



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, MNDL, MNDCL, FFL; MNDCT, MNSD, MNETC, FFT**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the Act) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act.
- A monetary order for unpaid rent and for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for the following:

- A monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act.
- An order for the landlord to return the security deposit pursuant to section 38.

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended, each with a translator.

Service

Each party acknowledged service of the documents of the other party. Each party served the other in compliance with the Act.

Issue(s) to be Decided

Issues Landlord

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Issues – Tenant

Is the tenant entitled to a Monetary Order?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to compensation for a Two Month Notice issued in compliance with the Act?

Is the tenant entitled to reimbursement of the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

The tenant clarified that their application is for:

1. Reimbursement of double the security deposit.
2. Compensation for rent for one month as promised by landlord.
3. Compensation for one month's rent following issuance of Two Month Notice

	ITEM - TENANT'S CLAIMS	AMOUNT
1.	Double security deposit	\$2,000.00
2.	Reimbursement one month's rent	\$2,035.00
3.	Compensation of one month's rent - Notice	\$2,030.00
	TOTAL	\$6,065.00

At the hearing, the landlord clarified that their application is:

1. Compensation for damage to the unit
2. Authorization to retain the security deposit.
3. Compensation for strata fines

	ITEM - LANDLORD'S CLAIMS	AMOUNT
1.	Replacement carpet	\$2,231.14
2.	Replacement blinds	\$3,000.00
3.	Painting, Cleaning	\$6,087.50
4.	Strata fines	\$800.00
	TOTAL	\$12,118.64

The landlord stated they do not have a claim for outstanding rent. Accordingly, this aspect of the landlord's claim is dismissed without leave to reapply.

Tenancy

The parties agreed as follows.

The tenancy began on May 1, 2021, and ended on March 1, 2023. The tenant paid a security deposit of \$1,000.00 which the landlord holds without the tenant's authorization.

The landlord gave the tenant a letter dated February 26, 2023, telling the tenant to move out on May 1, 2021, as the landlord was moving in. The letter is not a notice in the RTB form.

The tenant moved out a few days later, March 2, 2023.

Condition Inspection Report

No condition inspection report on moving in or moving out was completed or submitted as evidence.

Forwarding address

The tenant provided his forwarding address on March 10, 2023. The landlord acknowledged receipt.

Tenant's Claims

1. Security Deposit

The parties agreed the landlord is holding the tenant's security deposit in the amount of \$1,000.00 without the tenant's consent.

The tenant requested a doubling of the security deposit for failure to return as required under the Act.

The landlord said he is entitled to keep the security deposit as partial compensation for damages.

2. Reimbursement of Rent for March 2023

The tenant testified as follows.

The landlord gave the tenant a letter dated February 26, 2023, telling the tenant to move out on May 1, 2021, as the landlord was moving in. The letter is not a notice in the RTB form.

The landlord told the tenant he could move out early on March 1, 2023, and the landlord would reimburse rent paid for March 2023.

However, on March 6, 2023, the parties met in the unit. The tenant was expecting a cheque for \$2,035.00 for rent paid for March 2023 (in error, \$5.00 more than the rent).

Nevertheless, the tenant said the landlord made an excuse for not having the cheque.

The landlord testified as follows. They agreed they told the tenant they would reimburse him for rent for March 1, 2023, in the amount he paid, \$2,035.00. However, they were shocked at the condition of the unit which they saw for the first time on March 6, 2023. They were afraid of the tenant, did not say anything, decided not to reimburse the rent, and just wanted to get out of the unit.

On March 9, 2023, the landlord wrote the tenant and again promised the return of the rent for March 2023 as soon as the tenant returned the key. A copy of this letter was submitted.

The tenant mailed the key back on March 10, 2023, and the landlord acknowledged receipt. The landlord did not return rent for March 2023.

3. Compensation for one month's rent – Two Month Notice

When a landlord ends a tenancy to use the property, they must compensate the tenant the equivalent of one month's rent.

The parties agreed the landlord did not issue a Two Month Notice in the RTB form. The landlord gave the tenant a letter dated February 26, 2023, telling the tenant to move out on May 1, 2021, as the landlord was moving in.

The tenant said he is entitled to one month's rent as compensation under the Act.

The landlord denied the tenant's claim.

Landlord's Claims

1. *Carpets*
2. *Blinds*
3. *Painting/Cleaning*

The landlord testified as follows.

The landlord purchased the unit in 2012. He had lived in it, and so had other tenants. The carpets and blinds were original to the unit and were in good condition at the start of the tenancy.

The landlord claimed the tenant damaged the unit by inadequately ventilating the unit.

The lack of ventilation caused mold to grow which harmed the carpets and covered the blinds and walls. The landlord discovered this for the first time in the meeting of March 6, 2023.

The carpet and blinds had to be replaced at the cost claimed. The landlord submitted supporting receipts.

The landlord did not submit any evidence of the existence, type, cause or prevalence of the mold.

The preceding tenant had painted the unit before the tenant moved in. The landlord submitted a copy of the letter from the previous occupant stating this. Therefore, the painting was two years old when the tenancy ended. Because of the mold, cleaning and

painting were required, together reflected on one receipt. The landlord provided no breakdown of the receipt.

The tenant denied all the landlord's claims.

The landlord took advantage of the tenant by renting a dirty apartment which had a mold problem. Throughout the tenancy, the mold condition worsened. The tenant reported the mold to the landlord, and the landlord did nothing. The tenant adequately cared for the unit.

The tenant said he would have been evicted during the two years of the tenancy if he had done the damage claimed by the landlord. Instead, they promised the tenant to return his rent for March 2023. They had no reason not to honor their promise.

The landlord is seeking to recover replacement costs for old items, well past their useful life, such as the blinds and carpet. There was no reason to repaint the unit except to clean up the mold for which the tenant was not responsible.

4. Strata fines

The landlord stated the tenant incurred strata fines of \$800.00 and submitted supporting documentary evidence for \$200.00 only.

The tenant stated he was unaware of any strata fines and denied responsibility.

Analysis

I do not reference all the evidence. I refer to only relevant, admissible evidence and key facts in support of my findings.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims. Also, it is up to the tenant to establish their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act.

Credibility

In considering the application, I weighed the credibility of the parties.

I find the landlord's version of events that the tenant caused the damage and should pay for all repairs claimed to be disingenuous and self-serving. The landlord acknowledged the items were original to the unit and 11 years old, except for the paint which was two years old.

The landlord submitted sparse and unconvincing evidence about the condition of the unit when the tenant moved in. The landlord did not conform to their obligation to do a condition inspection report at the beginning and end of the tenancy which would have provided clarity over what damages, if any, occurred during the tenancy.

In short, I find that the landlord is seeking to pass expenses onto a tenant for which the landlord is responsible. In any event, I find the landlord has failed to prove the tenant is in any way responsible for the damages claimed.

I therefore give little credence to the landlord's testimony that the tenant failed in their responsibility to take care of the unit or was at all responsible for the worn out and poor condition of the unit at the end of the tenancy. I find the landlord would not have agreed to refund rent for March 2023 if they believed the tenant owed them compensation for damages.

So, where the versions of events differ, I give greater weight to the tenant's evidence.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

My findings are as follows:

Tenant's Claims

1. *Reimbursement rent March 2023* \$2,035.00

The tenant paid \$2,035.00 for rent for the month of March 2023.

Based on the submitted correspondence which includes a written promise by the landlord to return the rent, I find the landlord agreed to reimbursement of the rent for March 2023 in the amount paid.

Accordingly, I grant the tenant an award in the amount claimed.

2. *Return double security deposit* \$2,000.00

The tenant is entitled to a doubling of the security deposit as the landlord's right to claim against the deposit was extinguished as they did not carry out the required condition inspection on moving out. No condition inspection report on moving in or out was conducted.

Section 38 of the Act requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the provision of a forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, under section 38(6)(b) of the Act, equivalent to double the value of the deposit.

However, this provision does not apply if:

- the tenant consented in writing that the landlord could keep some or all the deposit to offset damages (Section 38(4)(a)), or
- the tenant has been ordered to pay an amount to the landlord (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on March 2, 2023. The tenant provided a written forwarding address on March 10, 2023, which the landlord received effective March 13, 2023.

The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

The landlord applied for dispute resolution to claim against the deposit for damages on March 27, 2023.

I find that the landlord extinguished their right to claim against the security deposit for damages, under sections 24 and 36 of the Act, for failure to complete a move-out condition inspection report.

In accordance with section 38(6)(b) of the Act and Policy Guideline 17, the tenant is entitled to receive double the value of their security deposit of \$1,000.00 in the total amount of \$2,000.00. The landlord must pay interest of \$16.47 for a total of \$2,016.47.

I grant the tenant an award of \$2,016.47 for the return of the security deposit and interest.

5. Compensation for one month's rent following issuance of Two Month Notice

The landlord did not issue a Two Month Notice in the RTB, but merely sent a letter to the tenant asking him to move out.

Accordingly, the tenant moved out on his own volition, not pursuant to a Two Month Notice in the RTB form.

I therefore dismiss the tenant's claim under this heading without leave to reapply.

Landlord's Claims

- 1. Carpets*
- 2. Blinds/Cleaning*

I have considered all the evidence. I do not accept as a reasonable interpretation of events that the landlord provided a like-new or well-maintained unit at the beginning of the tenancy, carried out their obligations to repair, and hold no accountability for the worn-out nature of the unit's components. I find the landlord knew of the existence of the mold and took no remedial action.

I find the tenant has provided a version of events which is probable given the facts as I understand them.

The tenant claimed that the unit had well used components when the tenancy started, the landlord failed to carry out the basic maintenance/repairs to address a mold problem which the tenant reported, and the unit aged from normal wear and tear over the tenancy.

period. The tenant said they were not responsible for any aspect of repairs to the unit or mold remediation after they moved out. While I acknowledged that all these assertions were denied by the landlord, I find the tenant's narrative to be the most believable.

It is likely that the unit needed substantial repairs when the tenant moved out because the carpets, blinds, and all other structural and decorative components were original to the unit (2012) and past their useful life.

I find the landlord knew or should have known through routine inspections that mold was present in the unit. The landlord ignored obligations under the Act to maintain and repair the unit. There is no credible evidence that the tenant contributed in any way other than normal wear and tear to the decline in condition of the unit.

There is no evidence, such as photographs, supporting the landlord's assertion that the unit had mold, any details about the mold, or that the unit needed cleaning or painting.

I have considered *Policy Guideline 40 – Useful Life of Building Elements*. This guideline is a general guide for determining the useful life of building elements for determining damages.

Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances have considered the useful life of the building elements and the age of the elements.

The table attached to the Guideline indicates both these items are past their useful lives of ten years.

The Guideline states that 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.

I find these items for which the landlord seeks compensation, were in used condition at the beginning of the tenancy and to be past their useful lives according to the Policy Guideline and as acknowledged by the landlord.

I find subsequent use to be no more than wear and tear. I find the landlord has not met the burden of proof that the tenant is responsible for any of the claimed expenses.

Accordingly, I dismiss the claims in this group without leave to reapply.

3. *Painting and cleaning (one receipt) \$6,087.50*

The landlord has failed to establish what portion of this expense related to each of the claimed cleaning and painting. I find the landlord has failed to adequately specify their claim. As well, I find the landlord has not met the burden of proof the tenant is responsible for the condition of the unit requiring repainting or cleaning.

Considering all the evidence, I find the landlord is seeking to pass on to the tenant an expense for which the landlord is responsible.

I accept the tenant's testimony as the most likely version of events.

Therefore, I dismiss the landlord's claim under this heading without leave to reapply.

4. *Strata fines \$800.00*

I accept the landlord incurred an expense for a strata fine in the amount of \$200.00 based on the submitted invoice from the strata.

I find the landlord has failed to meet the burden of proof for any additional strata fines and did not submit supporting documentary evidence.

I therefore grant the landlord an award of \$200.00 under this heading and dismiss the remainder of the claim without leave to reapply.

Filing Fee

As the tenant has been primarily successful in his claim, I award the tenant \$100.00 for the filing fee.

Summary of Awards

ITEM – TENANT’S CLAIMS	AMOUNT
Double security deposit (and interest)	\$2,016.47
Reimbursement one month’s rent	\$2,035.00
Filing fee	\$100.00
(Less award to landlord for strata fine)	(\$200.00)
TOTAL MONETARY ORDER TO TENANT	\$3,951.47

I grant the tenant a Monetary Order against the landlord in the amount **\$3,951.47**.

This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced in the courts of the province of BC.

Conclusion

I grant the tenant a Monetary Order against the landlord in the amount **\$3,951.47**.

This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced in the courts of the province of BC.

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: November 03, 2023

Residential Tenancy Branch