



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, and each was accompanied by other people to assist, who did not testify or take part in the hearing. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for strata fines?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on December 15, 2021 and reverted to a month-to-month tenancy after December 15, 2022, which ultimately ended on June 30, 2023. Rent in the amount of \$2,000.00 was payable on the 15<sup>th</sup> day of each month, which was increased to \$2,040.00 after the first year of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 as well as a FOB deposit in the amount of \$100.00, all of which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment unit in a strata complex, and the landlord did not live on the property during the tenancy.

The landlord further testified that the landlord gave the tenant a notice to end the tenancy for personal use, and gave compensation to the tenant in the equivalent of 1 month's rent. The Notice to end the tenancy was sent to the tenant on April 30, 2023 and the last day of the tenancy was June 30, 2023. The tenant gave notice to end the tenancy earlier by email effective June 4, 2023, and the inspection was to take place that day. The landlord does not know when the tenant actually intended to leave. The landlord was told by the strata that the tenant left on June 3. The landlord received the tenant's forwarding address in writing on June 4, 2023.

The landlord has moved into the rental unit.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$1,366.29:

- \$497.45 for carpet replacement at 70% of \$710.14;
- \$638.84 for Floorboard replacement;
- \$200.00 for a strata fine.

A copy of an inspection report has been provided for this hearing, however only the move-out portion has been completed.

The carpet was new in 2020 but had pet stains on it at the end of the tenancy, and even though cleaning was done, the stains remained. The tenant did not inform the landlord that the tenant had a pet. The landlord claims 70% of the cost because the carpet was not in perfect condition, and the landlord believed that would be a reasonable amount (\$570.00 + 12% tax). The landlord has provided an estimate dated June 10, 2023 from a carpet and flooring company for the cost of carpet, removal, disposal and installation totaling \$710.64 plus taxes.

The laminate was replaced at the end of April, 2023, during the tenancy. The landlord was made aware that there was a deficiency due to high moisture, which is shown in the condition inspection report. Moisture would have seeped below, which stemmed from moisture from the sink. When the condition inspection report was done, the floorboard had already been replaced, so is not mentioned in the report. Around November, 2022 the landlord wanted to have an open house for potential viewers who noticed that the flooring had buckled, obvious, and moisture, which was not there when the tenant moved in. The landlord hasn't replaced it yet, and did not ask the tenant to help pay for it. A copy of an email estimate from a flooring company dated June 8, 2023 has been provided for this hearing indicating a cost of material of \$75.39, minimum charge of \$495.00 for labour and tax.

After the landlord made this application, the landlord received a notice from the strata indicating that the tenant did not inform the concierge of the date of move-out or pay the \$100.00 move-out fee or the \$500.00 refundable damage deposit fee to the strata. The landlord sent an email to the tenant asking that the tenant e-transfer the fees. Shortly thereafter the tenant was fined \$200.00 and was charged a \$100.00 move-out fee. The tenant was given the bylaws and the Addendum to the tenancy agreement at the beginning of the tenancy. The tenant paid the \$100.00 move-out fee, but not the \$200.00 strata fine.

The landlord has provided a Notice of Infraction dated June 29, 2023 from the strata for failing to notify the strata of move-in or move-out at least 48 hours prior, and for failing to pay a refundable damage deposit of \$500.00 and for failing to pay a non-refundable move-in and move-out fee of \$100.00. Also provided is a Notice of Decision from the strata stating that a fine of \$200.00 and a move-out fee of \$100.00 are charged to the owner.

The landlord also received another strata complaint of about \$150.00, but the strata decided to charge only \$50.00.

The landlord has provided a document entitled "Final payable breakdown" setting out the amounts due to the tenant, including \$1,000.00 security deposit; \$100.00 FOB deposit; \$2,040.00 1 month rent compensation; and \$703.52 for early move-out compensation ( $\$2,040.00 + \$70.56 \times (10/30)$ ); for a total of \$3,843.52. It also shows deductions from that of \$497.45 ( $70\% \times \$710.64$ ); \$638.84 for floor board replacement ( $1.12 \times \$570.39$ ); and \$50.00 strata fine; for a total of \$1,186.28 and a net amount of \$2,657.24 payable to the tenant of which \$2,040.00 was by cheque and \$617.24 by e-

transfer. The landlord has also provided a copy of a cheque payable to the tenant in the amount of \$2,040.00 dated June 20, 2023 for “1 month rent compensation.”

The tenant has not served the landlord with an application seeking to recover the security deposit.

**The tenant** testified that there was no move-in condition inspection report completed. The carpet was damaged and previous tenants had pets. When the tenant was moving out, the tenant called a cleaner and on the inspection date, the landlord and the landlord’s mother were not happy with the carpet. The carpet was also cleaned a second time on June 9, 2023, and the tenant has provided a photograph testifying that it was taken after the cleaning.

The landlord did the calculation and sent the tenant \$2,040.00 compensation and an e-transfer of \$617.24.

The tenant disagrees with laminate costs. In October, 2022 the tenant was outside of Canada and the landlord entered to take photographs and the tenant had agreed. At that time, there was nothing wrong with the floorboards. There were no problems with the laminate until around November, 2022. The landlord inspected for selling purposes and perhaps it was from a leaking tap, but the tenant never noticed it was getting wet around the island in the kitchen.

The tenant believed that if the tenant didn’t need the elevator, the tenant wouldn’t need to pay for the move-out fee. The tenant gave back the FOB and key, but no one mentioned that. The tenant received an email on October 22, 2023 asking that the tenant send \$100.00 for a Notice of Infraction for the move-out fee. Between the date the infraction was sent out on June 29 and the date of the Notice of Decision on August 8, 2023, no one reached out to the tenant. The tenant agrees that the tenant had the bylaws and the Addendum.

### Analysis

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party’s failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and

4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged at the end of the tenancy. The landlord claims that the tenant left damages that resulted in a loss to the landlord.

I have reviewed all of the evidence, including the inspection report. I accept the undisputed testimony of the tenant that no move-in condition inspection report was completed; the report provided by the landlord is only completed at move-out, not at move-in. Where a landlord fails to ensure the move-in and move-out portions are completed, the landlord's right to claim against the security deposit for damages is extinguished.

Also, the law states that the reports are evidence of the condition of the rental unit at move-in and move-out. Without a move-in condition inspection report, and considering the testimony of the tenant that a stain existed at move-in from previous tenants who had pets, I am not satisfied that the landlord has established that the tenant is responsible for carpet replacement.

The landlord also claims \$638.84 for floorboard replacement. The landlord testified that the boards were replaced at the end of April, 2023, prior to the move-out condition inspection, so is not mentioned in the report. It was noticed during an open house that the flooring had buckled, and the tenant testified that the tenant never noticed it. Considering that there is no move-in condition inspection report to establish that there was no moisture prior, I am not satisfied that the landlord has established that any damage to the floorboards was a result of the tenant's failure to comply with the *Act* or the tenancy agreement.

With respect to the strata fines, the tenant testified that the tenant didn't know about the strata fines, and believed that if no elevator was going to be used, the tenant didn't have to give notice to the strata. However, the tenant also testified that the tenant has the strata rules. I find that the landlord has established a claim of \$200.00 for the strata fine.

The landlord's right to claim against the security deposit for strata fines is not extinguished.

The landlord's agent testified that the landlord received the tenant's forwarding address in writing on June 4, 2023. Having found that the landlord's right to claim against the security deposit for damages is extinguished, the landlord ought to have returned the

security deposit by no later than June 19, 2023. The landlord did not do so and therefore, I apply the principles set out in Residential Tenancy Policy Guideline #17 - Security Deposit and Set Off, which states, in part:

**9.** A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

#### C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit. unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;

- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

Therefore, I find that the landlord owes the tenant double the amount of the security deposit, or \$2,000.00, plus interest calculated to the date of the hearing of \$18.11, less the \$200.00 strata fine, for a total of \$1,818.11.

I have also reviewed the "Final payable breakdown" showing that the landlord has not returned the FOB deposit to the tenant. I accept the undisputed testimony of the tenant that the tenant returned the FOB, and therefore, I find that the landlord must repay the refundable amount of \$100.00.

Since the landlord has been partially successful with the application the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Having considered all of the evidence and the testimony of the parties, I grant a monetary order in favour of the tenant as against the landlord in the amount of \$1,818.11. The landlord must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,818.11.

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: December 12, 2023

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Residential Tenancy Branch