



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking the following relief:

- 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 an agent for the tenant attended the hearing, and each gave affirmed testimony. The parties 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 and testimony 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?
- Should the landlord recover the filing fee from the tenant?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on August 15, 2022 and reverted to a month-to-month tenancy after August 31, 2023, which ultimately ended on April 30, 2024. Rent in the amount of \$3,450.00 was originally payable on the 1<sup>st</sup> day of each month, which was increased to \$3,519.00 effective September 1, 2023, and there are no rental arrears. The landlord believes that the landlord collected a pro-rated amount of rent for the first partial month of the tenancy. On August 8, 2022 the landlord collected a security deposit from the tenant in the amount of \$1,725.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that move-in and move-out condition inspection reports were completed by the parties at the beginning and end of the tenancy, and copies have been provided for this hearing. The landlord also testified that the move-out portion contains an error in the date that it was made, which says 2023, but should read 2024. The tenant's agent attended for the move-out portion, and the landlord sent a copy of it to the tenant by email on May 1 or May 2, 2024. The tenant replied by email saying that the tenant didn't agree with it. The landlord has also provided a copy of an Address for Service form, signed by both parties on August 6, 2022 agreeing to the exchange of legal documents by email. The landlord received the tenant's forwarding address in writing on April 30, 2024.

The landlord had given the tenant a notice to end the tenancy for repeated late rent. The tenant didn't dispute it, but moved out in accordance with the notice.

The landlord claims \$1,450.00 for replacement of the carpet, and has provided an estimate dated June 1, 2024. At the end of the tenancy the carpet was very dirty, wrinkled and pushed to one side. Photographs have also been provided for this hearing. At the time of the move-out condition inspection, the tenant's agent also agreed that it needed to be replaced. The carpet was about 6 years old, being new at the time of building the complex in 2017, and the first people living there moved into the rental unit in 2018. Cleaning was attempted, but the damage was still there.

The landlord also claims \$730.28 for 9 hours of cleaning, which included carpet cleaning. An Invoice from a Cleaning Service dated May 8, 2024 has been provided for this hearing, showing \$405.00 for 9 hours of cleaning at \$45.00 per hour at a Realtor

rate, an administrative fee of \$2.50, travel fee of \$8.00; \$280.00 for carpet cleaning and \$34.78 for GST.

The fire alarm had been taken down, and a number of light bulbs had to be replaced, and there was damage to the walls. The landlord has provided a copy of an Invoice dated May 20, 2024 in the amount of \$472.50 for "Fire Alarm Cover Repair and Light Bulbs (2EA)" for \$300.00 and "Mud and Patch for the damaged wall" repair for \$150.00, and \$22.50 for GST. The fire alarm was not on the ceiling at the end of the tenancy, and just a wire was hanging there. It was hanging when the landlord had previously inspected the rental unit. The tenant's agent also had an option to replace the bulbs, and the landlord is not aware when they were burned out. The landlord is a realtor and has hired a private handyman service to replace the bulbs and smoke detector, who has been previously hired for other jobs.

The landlord received 2 strata fines of \$200.00 each, and the strata waived one of them. A copy of a letter from the strata dated June 3, 2024 has been provided for this hearing. The landlord claims \$200.00.

The landlord arrived for the move-out condition inspection with an assistant, who took photographs, and once that was finished the landlord and the tenant's agent walked around and the landlord's assistant showed the damages which were also pointed out to the tenant's agent. The rental unit had a crack due to the building settling, but that's not what the parties talked about. There were bumps on the walls and the tenant's agent agreed. Minor damages are day to day living, but the tenant's responsibility is to mud and sand, which was not done prior to the end of the tenancy.

**The tenant's agent** testified that partial damage should be paid, however the tenant disputes the fire alarm and carpet.

The fire alarm was on the ceiling where there was a settling crack. It was still working and active and had to be glued back on; it was falling off the ceiling. The strata said it can't be fixed and even if it was put back on, it would still come off.

The tenant's agent agrees to the strata fine, cleaning and painting, but does not agree to the carpet replacement or the fire alarm.

### Analysis

Firstly, where a party makes a claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test for damages:

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 tenancy agreement or the law;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

Also, the *Residential Tenancy Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out. I have reviewed the condition inspection reports which show that the move-in portion was completed on August 14, 2022 and the move-out portion was completed on April 30, 2023, which I accept was an error and should read April 30, 2024. The tenant signed the report at the beginning of the tenancy agreeing that the report fairly represents the condition of the rental unit. The move-out portion is signed by the tenant's agent on April 30, 2024 which agrees to \$1,7250.00 to be deducted from the security deposit. It also contains a forwarding address of the tenant.

The report shows that the oven, exhaust hood and fan, taps, sink and stoppers, fridge, oven and dishwasher were all dirty at the end of the tenancy, and marked as all clean or no notations at the beginning of the tenancy. I fail to see how it would take 9 hours of cleaning to complete those cleaning items. I also note that it shows a realtor rate of 9 hours at \$45.00 per hour. A "realtor rate" may be more convenient for a landlord or property manager, but the actual cost is required. I do not accept that the cleaning of the kitchen took 9 hours, and I dismiss the \$405.00 claim for cleaning.

The cleaning Invoice also includes \$280.00 for carpet cleaning. I have reviewed the tenancy agreement, which does not indicate that the tenant must have the carpets professionally cleaned at the end of the tenancy. The general rule is that a tenant must clean the carpets at the end of the tenancy if the tenancy lasted for more than 1 year or if the tenant had pets that were not kept in a cage. There is no evidence of pets, and the landlord did not collect a pet damage deposit. The tenancy started on August 15, 2022 and ended on April 30, 2024, which is more than 1 year. I find that the landlord has established a claim of \$280.00 for carpet cleaning, plus 5% GST, or \$14.00.

I also accept the administrative fee and travel fee in the cleaning Invoice totaling \$10.50, and I find that the landlord has established a total claim of **\$305.03** from the cleaning Invoice.

There are no notations on the move-in portion of the inspection report for the carpet, but states at move-out that the carpet in the master bedroom needed to be replaced. I have also reviewed the photographs provided by the landlord, and I do not see any buckling or that any part of the carpet was pushed to 1 side. The notations on the inspection

reports mentions nothing at move-in and “not cleaned up” at the end of the tenancy. I am not satisfied that the landlord has established that the carpets were in need of replacing as a result of the tenant’s failure to comply with the Act or the tenancy agreement, and I dismiss that portion of the landlord’s application.

With respect to the landlord’s claim of \$472.50 for repairs, the Invoice sets out mudding and patching the damaged walls at \$150.00. The inspection reports show that at the beginning of the tenancy there were small chips and marks in the entry, black marks and scratches in the closet in the living room, small scratches in the kitchen cabinets and doors, as well as long black marks, scuffs and chips in the living room and in the master bedroom and second bedroom. Any award for damages must not put the landlord in a better financial position that the landlord would be if no damage had been caused by the tenant. As a result, I find that the landlord had to mud and sand the pre-existing chips and scuffs in any event, which were not the responsibility of the tenant.

The repair invoice shows a \$300.00 charge for the fire alarm cover repair and light bulbs. The landlord did not dispute the testimony of the tenant’s agent that the fire alarm was off due to cracks in the ceiling from the building settling. However, the tenant has not provided any evidence at all, and there is no notation of that from the strata letter. I find that the landlord has established the **\$300.00** claim, plus GST of **\$15.00**.

The tenant’s agent does not dispute the **\$200.00** strata fine, and I find that the landlord has established that claim.

The landlord’s total claim is \$1,450.00 for the carpet replacement, \$730.28 for cleaning, which includes \$280.00 for carpet cleaning, \$472.50 for repairs, and \$200.00 for the strata fine, for a total of \$2,925.28, which is more than the amount of the security deposit. The law requires a landlord to return a security deposit in full to a tenant or make an application to keep any part of the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant’s forwarding address in writing. If the landlord fails to do either within that 15 day period, the landlord must repay the tenant double the amount. In this case the tenancy ended on April 30, 2024 and the landlord received the tenant’s forwarding address in writing on the same day. The landlord made this application on May 15, 2024, which is at the very end of the 15 day period. I find that the landlord has made the application within the time required and doubling of the security deposit does not apply.

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

I also note that the tenant's agent agreed in the condition inspection report for the landlord to keep the security deposit. However, the landlord testified that upon sending a copy of the report to the tenant, the tenant disagreed. I am not satisfied that the tenant's agent had the authority to agree that the landlord keep the security deposit.

Having found that the landlord has established a claim of \$305.03 for the cleaning Invoice, \$200.00 for the strata fine, \$315.00 for the fire alarm repair and light bulbs, and recovery of the \$100.00 filing fee, I order that the landlord keep \$920.03 from the security deposit and I order the landlord to return the difference of \$804.97 to the tenant (\$1,725.00 - \$920.03 = \$804.97). I grant a monetary order in favour of the tenant in that amount. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced 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 \$804.97.

This order is final and binding and may be enforced.

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: August 15, 2024

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Residential Tenancy Branch