# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding AQP MANAGEMENT
and [tenant name suppressed to protect privacy]
**DECISION**

## Introduction

The Tenant and the Landlord, by way of cross-applications, seek compensation under the *Residential Tenancy Act* (the "Act").

## Issues

1. Is the Tenant entitled to compensation?
2. Is the Landlord entitled to compensation?

## Background and Evidence

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The tenancy began April 1, 2013, and ended on June 30, 2024. The tenancy was ended as a result of a decision and order of possession from the Residential Tenancy Branch. There was a $347.50 security deposit and a $347.50 pet damage deposit, both of which are being held in trust by the Landlord pending the outcome of these applications.

The Landlord's Claim

The Landlord seeks $252.00 for carpet cleaning. The Landlord presented oral and documentary evidence showing that the carpet was heavily soiled at the end of the tenancy. An invoice from a carpet cleaning company was in evidence.

The Landlord seeks $130.94 for the cost of a locksmith to change the locks because the Tenant failed to return the keys at the end of the tenancy.

As submitted by the Landlord, the Tenant “abandoned the suite with no keys and no communication as what his plans were”. There is an invoice in evidence for the cost of the re-keying.

The Landlord seeks $420.00 for the cost of cleaning of the rental unit. The Tenant failed to clean the rental unit to put it into a state of reasonable cleanliness. There is an invoice for this cost.

The Landlord seeks $2,730.00 for the cost of interior wall painting. According to the Landlord’s written submission, “The walls were in bad shape, so we had to re-paint the suite with one coast and kitchen and bathroom needed 2 coats.”

The Landlord seeks $1,800.00 for loss of potential rent for July 2024. The Landlord submitted that the Tenant left the rental unit in such a condition that made it not rentable for July 2024.

The Landlord also seeks $1,044.01 for new curtains. The Tenant purportedly damaged the curtains during the tenancy, and the Landlord submitted that the “curtains were in so bad shape we had to throw them out.”

Last, the Landlord seeks $100.00 for the cost of the Residential Tenancy Branch application fee.

In total, the Landlord seeks $5,432.94, as outlined on a revised *Monetary Order Worksheet* dated July 23, 2024, and submitted into evidence.

Also submitted into evidence is a condition inspection report. According to the Landlord, the “tenant said he would return at 1600h, and the tenant did not show up. I attended both times to conduct the check out and move out inspection.”

The Tenant’s Claim

The Tenant seeks $35,000, comprising $1,338.75 for the cost of counselling, $11,830.06 for the loss of use of part of the rental unit during the tenancy, and $21,831.19 for negligence.

It is noted that the Tenant also seeks to recover the cost of the application fee; however, because the maximum amount that may be claimed under the Act is $35,000, I will not consider this additional amount sought.

At the outset, I will address two pieces of legislation to which the Tenant, and the Landlord in its response, refers. First is the parties' reference to the *Occupiers Liability Act,* [RSBC 1996] c. 337. This legislation does not apply to matters falling within the jurisdiction of the Residential Tenancy Branch and the Act. In short, I have no jurisdiction to consider claims for negligence or loss arising from a breach of the *Occupiers Liability Act.*

Second, the Landlord refers to the *Limitation Act,* [SBC 2012] c. 13, in their written submissions. They argue that under the *Limitation Act,* a claim for negligence must be commenced within 2 years after the day on which the claim was discovered, and that the Tenant's claim cannot reach further back than from October 25, 2022.

The Tenant's application for dispute resolution, in which he seeks compensation, may, in fact, cover a period of time going back further than two years. Subsection 60(1) of the *Residential Tenancy Act* states that "If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned." In other words, the Tenant not barred from seeking compensation starting from a point in time that might be longer than 2 years. The *Limitation Act,* which has limited applicability to disputes under the Act, does not bar the Tenant from seeking compensation.

The Tenant's written submissions provide the following summary of his application:

> My tenancy began on April 1, 2013. When I moved in the unit had not been freshly painted nor was the flooring new. There were curtains that were left behind by the previous tenant. My tenancy agreement which was signed on March 22, 2013 did not indicate that window coverings were included.
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> Over the course of my tenancy there have been 4 property management companies responsible for this site. Brown Bros. Agencies, South Island Property Management, Devon Properties Ltd. Fairview Management and AQPMC. As there have been multiple Property Management Companies overseeing the building during my tenancy they may not be aware that window coverings were not included.
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> I have been reporting issues with water ingress since 2019
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> My evidence shows that I reported the water and other issues repeatedly – particularly over the past 3 to 4 years asking that repairs be completed.

The move out inspection does not detail any items that are considered to be charge backs – it simply rates the unit as functioning and that I did not show up for the inspection. I was not provided a final notice of final opportunity of inspection as required by the RTB.

According to the RTB guidelines the life expectancy of paint in a unit is four years. Nothing in my unit was fresh or new when I moved in nor was it painted during my tenancy. There were multiple leak and water issues in the unit – it needed to be painted at move out as it had outlived it's useful life.

The carpet was also not new when I moved in – though you cannot tell in the pictures there are multiple areas where pieces of carpet were cut out and replaced. According to the RTB guidelines the life expectancy of carpet is 10 years. The carpet has outlived it's life expectancy. I was under the impression that it would be replaced so no need to have the carpets cleaned. No where in my tenancy agreement does it advise that carpets must be professionally cleaned at move out – nor was I given any kind of cleaning requirement list for moving out.

During the course of my tenancy the owner of the building refused to do anything but the most urgent of repairs and even then it was a stretch.

I was informed by one of the property management companies about the asbestos after the leaking.

While I was dealing with the leak, and other various repair issues, I went through every possible avenue to have them completed, including starting a BCAA claim with my tenant insurance. Shortly there after I was told directly they would not be doing the required work. Over the course of my I had scheduled dozens of appointments for various contractors who repeatedly cancelled, changed at last minute or simply didn't show up.

The state of my apartment rotting around me was a significant factor in my depression and mental health struggles. I am still getting counselling services presently. The amount on the monetary worksheet was only a fraction of the services I retained. Thankfully I managed to recently get a counsellor who works for VIHA and I no longer have to pay for services.

Exposure to asbestos is harmful and being potentially exposed for extended periods of time was extremely stressful and was detrimental to my life. Had I

known the ceiling was not going to be fixed I would have vacated the apartment. I was exposed to falling, cracking and breaking asbestos containing materials due to the constant wet and dry cycles of the ceiling.

The owner of the building failed to meet his duty of care in respect to the Occupiers Liability Act section 6 and 7. I am seeking compensation for that as indicated on my Monetary Worksheet Form

Also submitted by the Tenant was a loss of use calculation sheet, breaking down his calculation for loss of use of the balcony and for the loss of use of a dining room and partial loss of use of the dining room. There are numerous photographs of the rental unit in the Tenant's evidence.

A copy of a physician's note dated October 15, 2024, is included in the Tenant's evidence, in which the doctor writes, "This letter is to confirm that [Tenant's name] has suffered with intermittent respiratory symptoms, including a cough, for the past two years. He has been under our care during this time."

And in evidence is a copy of a statement of account listing counseling sessions and amounts paid.

I have also reviewed and carefully considered the written response submissions from the Landlord but will only reproduce that which is necessary to explain this decision, below.

**Analysis**

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

The Landlord's Claim

Section 37(2)(b) of the Act requires that a tenant return all keys and other means of access to the landlord when they vacate a rental unit. The evidence persuades me to find, on a balance of probabilities, that the Tenant did not return the keys. But for the Tenant's failure to return the keys, resulting in a breach of section 37(2)(b) of the Act, the Landlord would not have had to incur a rekeying cost of $130.94. This amount is proven with documentary evidence, and it is, I find, a reasonable amount to be claimed. There is not much that the Landlord could have done to minimize this loss.

For these reasons, I grant the Landlord an award of $130.94 for the rekeying.

Further, as a result of this breach of the Act, the Landlord was simply not in any position to find and secure a new tenant (thereby minimizing a potential loss of rent) to take up occupancy of the rental unit for July 2024. For this reason, I also award the Landlord for the loss of potential rent. However, the Landlord is entitled to only that amount of loss of rent for which the Tenant was paying—$881.51. It would be wholly unfair and inappropriate for the Landlord to gain additional compensation based on a higher amount of rent which is entirely set by the Landlord.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Further, a completed condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary (section 21, *Residential Tenancy Regulation,* B.C. Reg. 234/2006).

The Landlord submitted a condition inspection report, but almost none of the report was properly completed. There are zero notations regarding the condition of any area of the rental unit at the start of the tenancy or at the end of the tenancy. In short, there is insufficient evidence for me to find that the Tenant breached section 37 of the Act.

For this reason, the Landlord's claims for compensation related to the cost of move out cleaning, for interior wall painting, and for the curtains, are dismissed without leave to reapply.

Pursuant to section 72 of the Act the Landlord is entitled to recover the cost of the Residential Tenancy Branch application fee of $100.00. In total, the Landlord is awarded $1,112.45.

The Tenant's Claim

I turn first to the claim for costs related to counselling. The Tenant argues and submits that he is entitled to compensation for counselling which was purportedly required due to the Landlord's actions or inaction. However, I have carefully reviewed the only evidence submitted by the Tenant regarding this aspect of his claim: the *COUNSELLING_INVOICE.pdf.* There is nothing in the statement of account (nor would there likely be in any case) explaining that the counselling was somehow linked to or a result of the Landlord's conduct or negligence or anything for that matter. The counselling might have been related to tenancy matters, but this cannot be established from my review of the evidence.

In any event, I am not persuaded that the Tenant has proven any link between the amount claimed for counselling and a breach that may or may not have been caused by the Landlord. I therefore dismiss this aspect of the Tenant's claim.

Regarding the claim for negligence, the Tenant has not pointed me to any section of the Act that the Landlord allegedly breached that might result in compensation being awarded. As noted before, the Tenant has made his claim for compensation based on an entirely unrelated legislation, that *Occupiers Liability Act.* Nor has the Tenant provided any evidence, beyond one photograph of an asbestos hazard plastic covering, as to whether or to what extent asbestos was ever in the rental unit. Nor is there any third-party report establishing asbestos, and no medical documentation establishing that the Tenant was ever exposed to asbestos. The Tenant has not provided any evidence that the rental unit was not maintained in a state of decoration and repair that complied with the health, safety and housing standards required by law (section 32(1) of the Act). Certainly, it is acknowledged that not all areas of the rental unit were in their best condition or shape as it could have been, but this does not mean that the rental unit was uninhabitable. Or, again, that it was in breach of the Act.

In summary, in taking into careful consideration the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Tenant has not proven his claim for compensation for negligence. That aspect of his claim is dismissed without leave to reapply.

Regarding the claim for loss of use of part of the rental unit, the Tenant has not provided any evidence showing what, if any, of the rental unit was removed from use. Where evidence is provided, such as that related to the purported loss of balcony use, the photographs show that the Tenant did, in fact, have access to and use of the balcony.

There is no supporting evidence to show that the Tenant lost some or all use of the dining room, as is argued and submitted.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Tenant has not met the onus of proving this aspect of his claim for compensation.

Having not succeeded in these claims for compensation it follows that the Tenant is not entitled to recover the cost of his application fee.

**Conclusion**

IT IS HEREBY ORDERED THAT:

1. The Landlord's application is granted in part and the Landlord is awarded $1,112.45.
2. The Landlord is ordered and authorized to retain the security and pet damage deposits totaling $695.00 and this amount is applied to the amount awarded.
3. The Landlord is granted a monetary order for $417.45. A copy of the monetary order must be served upon the Tenant, who is ordered to pay this amount.
4. The Tenant's application is dismissed 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 Act.

Dated: November 29, 2024

Residential Tenancy Branch