



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S MNDCL-S FFL

### Introduction

This dispute relates to a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$3,706.04 for damages to the unit, site or property, compensation and filing fee,
2. Retain the tenants' security deposit of \$850 towards any amount owing,

The hearing began on December 6, 2022 and was adjourned after 60 minutes. On April 14, 2023, the hearing continued and after an additional 43 minutes, the hearing concluded. The parties attended at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

After service was addressed, the hearing continued. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties as a result.

### Issues to be Decided

- Is the landlord entitled to a monetary order, and if so, in what amount?
- What should happen to the tenants' security deposit?
- Should the landlord be granted the filing fee?

### Background and Evidence

A month-to-month tenancy began on March 1, 2019. Monthly rent in the amount of \$1,700 was due on the first day of each month. The tenants paid a security deposit of \$850 at the start of the tenancy which the landlord continues to hold. The interest will be calculated on the security deposit later in this decision. The parties agree that the tenants vacated the rental unit on February 1, 2022.

The landlord's monetary claim of \$3,706.04, is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning costs	\$1,200
2. Repairs	\$1,406.04
3. Rental loss for first half of February 2022	\$1,000
4. Filing fee	\$100
<b>TOTAL</b>	<b>\$3,706.04</b>

Regarding item 1, the landlord has claimed \$1,200 as the cost to clean the rental unit. The landlord stated that it took 30 hours at \$40 per hour of cleaning for a total of \$1,200. The landlord confirmed that there was no receipts or incoming/outgoing Condition Inspection Report, which I will address later in this decision.

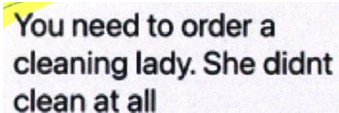
The landlord stated that the home was purchased in 2019 but was built in 2006.

The landlord presented many colour photos which show the following at the end of the tenancy:

1. Dirty stove top that was not clean and food in oven,
2. Warming drawer dirty with food/cheese,
3. Grease-stained cabinets,
4. Same as 3 but above stove,
5. Food and crumbs in cabinets,
6. Food debris left in dishwasher,
7. Same as 6 showing more showing carrot peels,
8. Stains on walls and dust on baseboards,
9. Dust on ceiling sprinkler head,
10. Dirty kitchen light,
11. Stains on entrance wall,

12. Dirty closet racks,
13. Dirty living room fan,
14. Same as 13 but closer up,
15. Dirt on ceiling fan,
16. Dirty living room blinds,
17. Additional dirty blinds,
18. Second bedroom dirty blinds,
19. More dirty blinds and dirty patio door,
20. Dirty bathroom fans,
21. Second bathroom tap grime,
22. Cobwebs at ceiling,
23. Hair left in bathtub,
24. Dirty area around showerhead,
25. Second bedroom dirty carpet,
26. Similar to 25 and very dirty,
27. Washing machine first view,
28. Washing machine second view,
29. Second bathroom dirty drain,
30. Second bathroom shower,
31. Dirty underneath sink,
32. Dirty kitchen drawer,
33. Dirty kitchen drawer second view,
34. Dirty kitchen drawer third view,
35. Dirty front door.

The landlord presented the copy of an text exchange between the tenant and the landlord and eventually after many messages the tenant texted the landlord as follows:



You need to order a  
cleaning lady. She didnt  
clean at all

The landlord testified that both landlords cleaned over the period of one week and a cleaning company finished the cleaning work. The landlord submitted a letter from the cleaning company team and clarified that the cleaning company took 26 hours to clean the rental unit and the landlord are charging for 4 hours of their time for a total of 30 hours at \$40 per hour.

The landlord submitted a letter from the cleaning company dated February 8, 2022, which reads in part as follows:

I am writing this letter on your behalf with respect to the move-out clean at the address noted above and date it was done;

I have owned my own my residential cleaning business for many years and have a very credible clientele;

I want it noted, that this was a very extensive clean; both the main & ensuite bathrooms were disgusting; there has been no cleaning of the shower enclosure in the main bathroom – could not get all the scum off the walls and glass doors; along with the drain totally black & clogged; all vanity cupboards & drawers in both bathrooms were filthy; floors & baseboards have likely never been cleaned;

Kitchen – another huge clean; all cupboards – inside & outside; fridge & freezer; stove – cook top totally ruined no matter how much scrubbing;

This was not a quick clean – it was a very dirty condo – no ongoing maintenance whatsoever.

I hope you recover your damage deposit and plus extra for excessive cleaning;

The tenant claims there was an agreement on \$200 for cleaning and denies staining any items. The tenant asked the landlord that if there was going to be a claim why did the landlord not conduct an inspection. The tenants provided no documentary evidence in response to the landlord's application. The tenants also did not provide any supporting evidence of an agreement of \$200 for cleaning costs.

Regarding item 2, the landlord has claimed \$1,406.04 for the following, which actually totals \$1,768.17. As a result, the landlord was advised during the hearing that the maximum amount that could be granted for item 2 is the amount claimed of \$1,406.04.

The landlord testified to the following items for item 2:

- A. \$180 for fixing holes,
- B. \$182.13 for transitions,
- C. \$200 for sublet move in/move out fee,
- D. \$257.28 for vertical blinds,
- E. \$150 to clean a wall fan,
- F. \$798.76 for a new dishwasher.

Regarding item 2A, the landlord testified that to repair the holes left by the TV mount, the landlord purchased spackle. The landlord confirmed that they did not provide photos of the holes in the wall. The landlord then testified that it took 3 hours at \$30 per hour,

which totals \$90 and not \$180, which I will address later in this decision. The tenant responded to this item by stating that they bought all of the supplies.

Regarding item 2B, the landlord has claimed \$182.13 to replace broken transitions. The landlord confirmed there is no photo evidence or receipts for this item. The tenant denies damaging any transitions in the rental unit.

Regarding item 2C, the parties reached a mutual agreement of \$200 for the tenants to compensation the landlord for the move in and out fees.

Regarding item 2D, the landlord has claimed \$257.28 to replace vertical blinds. The landlord stated that they were covered in mud and hair and that the vertical blinds were not washable. The landlord confirmed there was no receipt for the vertical blinds but stated they were \$77 plus 3 hours at \$60 per hour in labour to remove them and take them to the dump. The tenant responded to this item by stating the blinds were from 2006, making them beyond their useful life. The tenant also stated that the blinds were like that when they moved in.

The landlord responded by stating that they purchased the property in 2018 and that the building is between 14 and 15 years old. The landlord stated they did not know the age of the vertical blinds.

Regarding item 2E, the landlord has claimed \$150 to clean a wall fan. The landlord admitted that they did not supply a photo or a receipt. The tenant responded to this item stating that they are not an electrician so do not know how to remove a wall fan to clean it.

Regarding item 2F, the landlord has claimed \$798.76 for a new dishwasher and admitted that they did not know if the dishwasher was the original dishwasher when the home was built. The landlord confirmed they did not submit a receipt in support of this item but claims there were popcorn seeds that ruined the dishwasher. The tenant stated that the landlord worked on the dishwasher and then it eventually broke and was replaced.

Regarding item 3, the landlord is claiming \$1,000 for the rental loss of February 1-15, 2022 when new tenants moved in. The landlord claims that they are relying on the photos of the condition of the rental unit in support of the loss of February 1-15, 2022. The tenant's response to this item was that the rental unit needed a wipe down and had no damage at all.

The tenants made a final comment that at the walkthrough the parties agreed that the rental unit was “fine” and that the landlord said it was “fine” and then they received the claim. The tenants deny damaging the rental unit and reiterated that there was no incoming or outgoing condition inspection report.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 1** – The landlord has claimed \$1,200 in cleaning costs. I find the tenants not to be credible as they claim the rental unit needed to be “wiped down” and I find that to be an understatement. Having carefully reviewed the photo evidence and the cleaning invoice,

and section 37(2)(a) of the Act which requires the rental unit to be left in a reasonably clean condition, I find the landlord has met the burden of proof to support that the tenants breached section 37(2)(a) of the Act.

Therefore, I grant the entire \$1,200 claim for cleaning costs as I find the tenants were disorganized and by their own text admitted that the rental unit required cleaning. I find there was no agreement as claimed by the tenants for \$200 and therefore afford the tenants' testimony very little weight.

I will now address the lack of incoming and outgoing Condition Inspection Report by the landlord. I find the landlord breached sections 23 and 35 of the Act by failing to complete a formal incoming and outgoing Condition Inspection Report. I caution the landlord to comply with sections 23 and 35 of the Act for all future tenancies.

**Item 2** - Regarding item 2A, I find the landlord provided contradictory evidence, they claimed for \$180 to repair holes and they said they spent 3 hours at \$30 per hour. Given that there were no photos or receipts for spackle, I dismiss this item due to insufficient evidence, without leave to reapply.

Regarding item 2B, the landlord has claimed \$182.13 to replace broken transitions. The landlord bears the onus of proof and I find that a claim without an inspection report, photos or receipts does not meet the burden of proof. Therefore, I dismiss this item due to insufficient evidence, without leave to reapply.

Regarding item 2C, the parties reached a mutual agreement of \$200 for the tenants to compensate the landlord for the move in and out fees. This mutual agreement is made pursuant to section 63 of the Act and is enforceable between the parties as a result.

Regarding item 2D, the landlord has claimed \$257.28 to replace vertical blinds. I disagree that the vertical blinds were not washable as claimed by the landlord as they appear to be common vertical blinds. I find the landlord failed to provide any supporting documentary evidence from any cleaning company that stated in writing that the blinds could not be cleaned and had to be replaced. Furthermore, absent the required inspection report or receipts I find the landlord does not meet the burden of proof. Therefore, I dismiss this item due to insufficient evidence, without leave to reapply. I find it is not necessary to consider the useful life of the blinds as the claim fails without that consideration.

Regarding item 2E, the landlord has claimed \$150 to clean a wall fan. I find that this item must fail as the landlord provided no evidence that there were instructions provided on how to remove and clean a fan attached to the wall. In addition, I find that due to no photo evidence or a receipt that the landlord has not met the burden of proof. This item is therefore dismissed without leave to reapply, due to insufficient evidence.

Regarding item 2F, the landlord has claimed \$798.76 for a new dishwasher which I find fails due to a lack of receipt and any lack of specifics in terms of the age of the dishwasher. RTB Policy Guideline 40 – *Useful Life of Building Elements* states that a dishwasher has a useful life of 10 years. Given that the home was built in 2006 and considering that the landlord was not certain if the dishwasher was original, I find the landlord has failed to meet the burden of proof to support that the dishwasher was not 100% depreciated by the end of the tenancy. Therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

Regarding item 3, the landlord is claiming \$1,000 for the rental loss of February 1-15, 2022, when new tenants moved in. The landlord claims that they are relying on the photos of the condition of the rental unit in support of the loss of February 1-15, 2022. Given my earlier finding that the tenant's response of the rental unit needing to be "wiped down" was an understatement, I find the tenants are liable for the loss of February 1-15, 2022, rent due to the unreasonably dirty condition the rental unit was left in. Therefore, based on the earlier mentioned breach of section 37(2)(a) of the Act, I also grant the landlord **\$1,000** as claimed for loss of that amount from February 2022 rent.

As the landlord's claim was partially successful, I grant the **\$100** filing fee pursuant to section 72 of the Act.

Given the above, I find the landlord has established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT
1. Cleaning costs	\$1,200
2. Repairs	\$200 by mutual agreement for move in/out fees
3. Rental loss for first half of February 2022	\$1,000
4. Filing fee	\$100

<b>TOTAL</b>	<b>\$2,500</b>
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I will now calculate the interest on the \$850 security deposit being held by the landlord. Under the Act, the interest is **\$5.50**. Therefore, I find the landlord is holding \$855.50 in the combined security deposit including interest. I authorize the landlord to retain the tenant's entire \$855.50 security deposit including interest, in partial satisfaction of the landlord's monetary claim.

The landlord is granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of **\$1,644.50**.

### Conclusion

The landlord's application was partly successful.

The landlord has established a total monetary claim of \$2,500 which has been offset with the security deposit including interest of \$855.50.

The landlord has been granted a monetary order for the balance owing by the tenant to the landlord of \$1,644.50.

Should the tenant fail to pay that amount, the landlord must serve the monetary order on the tenant with a demand for payment letter. Then the landlord may enforce the monetary order as an order of the Provincial Court of British Columbia, Small Claims Division.

The tenant is reminded that they may be held responsible for the costs related to enforcing the monetary order including court fees.

The decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 1, 2023