



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes:**

MNDL-S, MNRL-S, MNDCL-S, FFL, FFT

### **Introduction**

This hearing was convened on April 27, 2023 in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The hearing was adjourned for reasons outlined in my interim decision of April 27, 2023. The hearing was reconvened on August 21, 2023 and was concluded on that date.

In my interim decision I directed the Landlord to re-serve the Tenant with the Landlord's Application for Dispute Resolution Package and all evidence previously submitted to the Residential Tenancy Branch for these proceedings. The Landlord stated that these documents were served to the Tenant, via email, on May 30, 2023. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

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Residential Tenancy Branch for these proceedings. The Tenant stated that these documents were served to the Landlord, via email, on May 31, 2023. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 30, 2023 the Landlord submit one piece of new evidence. The Landlord stated that this evidence was served to the Tenant, via email, on May 30, 2023. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, unpaid utilities, and lost revenue?

Should the security deposit be retained by the Landlord or returned to the Tenant?

#### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on March 01, 2021;
- on July 01, 2022, the Tenant gave the Landlord notice that the tenancy was ending on July 06, 2022, by text message;
- the rental unit was vacated on July 06, 2022;
- the Tenant agreed to pay monthly rent of \$2,550.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,275.00;
- the Tenant paid a pet damage deposit of \$1,275.00;
- a condition inspection report was not completed at the beginning of the tenancy, although the unit was jointly inspected;

- a condition inspection report was not completed at the end of the tenancy and the unit was not jointly inspected; and
- the Tenant provided a forwarding address, by text message.

The Landlord stated the forwarding address was provided on July 18, 2022. The Tenant stated the forwarding address was provided during the first or second week of July of 2022.

The Landlord is seeking compensation for lost revenue from August of 2022. The Landlord stated that on July 01, 2022 she began advertising the rental unit, for monthly rent of \$2,900.00. The Landlord stated that the unit was re-rented for September 15, 2022, at a monthly rate of \$2,900.00.

The Landlord is seeking compensation of \$206.55 for unpaid utilities. The parties agree that the Tenant was required to pay for sewer, water, and garbage disposal during the tenancy. The Tenant agrees that she still owes \$206.55 for utilities and that it should be deducted from her security deposit.

The Landlord is seeking compensation, in the amount of \$1,515.15 for landscaping. The Landlord stated that this expense was not incurred, although the Landlord and her husband spent approximately 8 hours mowing the lawn and repairing damaged areas on the lawn. The Landlord submitted photographs of the lawn, which needs mowing and has some damaged areas. The Landlord stated that these photographs were taken on July 16, 2022. The photographs are dated July 15, 2022. The Landlord stated that there were no damaged areas on the lawn at the start of the tenancy.

The Tenant stated that the lawn was mowed on July 07, 2022, which is the day after the unit was vacated. She stated that the lawn had some damaged areas when the tenancy began and some damaged areas when the tenancy began.

The Landlord is seeking compensation, in the amount of \$897.73, for replacing the carpet on the stairs. The Landlord submitted a copy of a receipt for this expense. The Landlord submitted photographs of the carpet, which the landlord stated were taken on July 16, 2022, in which the carpet appears very dirty. The photographs of the carpet are dated July 15, 2022. The Landlord stated that the carpet was installed approximately 3 years ago.

The Tenant stated that she had the carpet professionally cleaned at the end of the tenancy and that they were clean at the end of the tenancy. She stated that the

photographs submitted by the Landlord do not represent the condition of the carpet during, or after the end, of the tenancy, although she acknowledges they are photographs of the stairs in the unit.

The Landlord is seeking compensation, in the amount of \$145.68 plus tax, for replacing window screens. The Landlord stated that the window screens were replaced approximately 6 months prior to the start of the tenancy and that several of them were damaged at the end of the tenancy. The Landlord submitted a receipt to show that the Landlord incurred this expense.

The Landlord submitted photographs of several damaged screens. The Tenant stated that damage to the screens was present at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$213.60 plus tax, for replacing door handles. The Landlord stated that 6 lever style door handles had been removed and replaced with a different style of door handle. The Landlord submitted a receipt to show that the Landlord paid \$213.60 for 5 door handles.

The Tenant acknowledged that she removed several door handles and replaced them with a different style.

The Landlord is seeking compensation, in the amount of \$32.44 plus tax, for replacing approximately 6 lightbulbs. The Tenant stated that no light bulbs needed replacing at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$9.33 plus tax, for wood filler used for repairing door casings that were chewed by the Tenant's dog. The Landlord is also seeking compensation, in the amount of \$78.79, for paint used to complete this repair. The Tenant agreed that the casings were damaged by her dog. The Landlord submitted receipts to show that these expenses were incurred.

The Landlord is seeking compensation, in the amount of \$845.00, for cleaning the unit and disposing of items left behind. The Landlord submitted documents to show that these expenses were incurred.

The Landlord stated that the rental unit needed significant cleaning at the end of the tenancy. The Tenant stated that she had the unit professionally cleaned at the end of the tenancy and additional cleaning was not required.

The Landlord submitted numerous photographs of the rental unit, dated June 15, 2022, which show areas of the unit in significant need of cleaning.

The Tenant stated that she submitted photographs to the Residential Tenancy Branch which show the rental unit was clean at the end of the tenancy. The Tenant was advised that I have no Tenant photographs before me. The Landlord stated that the Tenant did not served photographs to the Landlord.

The Landlord is seeking compensation, in the amount of \$19.98, for replacing an exterior electrical cover. The Landlord submitted a photograph of the damaged unit, dated June 15, 2022. The Tenant stated that the cover was not damaged when she vacated the property.

The Landlord is seeking compensation, in the amount of \$39.35, for replacing a bathtub stopper. The Landlord stated that she damaged the stopper when she was clearing a large amount of hair from the drain. The Tenant stated that she was not aware there was hair in the drain.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

Section 45(1) of the *Residential Tenancy Act (Act)* permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day

before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

On the basis of the undisputed testimony, I find that on July 01, 2022, the Tenant gave the Landlord notice to end the tenancy.

I find that the Tenant failed to provide notice to end the tenancy in a manner that complies with section 45(1) of the *Act*. In order to end this tenancy on July 31, 2022, in accordance with section 45(1) of the *Act*, the Tenant would have had to give notice to end the tenancy on, or before, June 30, 2022.

Section 67 of the *Act* authorizes me to order a tenant to pay money to a landlord if the landlord suffered a loss as a result of the tenant breaching a section of the *Act*. While I accept that the Tenant breached section 45(1) of the *Act* when the Tenant gave notice to end the tenancy one day after the deadline for giving notice had passed, I am not satisfied that this late notice significantly contributed to the Landlord's inability to find a new tenant for August 01, 2022.

On the basis of the Landlord's testimony that she began advertising the rental unit on July 01, 2022, I find that she was not unduly disadvantaged by the late notice provided by the Tenant. Had the Tenant provided notice to end the tenancy in the late evening of June 30, 2022, which she was legally entitled to do, it is entirely possible that the Landlord would not have advertised the unit until July 01, 2022.

On the basis of the Landlord's testimony, I find that the Landlord was asking rent of \$2,900.00 when advertised the unit on July 01, 2022, which is \$350.00 more than the Tenant was paying. I find it entirely possible that the increased rent contributed to the Landlord's inability to find a new tenant for August 01, 2022. Had the unit been advertised for \$2,550.00, I find it entirely possible the unit could have been re-rented for August 01, 2022.

I find that the Landlord has failed to establish that the late notice to end the tenancy significantly created to the Landlord's inability to re-rent the unit for August 01, 2022. As such, I find that the Tenant is not obligated to compensate the Landlord for lost revenue from August of 2022. The claim for lost revenue is dismissed.

As the Tenant agreed that she owes \$206.55 for unpaid utilities, I grant the Landlord's claim for \$206.55.

I find that the Landlord has submitted insufficient evidence to establish that the condition of the lawn had significantly deteriorated during this tenancy. I find that the Landlord submitted insufficient evidence to corroborate her submission that the lawn did not have damaged areas at the start of the tenancy or to refute the Tenant's submission that it had damaged areas. Although the Landlord submitted a photograph of the lawn, which was taken prior to the start of the tenancy, the photograph is taken from a distance and does not provide sufficient detail to determine if there were damaged areas. I note the photographs of the lawn which were taken at the end of the tenancy show very close-up photographs of the damaged areas.

As the Landlord has failed to establish that the lawn was damaged during the tenancy, I dismiss the Landlord's claim for repairing damaged spots on the lawn.

Although the Landlord submitted photographs of the yard that show the lawn needed mowing, the Landlord's testimony is that these photographs were taken on July 16, 2022, which is 10 days after the rental unit was vacated.

In the absence of evidence to the contrary, I accept the Tenant's testimony that the lawn was mowed on July 07, 2022. I find it reasonable to conclude that the lawn growth shown in the Landlord's photographs could have occurred in the 9 days after the lawn was last mowed by the Tenant. I find that Landlord is not entitled to costs associated to mowing the lawn after the unit was vacated.

I favour the testimony of the Landlord, who stated that the carpet on the stairs was very dirty at the end of the tenancy, over the testimony of the Tenant, who stated that it was not dirty at the end of the tenancy. In reaching this conclusion, I was heavily influenced by the photographs of the stairs, which are dated July 15, 2022, which clearly show the carpet is extremely dirty. I find the Tenant's testimony that the photographs do not fairly represent the condition of the carpet at the end of the tenancy is simply unbelievable. I find it highly unlikely that the dirt depicted in the photographs could have accumulated between July 06, 2022, when the unit was vacated, and July 15, 2022, when the photographs were taken. I therefore find that the most reasonable conclusion is that the photographs fairly depict the condition of the stair carpet at the end of the tenancy.

I find that the Tenant breached section 37(2) of the *Act* when the Tenant did not leave the carpet on the stair in reasonably clean condition. Given the condition of the carpet at the end of the tenancy, I find it reasonable that the carpet was replaced, rather than cleaned.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. On the basis of the undisputed testimony that the carpet on the stairs was three years old, I find that the carpet has depreciated by thirty percent. I therefore find that the Landlord is entitled to seventy percent of the cost of repainting the carpet, which in these circumstances is \$628.41.

I find that the Landlord has submitted insufficient evidence to establish that the window screens were in good condition at the start of the tenancy. In reaching this conclusion, I was heavily influenced by the absence of evidence, such as a condition inspection report, which established that the screens were in good condition at the start of the tenancy or that refutes the Tenant's testimony that they were damaged at the start of the tenancy.

As the Landlord has failed to establish that the window screens were in good condition at the start of the tenancy, the Landlord cannot establish that they were damaged by the Tenant during the tenancy. As such, I dismiss the claim for replacing window screens.

On the basis of the undisputed evidence, I find that the Tenant removed several door handles and replaced them with a different style of handle. While a tenant has the right to change a door handle if they wish, they must replace the original handle at the end of the tenancy, unless they have the landlord's permission to alter the unit in this manner.

As the Tenant did not reinstall the original door handles, I find that the Landlord is entitled to the \$213.60 plus tax of \$25.63 that she paid to replace the original handles.

I find that the Landlord has submitted insufficient evidence to establish that lightbulbs needed replacing at the end of the tenancy. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's testimony that lightbulbs needed replacing or that refutes the Tenant's testimony that they did not need replacing. As the Landlord has failed to establish lightbulbs needed replacing, I dismiss the claim for replacing them.



As the Tenant acknowledged that door casings were damaged by a dog, I find that the Landlord is entitled to the cost of repairing them. This includes \$9.33 plus tax of \$1.12 for wood filler and \$78.79 for paint.

I favour the testimony of the Landlord, who stated that the rental unit needed cleaning at the end of the tenancy, over the testimony of the Tenant, who stated that it did not require cleaning at the end of the tenancy. In reaching this conclusion, I was heavily influenced by the photographs of the unit, which are dated July 15, 2022, which clearly show the unit was not left in reasonably clean condition. I find it highly unlikely that the dirt depicted in the photographs could have accumulated between July 06, 2022, when the unit was vacated, and July 15, 2022, when the photographs were taken. I therefore find that the most reasonable conclusion is that the photographs fairly depict the condition of the unit at the end of the tenancy.

I find that the Tenant breached section 37(2) of the *Act* when the Tenant did not leave the unit in reasonably clean condition and that the Landlord is entitled to recover the \$845.00 she paid to clean the unit and to dispose of garbage.

Although the Tenant stated that she submitted photographs to the Residential Tenancy Branch which show the rental unit was clean at the end of the tenancy, those photographs were not before me and could not, therefore, be considered.

I favour the testimony of the Landlord, who stated that an exterior electrical cover was damaged at the end of the tenancy, over the testimony of the Tenant, who stated that it was not damaged at the end of the tenancy. In reaching this conclusion, I was heavily influenced by the photograph of the damaged item, which is dated July 15, 2022. I note that there are paw marks on the wall beside the outlet, which causes me to conclude that it is quite likely that the damage was caused by the Tenant's dog. I therefore find that the Landlord is entitled to recover the cost of repairing the cover, which is \$19.98.

On the basis of the testimony of the Landlord, I find that she broke the bathtub stopper when she was cleaning hair from the drain. As this damage was not caused by the Tenant, I find that the Tenant is not responsible for repairing it and I dismiss the claim for this cost. While I accept that the Tenant should have cleaned the hair from the drain, the Tenant cannot be held liable for the manner in which it was cleaned. I am aware that hair can typically be removed from a drain without damaging the stopper.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,028.41, which includes \$206.55 for utility charges, \$628.41 for replacing carpet, \$239.23 to replace door handles, \$89.24 to repair door casings damaged by the Tenant's dog, \$845.00 for cleaning/garbage disposal, and \$19.98 to repair an exterior electrical outlet cover. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$2,028.41 from the Tenant's security and pet damage deposit of deposit of \$2,550.00.

As the Landlord has not established a right to retain all of the security/pet damage deposit, I find that the Landlord must return the remainder of the deposits, which is \$521.59.

Based on these determinations I grant the Tenant a monetary Order for \$521.59. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

I find that the Application for Dispute Resolution filed by each party has some merit. As such, I find that each party is responsible for the costs of filing their own Application for Dispute Resolution. The claims to recover the filing fees are dismissed.

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: August 22, 2023

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Residential Tenancy Branch