



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 3, 2022, wherein the Landlord sought monetary compensation from the Tenant in the amount of \$15,378.00 for damages and repairs to the rental unit, authority to retain the Tenant's security deposit towards any amounts awarded and recovery of the filing fee.

The hearing of the Landlord's application was scheduled for teleconference at 1:30 p.m. on June 27, 2023. Only the Landlord and his daughter, S.D. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:52 p.m. Additionally, 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 S.D. and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. S.D. testified that they served the Tenant with the Notice of Hearing and the Application on October 19, 2022 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

According to information provided by Canada Post, the Tenant received the package on October 21, 2023; accordingly, I find the Tenant was duly served as of October 21, 2023 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for the cost to repair and clean the rental unit?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

S.D. testified on behalf of the Landlord. She confirmed that this tenancy began January 30, 2013 and ended on December 5, 2021. The Tenant paid monthly rent in the amount of \$1,000.00 and paid a security deposit of \$325.00.

S.D. testified that the rental home was built in 1995. The bathroom in the rental unit was completely renovated in 2015 and the carpets were replaced in 2012. The Landlord provided photos of the rental unit taken at the start of the tenancy as well as at the end. S.D. argued that the condition of the rental unit at the end of the tenancy suggested the Tenant intentionally damaged the rental unit as there were numerous holes in the walls, and the cabinetry was pulled out and significantly damaged.

S.D. noted that they live upstairs and have the same fixtures and appliances in their home and their cabinets are in good condition. Similarly, she noted that there is another rental unit in the basement on the left side which is also in good condition. The Landlord argued that this suggests the damage to the rental unit by the Tenant was intentional.

S.D. further noted that the amounts claimed by the Landlord does not represent all the expenses they incurred to repair the unit as they did a lot of the work on their own. She confirmed they only claimed for amounts for which they had receipts.

### Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's undisputed testimony and evidence and find the Tenant damaged the rental unit over and above normal wear and tear. The photos submitted by the Landlord support their claim and show considerable damage to the walls, kitchen counters and cabinetry and doors. Additionally, the flooring in the bathroom was damaged due to water overflows or lack of cleaning. Many of the screens required replacement. The Tenant also left items to be disposed of by the Landlord and the photos indicate the rental unit required additional cleaning.

A tenant is required to leave a rental unit undamaged at the end of a tenancy. Reasonable wear and tear is not considered damage. Where a tenant leaves a rental unit damaged and does not repair the damage prior to the end of their tenancy the landlord may seek compensation from the tenant.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. 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.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

*Policy Guideline 40* also provides a table setting out the useful life of most building elements. A review of this table indicates that some of the items for which the Landlord seeks compensation may have already reached their useful life and would have required replacement in any event of the tenancy.

I am mindful that this was a long term tenancy. Further, the rental unit was built in 1995 and aside from new carpet in 2012 and a bathroom renovation in 2015, the fixtures in the unit were 26 years old.

The Landlord claims the sum of \$15,378.00 for cleaning and repair of the rental unit. I find it appropriate to reduce this claim by 25% in recognition of the length of the tenancy as well as the age of the rental unit and I award the Landlord the sum of **\$11,533.50** for compensation for cleaning and repairs to the rental unit. As the Landlord has been successful in their Application, I also award them recovery of the **\$100.00** filing fee.

Pursuant to section 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$325.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order in the amount of **\$11,308.50**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Compensation for damages and cleaning	\$11,533.50
Filing fee	\$100.00
Total	\$11,633.50
<i>Less security deposit</i>	<i>\$325.00</i>
<b>TOTAL MONETARY AWARD</b>	<b>\$11,308.50</b>

### Conclusion

The Landlord's claim for monetary compensation for cleaning and repairs to the rental unit and recovery of the filing fee is granted. The Landlord is entitled to retain the Tenant's security deposit and is granted a Monetary Order for the balance due.

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: July 13, 2023

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Residential Tenancy Branch