



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

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

1. An Order for the Tenants 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 Sections 38, 62 and 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Property Manager, her Support/Translator, and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on August 15, 2022, Canada Post Tracking Number on cover sheet of decision, the Tenants confirmed receipt, deemed served on August 20, 2022; and,

- the Tenants' evidence served by registered mail on April 21, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on April 26, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

1. Is the Landlord entitled to an Order for the Tenants 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 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 parties confirmed that this tenancy began as a fixed term tenancy on August 1, 2020. The fixed term ended on July 31, 2021, then the tenancy continued on a month-to-month basis. The Landlord stated the monthly rent was \$3759.00 and utilities were \$375.00 payable on the first day of each month. The Tenant stated monthly rent was \$3,759.25 and utilities were \$250.00 per month. The parties confirmed that a security deposit of \$1,850.00 was collected at the start of the tenancy and is still held by the Landlord.

A move-in condition inspection was completed on July 22, 2020, and a move-out condition inspection was completed on July 17, 2022.

The Landlord testified that she had completed a total renovation before renting to the Tenants. When she received the rental unit back, there were drawings on the walls, even the wood walls, by the Tenants' children. She reported that there were scratches on the wood baseboards, many door frames were damaged, and several areas of tiled floors were damaged. She stated that the Tenants had made holes in the rock fireplace front, and in one outside wall between some bricks. The Landlord argued that the Tenants did not clean the bathroom and oven, and some window blinds and curtains were broken.

The Tenant included in his documentary evidence a copy of the move-in and move-out condition inspection report.

The Landlord sent a July 17, 2022 quote for repairs to the Tenant that needed to be completed in the rental unit:

	Description	Qty	Unit price	Total
1	Patch up & touch up the damaged walls	1	\$1,500.00	\$1,500.00
2	Repairing the floor	1	\$1,800.00	\$1,800.00
3	Re-staining the wooden wall	1	\$1,400.00	\$1,400.00
4	Replacing the door screen	1	\$350.00	\$350.00
5	Replacing the vanity face panels	1	\$550.00	\$550.00
6	Cleaning	1	\$500.00	\$500.00
Subtotal				\$6,100.00
Tax 5%:				\$305.00
Grand Total				\$6,405.00

*Walls:*

The Landlord testified that the Tenants' children drew over many walls inside the rental unit, including those walls made of wood. The Landlord uploaded pictures of these markings. The Landlord claims damages to baseboards and door frames.

The move-out condition inspection report noted that in the main bathroom "paint pilled of on the door trim, pen scratches on the right side top drawer, marker on  $\Sigma$  - the cabinet drawer, tub is not clean."

In the hallway, the move-out condition inspection report noted there were marker drawings on the wall and scratches.

In bedroom (2), the move-out condition inspection report noted there were marker drawings and scratches on the wall on the left side of the door.

The Landlord claimed \$1,500.00 to patch up and repair damaged walls, and \$1,400.00 to re-stain the wooden wall. The Tenants confirmed there is a chance that the "kids' did the drawings on the wood walls, but they deny that the repair and re-staining of the wood wall(s) would total \$1,400.00.

*Floors:*

The Landlord said the floors were a 'problem'. The move-out condition inspection report noted that the floor in the kitchen was good. There was a notation on page 3 of the move-in/out condition inspection report that "the floor in kitchen – some tile seems loose". The property manager confirmed this was the only damage to the floors at move-in. The Tenants are not aware of any damage, but say if there was any, it is normal wear and tear.

The Landlord's quotation noted that repairing the floor would be a total of \$1,800.00.

*Door screen:*

The Landlord testified that the door screen on the balcony door was ripped out at the bottom. She uploaded a picture showing this damage. The Landlord's Support stated that the screen was torn, and they could not simply press it back into the frame.

The Landlord's quote claimed \$350.00 to repair this damage.

The Tenants said that the rubber tubing/gasket was pulled out around the screening on the door. They said they probably forgot to do that repair. They deny that that repair costs \$350.00.

*Vanity face panels:*

The Landlord testified that the Tenants' children drew on the vanity with some kind of pen in the main bathroom. She uploaded a picture showing this damage on one drawer edge.

The Landlord's quote claimed \$550.00 to replace the vanity face panels.

The Tenant stated it may have been possible that his small children did these drawings.

*Cleaning and Kitchen stove/oven:*

On July 22, 2020, the move-in condition inspection report noted that all items were in good condition. On July 12, 2022, the move-out condition inspection noted that underneath the exhaust hood above the stovetop it was dirty. The Landlord's verbal testimony also was that the Tenants did not clean the oven. The Tenant included a video walk-through he did alone, and he did not open the oven door displaying the condition inside the oven, while he did open the refrigerator doors showing the inside of the refrigerator.

The Landlord claimed \$500.00 for cleaning in the rental unit.

The Tenant testified that he gave the Landlord her house cleaner than what she gave him.

*Livingroom fireplace:*

The Landlord testified that the Tenants put holes in the stonework above the fireplace. The Landlord uploaded two pictures showing the holes in the stonework above the fireplace. The move-in condition inspection report noted the fireplace was good, on move-out there was no indication of the damage to the fireplace, but there also was not an indication that the fireplace was good. The box was left unmarked at move-out.

There was no quotation for the repair of this alleged damage to the fireplace.

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 adjourned allowing a chance for the Tenants to serve their evidence on the Landlord. The Interim decision granted an opportunity to the Tenants to serve their evidence on the Landlord, but it was not a reciprocal opportunity for the Landlord, as the Landlord had already served their evidence on the Tenants. I decline to consider the new evidence the Landlord uploaded; however, I did take testimony from the Landlord and her property manager on it.

***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*

...

***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.*

Residential Tenancy 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 guideline must be read in conjunction with Sections 7 and 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 Tenants did not leave the rental unit reasonably clean, and undamaged at the end of the tenancy breaching Section 37(2)(a) of the Act. The Landlord provided evidence of marked up walls and wooden walls in the rental unit. She uploaded some pictures of chipped baseboards and doorframes. She uploaded pictures of a damage door screen and vanity doors that had been drawn on. The Landlord also claimed that the rental unit was not left reasonably clean, especially the oven and under the exhaust hood.

I find the Tenants breached Section 37(2)(a) of the Act and that this damage was not reasonable wear and tear. I find the Landlord has substantiated her claims for damaged

walls totalling **\$1,500.00 plus GST**, and to repair and re-stain the wood wall, I grant the Landlord **\$1,400.00 plus GST**.

The Landlord claimed cleaning costs totalling \$500.00; however, I find this amount to be excessively high for a cleaning of the rental unit's stovetop, under the exhaust hood and the oven. The Landlord testified that the wall repair and painter people also charged her for their clean-up. I find that the wall repair person and painters would have included the costs of their clean up in their quotes; however, I find an amount of **\$80.00 plus GST** to be reasonable to clean the stovetop, under the exhaust hood and the oven and I grant this to the Landlord.

The Landlord claimed \$550.00 to replace the front panels of the vanity which had drawings on them. The Tenant stated it may have been possible that his children did these drawings. Like the wooden walls, the materials of the vanity may not be easily cleaned of the ink used to make the drawings, and it would take some work to replace these two front panels. I find the Landlord has substantiated this claim, and I grant compensation to the Landlord for this repair totalling **\$550.00 plus GST**.

The Landlord claimed \$350.00 to replace the door screen on the balcony door. I find the Landlord has not substantiated this amount to replace the door screen. I find the Landlord is entitled to **\$150.00 plus GST** to replace the screen in the balcony door.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

The Landlord's total monetary award is calculated as follows:

<b>Items</b>	<b>Amount</b>
Repair damaged walls	\$1,500.00
Repair & re-stain wood wall	\$1,400.00
Clean stovetop, under exhaust fan, oven	\$80.00
Replace vanity panels	\$550.00
Replace screen in balcony door	\$150.00
GST on above items	\$184.00
Application filing fee	\$100.00
Less security deposit	-\$1,850.00
<b>Total monetary order</b>	<b>\$2,114.00</b>

The parties gave testimony about compensation that may be due to the Tenants for excessive water use due to a possible leak. The Tenants have not made a monetary claim to recoup this money that was taken out of their account without their authorization. I do not have the ability to assess this claim, and the Tenants are free to apply to the RTB to make a monetary claim against the Landlord.

### Conclusion

I grant the Landlord a Monetary Order in the amount of \$2,114.00, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: June 02, 2023

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Residential Tenancy Branch