



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## **DECISION**

Dispute Codes      For the Landlord: MNDL-S, LRSD, FFL  
For the Tenant: MNSDS-DR, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application pursuant to the Act is for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security and pet damage deposits (the Deposits), under section 38; and
- an authorization to recover the filing fee, under section 72.

The tenant's application pursuant to the Act is for:

- an order for the landlord to return the Deposits, pursuant to section 38; and
- an authorization to recover the filing fee, under section 72.

The landlord's agent AB (the Landlord) and tenant MC (the Tenant) attended the hearing. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

### Service

The Tenant confirmed receipt of the Landlord's notice of application and evidence (the Landlord's materials) and that she had enough time to review them.

Based on the undisputed testimony, I find the Landlord served the Landlord's materials to the Tenant in accordance with section 89(1) of the Act.

The Tenant affirmed she did not serve her notice of application and evidence (the Tenant's materials) because she assumed it was not necessary to do so.

Section 89(1) requires the applicants to serve their notice of application. The Residential Tenancy Branch provided to the Tenant the Tenant's materials, including information about required service.

As the Tenant did not serve the Tenant's materials, I dismissed the Tenant's application.

However, in accordance with Policy Guideline 17, I am still able to consider if the Tenant is entitled to an order for the return of the Deposits: "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 RTA."

#### Issues to be Decided

Is the Landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the Deposits?
3. an authorization to recover the filing fee?

Is the Tenant entitled to an order for the return of the Deposits?

#### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Landlord's claims and my findings are set out below.

I explained rule 7.4 to the attending parties: it is the Landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on January 15, 2023 and ended on October 15, 2024. Monthly rent when the tenancy ended was \$2,300.00, due on the 15<sup>th</sup> day of the month. The landlord collected a security deposit in the amount of \$575.00 and a pet deposit in the same amount and currently holds the Deposits in the total amount of \$1,150.00.

The parties also agreed the Landlord received the forwarding address in writing on January 23, 2025 and the Tenant did not authorize the Landlord to retain the Deposits in writing.

The parties conducted a move in inspection, but did not complete a condition inspection report.

The Landlord is seeking \$2,020.20 as the Tenant damaged the master bedroom carpet. The Landlord stated the carpet was in good condition when the tenancy started, and that when the tenancy ended there were 17 large irremovable stains, likely due to spilled liquid or pet urine.

The Landlord submitted two photos taken on December 18, 2022 showing carpet ridges. The Landlord testified she did not take photos when the tenancy ended because she imagined the Tenant would authorize her to retain the Deposits. The Landlord took 2 photos on November 7, 2024 showing the stains.

The Landlord submitted an invoice for the amount claimed and said that she paid this amount for a new replacement carpet.

The Landlord does not know how many square feet the bedroom has and does not know the carpet's age.

The Tenant affirmed the carpet was old when she moved in, sometime during the tenancy the toilet overflowed, and the water spilled over the bedroom's floor. The Tenant stated she cleaned the floor with a heater and there were some stains when she moved out caused only by the toilet overflow. The Tenant never informed the toilet overflow to the Landlord.

### 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.

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

### Deposits

I accept the uncontested testimony the parties did not complete a move in inspection report, the tenancy ended on October 15, 2024, the Landlord received the forwarding address in writing on January 23, 2025, retained the Deposits and submitted an application for dispute resolution.

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 her right to claim against the Deposits, per section 24(2)(c) of the Act.

Section 38(1) of the Act requires landlords to either return the security and pet 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 her right to claim against the Deposits and did not return the Deposits within the timeframe of section 38(1) of the Act, the Landlord must pay the Tenant double the amount of the Deposits.

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."

I find it reasonable to calculate the interest until the hearing's date, as the Landlord confirmed she held the Deposit on that date.

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 \$55.01.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenant is entitled to \$2,355.01 (double the \$1,150.00 Deposits plus the interest).

### Carpet

Based on the undisputed testimony, I find the toilet overflowed during the tenancy, the Tenant did not inform this issue to the Landlord and the carpet had stains when the tenancy ended.

Section 32 of the Act states that landlords must maintain rental units in health standards, tenants must repair damages caused by their actions or neglect, but are not required to make repairs for reasonable wear and tear.

Tenants are required to inform landlords about damages that happen in the rental unit, including when the tenants are not responsible for the damages, in accordance with section 32 of the Act.

I accept the uncontested testimony the Landlord paid the invoice in the amount of \$2,020.20.

Based on the conflicting testimony of the parties and the photos submitted, I find the Landlord failed to prove the carpet was damaged due to pet urine when the tenancy ended.

I find the Tenant breached section 32 of the Act by not informing the Landlord about the toilet overflow, and the Landlord suffered a loss due to the Tenant's breach. If the Tenant had informed the Landlord about the toilet overflow the Landlord could have addressed the carpet damage in a different way and avoided this damage.

Policy Guideline 40 (published in February 2025) indicates that carpets have a useful life of 12 years.

The Landlord is not aware of the carpet's age. Based on the Tenant's testimony and the photos submitted, I find the carpet was old when the tenancy started, as it had ridges. As the Landlord applied for damages related to the carpet, the Landlord should have been aware of the carpet's age.

Considering the Landlord failed to prove the carpet's age, I find the Landlord failed to prove that she is entitled to the compensation claimed for a new replacement carpet.

Policy Guideline 16 states that the party may be awarded nominal damages: "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right."

Considering the Tenant breached section 32 of the Act, and the Landlord suffered a loss, I find it reasonable to award the Landlord nominal damages in the amount of \$500.00.

Filing fee and Summary

I grant the Landlord the \$100.00 filing fee, as the Landlord was successful in this application.

In summary, I grant the Landlord \$600.00.

Policy Guideline 17 sets guidance for a set-off when there are two monetary awards: "Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order."

I granted the Tenant \$2,355.01.

Thus, I award the Tenant \$1,755.01 (\$2,355.01 minus \$600.00).

Conclusion

Pursuant to sections 38 and 67 of the Act, I grant the Tenant a monetary order in the amount of \$1,755.01.

The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order in accordance with section 88 of the Act. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 Act.

Dated: March 5, 2025

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Residential Tenancy Branch