



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes            **MNDL-S, MNDCL-S, LRSD, FFL  
MNSD, FFT**

### 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 also dealt with an application by the Tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the Landlord to return the security deposit pursuant to section 38.
- An order requiring the Landlord to reimburse the Tenant for the filing fee pursuant to section 72.

*Preliminary Issue – Service by Tenant*

The Landlord acknowledged receipt of the Tenant's evidence. Further to the parties' testimony and documents in support of service, I find the Tenant served the Landlord in compliance with the Act.

*Preliminary Issue – Service by Landlord*

The Tenant acknowledged receipt of the Landlord's proceeding package and evidence including a USB, (with an exception addressed below), sent by registered mail with an effective service date under sections 89 and 90 of the Act of November 5, 2024.

The Tenant did not acknowledge receipt of an email from the person who was to move into the unit the day after the Tenant moved out (the intended incoming tenant).

The RTB Rules set out the procedure for submission of digital evidence. Before the hearing, the Landlord must confirm with the Tenant that they can access the files. The party submitting the digital evidence will have to ensure that the opposing party is able to access this evidence. Otherwise, the arbitrator may determine that the digital evidence will not be considered.

In this case, the Tenant stated the Landlord did not comply with the Rules and did not confirm with the Tenant that she could not access the email from the new tenant on the USB. The Landlord acknowledged this.

Accordingly, I will not consider the email from the new tenant. The Landlord provided testimony on the events leading to the cancellation of the new tenancy.

I find the Landlord served the Tenant in compliance with the Act except for the email from the intended incoming tenant referenced above.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for compensation for damages and loss of rent, authorization to keep the security deposit, and reimbursement of the filing fee?

Is the Tenant entitled to the return of the security deposit and reimbursement of the filing fee?

Background and Evidence

The parties provided disputed testimony. Not all this evidence is referenced in my decision.

*Tenancy*

The parties agreed this tenancy began on June 1, 2023 and ended on August 31, 2024. Rent was \$1,863.00. The Tenant provided a security deposit of \$900.00 which the Landlord holds.

*Forwarding address*

The parties agreed the Tenant provided her forwarding address on July 28, 2024 when she provided written notice she was moving out. The Landlord acknowledged receipt.

*Condition inspection*

The parties agreed no condition inspection took place on move-in.

The parties agreed no condition inspection took place on move-out although their explanations differ.

The parties stated they agreed to a move-out inspection time on the last day of the tenancy. However, the Landlord stated that the Tenant had not completely moved out when she arrived. The Tenant set a later time that day which was not convenient for the Landlord. The Landlord then issued a Final Notice for the evening of the same day which the Tenant acknowledged receiving. The Landlord attended the move-out inspection and the Tenant did not.

The Landlord completed the move-out inspection carried out in the absence of the Tenant and submitted a copy.

*Landlord's Claim*

The Landlord claimed the following:

ITEM	AMOUNT
Painting	\$200.00
Cleaning	\$250.00
Rental loss for September	\$450.00
<b>TOTAL</b>	<b>\$900.00</b>

The Landlord testified as follows. The Tenant touched up the walls of the unit with paint of a different color than the original. The Landlord submitted many supporting photographs.

The Landlord testified she had to paint over the Tenant's work herself as the intended incoming tenant was scheduled to move in right away. She estimated the number of hours at \$35.00 an hour for a total request for compensation of \$200.00.

The Tenant left the unit requiring cleaning. The Landlord submitted many supporting photographs and said she had to clean as the intended incoming tenant was scheduled to move in right away. She estimated the number of hours at \$35.00 an hour for a total request for compensation of \$250.00.

The Landlord had entered into a tenancy agreement with the incoming tenant and submitted a copy. However, the intended incoming tenant refused to move in when they saw the condition of the unit and demanded the return of the deposit and the cancellation of the tenancy agreement. The Landlord returned the deposit. The unit was vacant for one month until the Landlord found a new occupant. The Landlord requested compensation of \$450.00 although she lost revenue of \$2,300.00 (the increased rental amount).

#### *Tenant's Evidence*

The Tenant denied the Landlord is entitled to any compensation and testified as follows.

The Tenant attempted to touch up the walls and acknowledged the paint was a different color than the original. However, she did her best to buy matching colors and it is not her fault the store failed to properly match. The Landlord's estimated hours and cost are unreasonable.

The Tenant acknowledged that some parts of the unit as shown in the Landlord's photos required more cleaning. However, the unit was reasonably clean and the Tenant had paid a cleaner for 4 hours of work. The Landlord's claim is exaggerated and unreasonable.

The Tenant denied the Landlord was unable to rent the unit to the incoming tenant because of the painting or cleaning condition.

#### Analysis

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

#### *Deposit*

I accept the uncontested testimony the parties did not complete a move in inspection report, the tenancy ended on August 31, 2024, the Landlord received the forwarding

address in writing on July 28, retained the deposit and applied for dispute resolution on September 13, 2024.

Section 23(4) of the Act requires landlords to complete a condition inspection report in accordance with the Residential Tenancy Regulations when the tenancy starts.

Section 24(2) of the Act states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
[...]  
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the Landlord did not complete a condition inspection report when the tenancy started, the Landlord extinguished the right to claim against the deposit, per section 24(2)(c) of the Act.

Section 38(1) of the Act requires landlords to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

In accordance with section 38(6)(b) of the Act, as the Landlord extinguished his right to claim against the deposit and did not return the deposit within the timeframe of section 38(1) of the Act, the Landlord must pay the Tenant double the amount of the deposit.

*RTB Policy Guideline 17* states that "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."

*Policy Guideline 17* also states the Tenant is entitled to double the deposit if the Landlord claimed against the deposit when the Landlord's right to do so has been extinguished under the Act:

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 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.

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is **\$32.47**.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenant is entitled to \$1,832.47 (double the \$900.00 deposit plus the interest).

I will now consider the Landlord's claims against the Tenant.

**Is the Landlord entitled to a Monetary Order for loss of rent?**

In this case, the onus is on the Landlord to prove the Landlord is entitled a claim for a monetary award.

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

I find the Landlord has met the burden of proof for an award for loss of rent as claimed.

I accept the Landlord's testimony supported by photographs that the Tenant left the unit requiring cleaning and repair because of which the scheduled incoming tenant declined to move in. A Tenant must leave a unit reasonably clean and must repair damage. This Tenant did not comply with their obligations under the Act. As a result, the Landlord was not able to rent the unit for one month because of the last-minute cancellation and the Landlord lost rental income for one month.

I find the Landlord found a different tenant for the following month and acted reasonably to find a new occupant within a short period.

I find the Landlord's claim for loss of rent of \$450.00 to be reasonable in the circumstances.

I grant an award to the Landlord in this amount.

**Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?**

Section 32(3) of the Act states that a Tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the Tenant or a person permitted on the residential property by the Tenant. Based on the Landlord's testimony and evidence, I find the Tenant left parts of the walls painted with the wrong color paint.

A tenant is required to leave a unit reasonably clean. Based on the Landlord's testimony and evidence, I find the Tenant failed to do so.

I accept the Landlord's claims which were supported by photographs and the Tenant's acknowledgment that some cleaning and painting were necessary.

The estimate of time and cost are justifiable in the circumstances. Although the Landlord has not submitted receipts as she did the work herself, I have referenced *RTB Policy Guideline 16: Compensation for Damage or Loss*. This Guideline states that an award may be made where there has been an infraction of a legal right, and the applicant has not proven the extent of the loss. I find the amount claimed to be reasonable and warranted in the circumstances.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has met the burden of proof for all claims. The Landlord has established a claim for damage to the rental unit for the cleaning and painting as claimed.

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 Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$200.00 for painting and \$250.00 for cleaning.

*Filing fee*

As both parties have been successful in their claims, I do not award reimbursement of the filing fee to either.

*Summary of Award*

Further to section 72, I grant an award to the Tenant of **\$932.47** as follows:

ITEM	AMOUNT
Award to Tenant - Security deposit and interest	\$1,832.47
(Less Award to Landlord )	(\$900.00)
<b>TOTAL</b>	<b>\$932.47</b>

### Conclusion

I grant the Tenant a Monetary Order of **\$932.47** which may be filed and enforced in the courts of the Province of BC. 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: November 26, 2024

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Residential Tenancy Branch