



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, 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 regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 1:56 pm to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The tenant did not attend the hearing. The landlord, represented by agent TM (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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.

I accept the landlord's uncontested testimony that she served the notice of hearing and the evidence (the materials) to the tenant's forwarding address on September 26, 2022. The landlord affirmed the tenant did not provide the forwarding address but moved to another rental unit managed by the landlord. The landlord submitted into evidence a new tenancy agreement signed by the tenant on August 11, 2022 for a fixed-term tenancy from September 01, 2022 to August 31, 2023.

The forwarding address and the tracking number are recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the August 11, 2022 tenancy agreement, I find the landlord served the materials in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5<sup>th</sup> day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on October 01, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. 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 party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord testified the tenancy started on August 01, 2021 and ended on August 31, 2022. Monthly rent was \$1,800.00, due on the first day of the month. The landlord collected a deposit of \$900.00 and holds it in trust. The tenancy agreement was submitted into evidence. It states the tenant agrees to pay the strata move-out fee of \$50.00.

The landlord stated the 3-bedroom, 1,158 square feet rental unit was painted before the tenancy started.

The landlord is claiming \$1,462.50, as the tenant caused extensive damage to the walls by putting tape strips on the walls and ripped the drywall. The landlord submitted an invoice for \$1,951.15 for drywall repairs on September 12, 2022. The landlord decided to ask only for the amount claimed. The move out inspection report (the report)

indicates “led damage / dirty” in the dining and living rooms and bedroom walls and ceilings.

The landlord is claiming \$87.00, as the tenant did not return the garage fob. The landlord submitted an invoice for the amount claimed dated September 02, 2022.

The landlord is claiming \$336.00, as the tenant did not clean the rental unit. The landlord submitted an invoice for the amount claimed dated September 13, 2022. The landlord said the cleaners worked for 12 hours at \$28.00 per hour. The report states the sundeck, entrance area, kitchen, dining and living room, bathroom and bedrooms were dirty when the tenancy ended.

The landlord is claiming \$50.00, as the tenant did not pay the move-out strata fee.

The landlord is claiming \$38.00, as the tenant did not return the mailbox key.

The landlord paid for all the expenses claimed and submitted a monetary order worksheet.

### Analysis

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Residential Tenancy Branch (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 applicant has to prove the respondent failed to comply with the Act, the applicant suffered a loss resulting from the respondent’s non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, 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.

### Wall damage

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”.

RTB Policy Guideline 1 states the tenants are responsible for negligent wall damages:

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 landlord's convincing testimony, the inspection and the invoice, I find the landlord proved, on a balance of probabilities, the tenant breached section 32(3) of the Act by failing to repair the damaged walls and the landlord incurred the loss claimed.

I award the landlord \$1,462.50.

Garage fob

Section 37(2)(b) of the Act states the tenant must return all the keys to the tenants when the tenancy ends.

Based on the landlord's convincing testimony and the invoice, I find the landlord proved, on a balance of probabilities, the tenant breached section 37(2)(b) of the Act by failing to return the garage fob and the landlord incurred the loss claimed.

I award the landlord \$87.00.

### Cleaning

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

RTB 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.”

Based on the landlord’s convincing and undisputed testimony, the report and the invoice, I find the landlord proved, on a balance of probabilities, that the tenant breached section 37(2)(a) of the Act by not cleaning the rental unit and the landlord suffered the loss claimed.

I award the landlord \$336.00.

### Move-out strata fee

Based on the landlord’s uncontested testimony and the tenancy agreement, I find the tenant agreed to pay the \$50.00 move-out fee and did not pay this fee. I find the tenant breached the tenancy agreement by not paying the move out fee and the landlord suffered the loss claimed.

I award the landlord \$50.00.

### Mailbox key

Based on the landlord’s convincing testimony, I find the landlord proved, on a balance of probabilities, the tenant breached section 37(2)(b) of the Act by failing to return the mailbox key and the landlord incurred the loss claimed.

I award the landlord \$38.00.

### Filing fee and deposit

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a

landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$900.00 deposit in partial satisfaction of the monetary award.

In summary, the landlord is entitled to:

<b>Expenses</b>	<b>\$</b>
Wall damage	1,462.50
Garage fob	87.00
Cleaning	336.00
Move-out fee	50.00
Mailbox key	38.00
Filing fee	100.00
Subtotal	2,073.50
Deposits (minus)	900.00
<b>Total</b>	<b>1,173.50</b>

### Conclusion

Pursuant to sections 67 and 72 of the Act, I authorize the landlord to retain the \$900.00 deposit and grant the landlord a monetary order in the amount of \$1,173.50.

The landlord is provided with this order in the above terms and 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 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: June 09, 2023

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Residential Tenancy Branch