of these items in her picture evidence. I find the Landlord has proven on a balance of probabilities that these items were damaged beyond reasonable wear and tear and must be replaced. I grant the Landlord compensation totalling **\$895.94** for the table and chairs, and **\$68.00** to replace the wood tv tables.

*Ceiling and wall painting, tub stopper*

The Landlord submitted that the Tenant left the ceiling and walls covered in resin, dirt and with a foul odour. The only fix for this damage was to completely clean and paint the ceiling and walls. The Landlord engaged a company to paint the ceilings, and the Landlord and a friend did the walls themselves. The Landlord testified that the tub stopper was completely broken. I find the Landlord has proven on a balance of probabilities that the ceilings, walls and the tub stopper were damaged beyond reasonable wear and tear. I grant the Landlord compensation for the ceiling paint work totalling **\$1,265.50**. I grant the Landlord compensation for the wall paint, supplies and new tub stopper totalling **\$446.79**.

*Laminate flooring*

The Landlord claimed the Tenant blocked the freezer defrost valve, and water that leaked out permanently stained and warped the laminate flooring. The Landlord also submitted there is a chunk out of the laminate flooring, possibly caused by pots or pans dropped on the floor. I find the Landlord has proven on a balance of probabilities that the kitchen laminate flooring was damaged beyond reasonable wear and tear and needed to be replaced. I grant the Landlord compensation for the laminate flooring and installation totalling **\$865.28** (\$665.28 + \$200.00).

*New carpets, couch and automan cleaning*

The Landlord submitted that the carpets were completely dirty, burned by cigarettes or hot pots and pans, and also smelled very badly. The Landlord had to replace the carpets. The Landlord had the couch and automan professionally cleaned which resulted in a completely noticeable difference in the furniture. I find that the Landlord has proven on a balance of probabilities that the carpets and the couch and automan were damaged beyond reasonable wear and tear. I grant the Landlord compensation for the new carpets totalling **\$4,215.43** and the professional upholstery cleaning totalling **\$576.00**. I deny granting the Landlord the \$150.00 compensation just because the furniture was new when the Tenant moved in. It is inevitable that furniture items will be soiled in a furnished suite and the professional upholstery cleaning brought the furniture to a reasonable level of clean.

*Cutting down closet doors*

The Landlord had to get the bottoms of the closet doors cut down to accommodate the new carpets. I find, as with the new carpets, the Landlord is entitled to compensation for this adjustment to the closet doors. I grant the Landlord **\$40.00** for this work.

*Paint for kitchen countertop*

The Landlord claims compensation for paint to repair the kitchen countertops that were damaged by water. The Landlord's picture evidence demonstrated the damage to the countertop. I find that the Landlord has proven on a balance of probabilities that the kitchen countertops needed repair and were damaged beyond reasonable wear and tear. I grant the Landlord compensation to paint the kitchen countertops totalling **\$111.99**.

*Dust mite mattress cover, mattress pad, salt and pepper grinders and knife set*

The Landlord's rental unit was fully furnished and stocked with household items that allowed the Tenant to just move in. When the Tenant left, certain items were taken or damaged beyond reasonable wear and tear. I find the Landlord has proven on a balance of probabilities that compensation for a new dust mite mattress cover totalling **\$52.45**, mattress pad, salt and pepper grinders and knife set totalling **\$90.70** are granted.

*Kitchen items, pots and pans*

After three events where the smoke detector was ringing because of smoke and fire in the kitchen, the Landlord found that pots and pans, a roaster, a lasagna pan with lid and

plastic containers were ruined because of these fires. I find that the Landlord has proven on a balance of probabilities that these kitchen items and pots and pans were damaged beyond reasonable wear and tear. I grant the Landlord compensation for the replacement of these kitchen items and pots and pans totalling **\$330.33**.

#### *Stove*

The Landlord's range had big gouges and permanent stains in the glass cooktop. The Landlord could not just replace the cooktop as a replacement was not available. The Landlord's picture evidence demonstrated the damage to the stove cooktop. The Landlord had to purchase a new stove. I find that the Landlord has proven on a balance of probabilities that she had to purchase a new stove as the existing stove was damaged beyond reasonable wear and tear. I grant the Landlord compensation for the new stove totalling **\$894.32**.

Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in her claim, I grant her recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary Award is calculated as follows:



ITEMS	AMOUNT
Solid wood table and four chairs	\$895.94
Wood tv tables	\$68.00
Ceiling paint work	\$1,265.50
Wall paint, supplies and tub stopper	\$446.79
Laminate flooring	\$665.28
Installation and underlay for laminate flooring	\$200.00
New carpets	\$4,215.43
Couch and automan cleaning	\$576.00
Cut down closet doors to fit over new carpets	\$40.00
Paint for kitchen countertop	\$111.99
Dust mite mattress cover	\$52.45
Mattress pad, salt and pepper grinders, knife set	\$90.70
Kitchen items, pots and pans	\$330.33
New stove	\$894.32
Application filing fee	\$100.00
Less: security deposit	-\$750.00
<b>TOTAL MONETARY AWARD:</b>	<b>\$9,202.73</b>

### Conclusion

I grant a Monetary Order to the Landlord in the amount of \$9,202.73. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: April 05, 2023

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Residential Tenancy Branch