



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with two Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The Landlord's application for:

- A monetary order of \$338.70 for unpaid rent
- A monetary order of \$1,492.72 for damage to rental unit and compensation for loss under the Act
- Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act

The hearing dealt with the Tenant's Application for Dispute Resolution under the Act for:

- A monetary order of \$10,844.00 for compensation for monetary loss or money owed under the Act
- The return of their security deposit and pet damage deposit

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters**

At the outset of the hearing of June 24, 2024, the Tenant testified that they did not serve the Proceeding Package to the Landlord.

Section 59(3) of the Act and Residential Tenancy Branch (RTB) Rule of Procedure 3.1 both require that an applicant serve the respondent with these documents within three days of receiving the aforementioned proceeding package from the RTB.

The Tenant did not do this within the required timeframe, or at all. As such, the Landlord has not been provided notice of Tenant's application for dispute resolution and it would be unfair to proceed with the Tenant's application.

I dismiss the Tenant's application with leave to reapply, due to the service issues described above. I make no findings on the merits of the application. Leave to reapply is not an extension of any applicable limitation period.

I find that the Tenant acknowledged service of the Proceeding Package and documentary evidence from the Landlord and are duly served in accordance with the Act. Further, the Landlord confirmed that they received documentary evidence from the Tenant and are prepared to proceed with the hearing.

The parties agreed to settle their dispute as follows:

Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle their dispute.

Both parties agreed to the following terms of a final and binding resolution of the Landlord's application and the issues in dispute arising out of this tenancy at this time and that they did so of their own free volition and without any element of coercion:

1. The Landlord will keep the security deposit in the amount of \$307.18 as settlement of the following items:
  - \$193.76, for the bi-fold door
  - \$31.35, for the toilet seat
  - \$67.07, for the front door latch
  - \$15.00, for a dump fee
2. These particulars comprise the full settlement of all aspects of the Landlord's current application for the above noted items. I will address the remainder of the Landlord's application later in this decision.

Pursuant to section 62(3) of the Act, I make the following order:

**I ORDER** the parties to comply with their mutually settled agreement described above.

### **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for unpaid rent, and for compensation for damage or loss under the Act?

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

### **Background and Evidence**

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

The parties agreed that to the following details of this tenancy:

- The Tenancy began on October 1, 2020, and ended on February 29, 2024
- The Tenant vacated the rental unit on March 3, 2024
- The monthly rent of \$2,571.97 was due on the first day of each month
- The Tenant paid a security deposit in the amount of \$1,200.00 and a pet damage deposit of \$1,200.00, for the total deposits of \$2,460.44, and this amount includes interest
- The move in inspection Condition Inspection Report (CIR) was completed on October 1, 2020
- The move out inspection CIR was completed on March 3, 2024
- On March 3, 2024, the Tenant provided their forwarding address in writing to the Landlord
- On March 15, 2024, the Landlord returned the deposits in the amount of \$629.02 to the Tenant, and the Landlord continues to hold the deposits of \$1,831.42

The Tenant testified that they did not agree with the move out CIR.

The Landlord is seeking a monetary order as follows:

Item 1 - \$338.70 rent for overholding. SW testified that the Tenant should have vacated the rental unit by February 29, 2024, however, they remained in the rental unit until March 3, 2024. The Landlord estimated market rent of \$3,900.00 effective March 1, 2024, and stated that they offered the Tenant monthly rent of \$3,500.00. Therefore, the

Landlord is seeking \$338.70 for three days of overholding,  $\$3,500.00 \div 31 = 112.90$ , x 3 days.

The Tenant stated that they did not agree to the increased monthly rent of \$3,500.00, and they vacated the rental unit on March 3, 2024. The Tenant testified that they had to move due to the sudden increase in rent.

Item 2 - \$121.45 for replacement of the refrigerator shelf trim. SW testified that the plastic trim on the refrigerator was broken, and they replaced this item. The Landlord submitted an invoice for this amount. SW stated that the parties had discussed replacement of the refrigerator, however, it was in good functioning condition.

The Tenant testified that the refrigerator was not functioning well and had to be replaced, and that the parties had discussed a shared cost.

Item 3 - \$250.00 for patching. SW testified that the walls had holes and marks, and required patching. SW testified that a doorframe and stairway trim were damaged and required patching. The Landlord submitted photographs as part of their documentary evidence. The Landlord referred to the estimate of \$250.00 that was filed as part of their documentary evidence. SW stated that they paid this amount on March 12, 2024.

The Tenant stated that they filled and patched all nails and screws.

Item 4 - \$400.00 for painting costs for two of the walls the Tenant painted without permission from the Landlord. SW testified that they paid \$3,500.00 for re-painting of the rental unit, and their painter confirmed that the painting cost for two of the walls was \$400.00. The Landlord stated they made a cash payment, and submitted the withdrawal confirmation as part of their documentary evidence.

The Tenant admitted that they painted the dining room and their daughter's bedroom. The Tenant referred to their documentary evidence of photographs to show patching and the difference in paint and argued the Landlord would need to paint the entire rental unit regardless of the walls they painted.

Item 5 - \$280.00 for professional cleaning. SW stated that the rental unit required cleaning at the end of the tenancy, and the cabinets, oven, stove, sink and bathrooms needed to be cleaned. SW testified that they cleaned the rental unit, which consisted of general cleaning. SW testified that they relied on professional cleaning services for further cleaning. The Landlord submitted a receipt dated March 12, 2024.

The Tenant testified that they left the rental unit in a reasonably clean condition at the end of the tenancy. The Tenant stated that their family assisted them with the cleaning.

Item 6 - \$262.50 for carpet cleaning. SW referred to Clause 16 of the Addendum of the Tenancy Agreement, and stated the carpets needed to be professionally cleaned and up to standard at the end of the tenancy.

SW testified that the carpets required cleaning and it would be easier to get new tenants with fresh and clean carpets. The Landlord submitted a receipt dated March 14, 2024.

The Tenant testified that on December 20, 2023, they had the carpets professionally cleaned. The Tenant referred to photographs that were submitted as part of their documentary evidence.

## **Analysis**

### **Is the Landlord entitled to a Monetary Order for unpaid rent, and for compensation for damage or loss under the Act?**

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Section 37 of the Act states when a tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. It is the decision of the arbitrator based on the evidence presented what represents reasonable wear and tear.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement as follows:

Item 1 - \$248.90 rent for overholding. Section 57(3) of the Act states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. In this case, I accept the testimony of the parties that the tenancy ended on February 29, 2024, and I find the Tenant was overholding for three day, until March 3, 2024.

I find it unreasonable for the Landlord to submit a claim at the estimated monthly rent of \$3,500.00 when that is far greater than the monthly rent paid by the Tenant at the end of the tenancy. As such, I grant the Landlord a monetary award of \$248.90 calculated as follows:  $\$2,571.97 \div 31 \text{ days} \times 3 \text{ days}$ .

Item 2 - \$121.45 for replacement of the refrigerator shelf trim. I find the Landlord's documentary evidence shows a cracked and damaged trim, which is beyond reasonable wear and tear. The evidence before me shows that the refrigerator was in functional condition at the end of the tenancy, and I find the Tenant is responsible for the claimed damage. I find the Tenant is in breach of section 37 and they are responsible for this item. I grant the Landlord a monetary award for this item.

Item 4 - \$400.00 for painting costs for two of the walls the Tenant painted without permission from the Landlord. RTB Policy Guideline 1 (PG 1) states if the tenant does not return the rental unit to its original condition before vacating, the landlord may do so and claim the cost against the tenant. I find the Tenant did not have permission to paint two of the walls in a darker colour as shown in the documentary evidence. I accept the Landlord's quote of \$400.00 that was obtained from their painter. I find the Landlord is entitled to recover the cost of paint from the Tenant, as the Tenant did not have permission to make such changes. I grant the Landlord a monetary award of \$400.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party

Therefore, I find the Landlord is entitled to a monetary award for compensation for damage or loss under the Act, in the amount of \$770.35.

I decline to award the remainder of the Landlord's application for the following reasons:

Item 3 - \$250.00 for patching. I accept the Tenant's testimony that they filled and patched nails and holes at the end of the tenancy. Further, I find the documentary evidence shows that the holes and screws are part of reasonable wear and tear during the tenancy, and I do not find them to be excessive. As such, I dismiss this claim without leave to reapply.

Item 5 - \$280.00 for professional cleaning. Although the move out CIR indicated required cleaning, the Tenant did not agree with the move out CIR and stated they cleaned the rental unit at the end of the tenancy. The onus is on the Landlord to prove

their claim. I find other than the move out CIR, there is no evidence to prove the condition of the rental unit at the end of the tenancy, such as photographs. I find the Landlord did not prove the Tenant's failure to comply with the Act, regulation or tenancy agreement, and that the loss resulted from that failure to comply. As such, this claim is dismissed without leave to reapply.

Item 6 - \$262.50 for carpet cleaning. SW referred to Clause 16 of the Addendum of the Tenancy Agreement, which was not filed in evidence. Page 1 and Page 3 of the Addendum were submitted in evidence showing Clause 1-7 and 17-24. Clause 16 was not submitted in evidence and is not before me.

Based on the Landlord's testimony, I find they did not prove the Tenant's failure to comply with the Act, regulation or tenancy agreement, and related loss. The Landlord did not submit photographs of the carpet. I find the Tenant's documentary evidence shows the carpets were left in a reasonable condition. Further, I find the Tenant is not responsible to bring the carpets to a standard that is acceptable for new prospective tenants. As such, this claim is dismissed without leave to reapply.

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

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the forwarding address was provided on March 3, 2024, and the Landlord made their application on March 18, 2024, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

The Landlord holds the total deposits of \$1,831.42. Under section 72 of the Act, I allow the Landlord to retain the Tenant's deposits in the amount of \$770.35 in full satisfaction of the monetary award.

Further, the parties have agreed for the Landlord to keep \$307.18 as per their mutually settled agreement.

Based on the above, I authorize the Landlord to keep the total deposit of \$1,077.53. I order the Landlord to immediately return the balance of the deposits held, or \$753.89, to the Tenant. To give effect to this order, I grant the Tenant a monetary order in the amount of \$753.89.

## Conclusion

The Landlords' application was resolved in part by mutual agreement.

The parties have been ordered to comply with the terms of their mutually settled agreement. I authorize the Landlord to keep the security deposit of \$307.18 to give effect to the settlement reached between the parties.

I grant the Landlord a Monetary Order in the amount of \$770.35, which the Landlord may deduct from the security deposit in full satisfaction of the claim.

I order the Landlord to immediately return the balance of the deposits held, or \$753.89, to the Tenant. To give effect to this order, I grant the Tenant a monetary order in the amount of \$753.89.

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** to be enforceable. Should the Landlord(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

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 25, 2024

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Residential Tenancy Branch