



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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*.
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing took place by submission of evidence and written submissions pursuant to the Interim Decisions of December 27 and December 29, 2023. .

The parties raised no issues regarding service.

The tenant submitted links to evidence in her written submissions which I find were not served in compliance with the *Act*. Accordingly, I do not consider the evidence in the links in my decision.

I find the parties served the evidence and written submissions (excluding the links) in compliance with the Act.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for compensation for damages, authorization to retain the tenant's security deposit, and reimbursement of the filing fee?

Background and Evidence

1. *Overview*

This is an application by the landlord for a Monetary Order for compensation for damages caused by the tenant. The tenancy is over.

The tenant denied the landlord is entitled to any compensation. The tenant requested return of her security deposit.

2. *Tenancy*

The landlord submitted a copy of the tenancy agreement. The tenancy started September 1, 2020 and ended on May 31, 2023. Rent was \$4,000.00 payable on the first of the month. The tenant paid a security deposit of \$2,000.00 which the landlord retains without the tenant's authorization. The landlord submitted their application on June 8, 2023.

3. *Condition Inspection Report – Moving In*

No condition inspection report signed by the parties was submitted on moving in.

4. *Condition Inspection Report – Moving Out*

The landlord did not submit a completed and signed condition inspection report on moving out.

The tenant stated the landlord cancelled the first scheduling of the condition inspection on moving out and refused to complete the RTB form when they did the second walk

through. The tenant's cleaner R.N. attended. R.N. called the police when a dispute arose over the tenant's obligations, such as to paint the unit.

The landlord's version of what took place is different. In their written submissions, the landlord said the tenant failed to attend.

The landlord did not submit a Notice of Final Opportunity to Schedule a Condition Inspection offering the second and final opportunity to schedule the condition inspection

5. *Forwarding address*

The tenant submitted a copy of a letter dated January 28, 2024 from M.P., Director of an organization [S.I.S.] that provided support to the tenant.

The letter stated the tenant sent the landlord her address by Xpress post and the package was marked "delivered" on June 2, 2023 at 10:25 am. A copy of the receipt with the tracking number was included with the letter.

6. *Landlord's Claims*

The landlord submitted a Monetary Order worksheet naming two claims and a narrative naming other claims. The total claims are as follows:

	ITEM	SPECIFIED CLAIMED AMOUNTS
1.	Repainting	\$2,600.00
2.	Carpet replacement	\$2,400.00
3.	Floor replacement	\$2,000.00
4.	Tiles replacement – unspecified amount	unspecified
5.	Microwave oven, refrigerator door, range repairs - unspecified amount	unspecified

6.	Various other claims – unspecified in description, cost, amount claimed	unspecified
	TOTAL	\$7,000.00

While the specific claims are discussed below, the landlord also submitted the following:

- (a) Condition inspection report on moving out of previous tenant dated April 30, 2020.
- (b) Many photographs, including:
 - a. Undated photos of dirty bathroom ceiling vent, bedroom(s), damaged stained carpet, cracked laundry tile(s), marks on living room wall(s), marks on main entry wall, scratches on living room wood floor, washing machine stain, pictures of range (not working), and so on
 - b. Pictures stated to be taken April 2, 2023, showing a cluttered and untidy unit
- (c) Estimates and receipts

7. *Tenant's Response*

The tenant submitted the following response:

- (a) The condition inspection report on move-out with respect to the previous tenant dated April 30, 2020 is irrelevant as it pre-dates the beginning of this tenancy which began September 1, 2020.
- (b) Pictures of the unit showing it as cluttered and untidy are explained by simultaneous medical and personal emergencies, pre-date the move out, and are irrelevant.
- (c) The landlord's photos are undated, were taken during unauthorized entry, pre-date the move out, are irrelevant and do not reflect the condition of the unit on move-out.
- (d) The landlord's documents are quotes or similar estimates, do not establish the landlord paid the amounts, and are irrelevant and unreliable. The tenant cited her research upon which she believed the quotes and invoices are not from arms length businesses; they are fabricated and unreliable. The landlord did not obtain more than one quote per claim and therefore did not try to reduce expenses.

Each of the landlord's claims are discussed:

1. *Repainting*

The landlord submitted documentary evidence which included:

- (a) Quote" dated May 26, 2023 for "painting, ceiling, walls, baseboard and door, in the amount of \$2,600.00
- (b) Email from landlord to tenant dated April 2, 2023, stating: "The paint of the walls needs to be restore to the original and color, please correct it.",
- (c) Email from tenant to landlord dated April 2, 2023, stating: "The walls will be touched up before we move out." (which did not take place)
- (d) written submissions including statement, "[Tenant} damaged the doors, frames and other stuff, and she did not notice us".

The landlord did not provide the date for the last painting of the unit. The landlord did not provide a condition inspection report on moving in or moving out.

Tenant's Response

The tenant stated as follows in her written submissions. She denied the landlord is entitled to the cost of repainting the unit.

The paint was older than four years, so it is past its useful life. It is the landlord's responsibility to paint the unit, not the tenant's.

The tenant submitted photographs dated August 31, 2020 showing scuffed and marked walls on moving in.

The tenant offered to touch up the paint when she moved out and did so. She never promised to repaint the entire unit. She submitted a repair invoice for \$1,822.03 in support of her claim that she had repaired any damage for which she was responsible.

The landlord has not submitted evidence of the amount of the expense. The landlord submitted documents which are not receipts; one of which is marked as a “quote”. The other “receipt” may be a quote and is not signed by the landlord.

The condition of the unit was damaged by adjacent “heavy construction producing dust, soot and tar right outside my window, 3m away”. In her written submissions, the tenant stated:

What you see on carpet, ceiling vent and baseboards is the accumulation of dust, soot and tar. The construction pollution and noise was so bad that we had to evacuate for respiratory and hearing issues and other complicating medical factors. The landlord failed to warn me of the construction, [..]

The entire road was dug up and a trench was dug outside my space, while pile driving also occurred nearby. This left huge amounts of dirt that came through the building HVAC, closed windows (which were not airtight), and opening of doors.

[...]

The tenant submitted a copy of a letter dated January 28, 2024 from M.P., Director of an organization [S.I.S.] that provided support to the tenant. The letter is referenced in detail in the *Tenant's Evidence* section.

2. *Carpet replacement*

The landlord submitted documentary evidence which included:

- (a) “Quote” dated May 26, 2023 for removal and installation, in the amount of \$2,400.00
- (b) A document not identified as either a quote or an invoice, dated June 19, 2023, for carpet, underlay, removal, disposal and installation, in the amount of \$2,056.32, unsigned by landlord, not marked “paid”

Tenant's Response

The tenant stated as follows in her written submissions. She denied the landlord is entitled to the cost of replacing the carpet.

The carpet was well used when she moved in. The tenant submitted photographs dated August 31, 2020 showing marks and indentations or holes. The tenant only used the flooring normally and is not responsible for ordinary wear and tear. There is no reliable evidence of the expense, which includes such items as underlay. The landlord has not submitted adequate comparative costs or provided evidence of trying to keep costs down.

The landlord did not submit evidence of the age of the carpet. The carpet was beyond its useful life [10 years]. It is the landlord's obligation to replace the carpet, not the tenant's

The tenant stated in her written submissions:

I am attaching photos that show the carpet was threadbare in parts, damaged and stained before I moved in. [photos attached]

[...]

The carpets are also more than 5 years old, and their estimate has not discounted for this or the prior damage. Please refer to the photos attached. I did not damage the carpets.[Photos attached]

3. *Floor replacement*

The landlord submitted documentary evidence which included:

- (a) Monetary Order worksheet stating the landlord claimed "estimate from [company] to replace word, floor, tile., in amount of \$2,000.00

Tenant's Response

The tenant stated as follows in her written submissions. She denied the landlord is entitled to the cost of replacing the flooring. The flooring was well used when she moved in. She only used the flooring normally. She is not responsible for normal wear and tear.

The landlord did not submit evidence of the age of the flooring. The tenant stated the flooring was past its useful life. The landlord has submitted no evidence that they incurred any expense, or obtained quotes to reduce the cost.

4. *Tile(s) replacement*

The landlord submitted documentary evidence which included:

- (a) A picture of a broken tile

The landlord did not submit a receipt or other evidence of age, purchase or repair cost.

Tenant's Response

The tenant testified as follows. She denied the landlord is entitled to the cost of a tile replacement.

The tenant used the laundry room in which the cracked tile was in, in a normal manner. She is not responsible for a cracked wall tile.

The landlord has not submitted evidence of the age of the tile which was used when she moved in. The tile was probably beyond its useful life.

The landlord has submitted no evidence of any expense associated with repairing the tile.

5. *Microwave oven, refrigerator door, and range repairs*

The landlord submitted documentary evidence which included:

- (a) written submissions stating the microwave oven and range did not work when the tenant moved out; as well, refrigerator door was scratched

Tenant's Response

In her written submissions, the tenant stated she is not responsible for repairs to these items.

The tenant used the items in a normal manner. She is not responsible for normal wear and tear. There is no evidence she damaged any of these items beyond normal wear.

All these items were used when she moved in. The landlord has not submitted any evidence of the age of the items or expenses they incurred. They are all past their useful life. The items worked at the end of the tenancy.

8. *Tenant's Evidence*

The tenant's response to each of the landlord's claims is stated above.

The tenant also stated in her written submissions as follows. The tenant's cleaned the unit when she moved out and she submitted a copy of several receipts including two for \$200.00 and \$373.97.

The tenant submitted pictures which she stated were taken on moving out showing clean appliances, range, oven, microwave, dishwasher, fridge, washer-dryer, and kitchen.

The tenant had repairs done to the suite in the amount of \$1,822.03 when she moved out in support of which she submitted a copy of the receipt.

The tenant submitted a copy of a letter dated January 28, 2024 from M.P., Director of an organization [S.I.S.] that provided support to the tenant. The letter cites the reported observations of R.N. who attended the unit on move out and called the police.

The letter of M.P. states the unit was clean. The carpet showed some damage likely from moths. The parties attended a walk through on vacancy, the landlord did not have a condition inspection report, objected to the condition of the unit (walls needed repainting, repairs needed to appliances, and so on). R.N. called the police because of the hostile meeting. The letter states:

[Three names] provided paid cleaning services. I personally reviewed their invoices and approved the payment for this. I also helped with the move out on the day of and was there when [the tenant] left. Our team has also reviewed the move -in and move-out videos and photos.

[...]

The suite was thoroughly cleaned by the above mentioned and left in clean condition. It should be noted that at the end of her tenancy and at the time of moving out there was massive construction going on encompassing the entire outside street side that had road tar, dirt and exhaust blowing in constantly. The building also has an HVAC and the ground floor windows are not airtight. This may be a source of dirt that was perhaps tracked in after she had the keys returned.

The contracted [R.M.], upon representing [the tenant] to return the keys, reported that she handed the keys to the landlords. She sent a photo of leaving the keys and recorded the exchange. She references giving the keys over 3 times on the video. The landlord refused to accept the keys from her. She also reported that the landlord brought no papers and declined to do paperwork for the move-out inspection. (This is on the recording too).

[R.M.] reported the stone has cracks, likely stress fractures and stone flaws, and that [landlord] said one may have already been there. [The tenant] says she did not examine the tile when she moved in.

[R.M.] reported that the small carpet wear appeared to be moths. I did not notice any holes when I was there when [the tenant] moved on May 8. However, [R.M.] reported "little flying buggy things" on May 21 when she was vacuuming. She says [landlord] said the carpets are wool. It is possible moths came from another unit or outside or another way and spawned in spring, when the tenant] was away. They move quickly. When I helped [the tenant] unpack at the other end, a small moth, early in its lifecycle, flew out. In any case, moths are a landlord's responsibility.

[...]

[R.N. reported] that the landlords wanted the unit to look like when it was brand new and before anyone ever lived there. She also reported that the landlord seemed confused about what the unit looked like before [...]

Analysis

The parties submitted substantial conflicting evidence. I do not discuss all the evidence. I refer only to relevant, admissible evidence in support of my findings.

1. 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. All the items for which compensation was claimed were used when the tenant moved in. The landlord submitted no evidence of the age of the items or condition inspection reports.

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 any aspect of the unit at the end of the tenancy.

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.

2. 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. To begin with, the landlord must show the tenant is responsible for the damage.

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.

3. 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 party (the tenant, in this case) 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.,

4. Landlord's Claim

Under the Act, the landlord is responsible for regular repairs and maintenance. The tenant is required to pay for repairs where damages are caused, either deliberately or because of neglect, by the tenant or guests. The tenant is not responsible for reasonable wear and tear. These obligations are discussed in *RTB Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises*.

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.

The landlord has the burden of proving their claim. They have failed to do so in this case. They did not submit evidence of the age of the paint, the carpet, the flooring, the appliances, or any other items. These items were used when the tenant moved in. They also failed to establish the amount they paid for the repairs. I do not accept their quotes and invoices as convincing.

RTB Policy Guideline 40 Useful Life of Building Elements provides a general guide for determining the “useful life” of building elements. For example, carpets are listed at 10 years, paint at 4 years, and stoves at 15 years. It is important to refer to this resource in situations like this where a landlord is seeking monetary compensation for damage. In this case, all items for which the landlord seeks compensation may have been beyond their useful life. The landlord has failed to establish they had any remaining life.

The landlord also did not submit condition inspection reports on moving in or out which would have assisted in determining what damage, if any, was caused by the tenant.

I accept the tenant’s credible, well supported evidence in all respects. The tenant claimed that the unit had well used components when the tenancy started. I accept her testimony supported by documentary evidence, that she left the unit in a clean condition as required by the Act and that she had repaired any damage beyond reasonable wear and tear.

As stated earlier, the tenant submitted a copy of a letter dated January 28, 2024 from M.P., Director of an organization [S.I.S.] that provided support to the tenant. The letter of M.P. states the unit was clean as she oversaw the move out and approved the cleaning invoices.

I find the tenant has provided a version of events which is probable given the facts as I understand them. While I acknowledged that all these assertions were denied by the landlord, I find the tenant’s narrative to be the most believable.

In summary, after reviewing all the evidence, I find the landlord has not met the burden of proof with respect to any of their claims, which I dismiss without leave to reapply.

5. *Security Deposit*

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 under sections 24 and 36 of the Act. No condition inspection report on moving in or out was submitted.

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.

I find the tenant provided her forwarding address in writing to the landlord in compliance with the Act on June 2, 2023. I base this finding on the letter dated January 28, 2024 from M.P., Director of an organization [S.I.S.] that provided support to the tenant. The letter stated the tenant sent the landlord her address by Xpress post and the package was marked "delivered" on June 2, 2023 at 10:25 am. A copy of the receipt with the tracking number was included with the letter.

The landlord was required to return the security deposit within 15 days and failed to do so.

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.

In accordance with section 38(6)(b) of the Act and *Policy Guideline 17*, I find that the tenant is entitled to receive double the value of their security deposit of \$2,000.00 for a total of \$4,000.00

I grant the tenant a Monetary Order of \$4,000.00 for the return of the security deposit.

6. *Summary*

I grant the tenant a Monetary Order of \$4,000.00 for the return of the security deposit

I dismiss the landlord's claims without leave to reapply.

Conclusion

I grant the tenant a Monetary Order of \$4,000.00 for the return of the security deposit. 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.

I dismiss the landlord's claims without leave to reapply.

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: February 17, 2024

Residential Tenancy Branch