



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## DECISION

**Dispute Codes**      **CNC-MT, MNDCT, OLC, OFT; OPU-DR, MNU-DR, FFL**

---

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

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47.
- A monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act.
- An order requiring the landlord to comply with the Act pursuant to section 62.
- An Order that a fixed term tenancy has ended due as frustrated pursuant to section 44(1)(e)

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the Act) for the following:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") pursuant to sections 46 and 55.
- 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.

- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

## **Background to Applications**

---

1. This is the third hearing on the applications.
2. The Tenant vacated the unit before the first hearing on February 26, 2025.
3. I granted an Interim Decision on February 26, 2025 which included the following terms:
  - a. The applications were joined.
  - b. The Tenant withdrew claims under sections 47, 66 and 62 as she had moved out, which were dismissed without leave to reapply.
  - c. The Landlord withdrew the claim for an Order of Possession under section 46.
  - d. The parties were directed to submit written submissions
4. The second hearing took place on March 18, 2025 and was scheduled for one hour. Both parties attended. The hearing adjourned after 2 hours and 43 minutes without completing. The Landlord finished presentation of their evidence. The Tenant did not cross examine the Landlord or submit evidence.
5. The Landlord attended this hearing, but the Tenant did not. I kept the teleconference line open for an additional 92 minutes after the scheduled start time to allow the Tenant an opportunity to join. The teleconference system indicated only the Landlord and I had connected. I confirmed the correct call-in number and participant code for the Tenant was provided.
6. I checked the Communications history for the applications which did not include a record of any request by the Tenant for an adjournment or any explanation for her failure to attend.
7. The remaining issues are:
  - a. Is the Landlord entitled to a Monetary Order for rent and damages to the unit, authorization to retain the security deposit, and reimbursement of the filing fee?

Is the Tenant entitled to a Monetary Order for compensation for loss of quiet enjoyment and an order that the Landlord's conduct effectively frustrated the tenancy agreement?

### **Preliminary Issue – Partial Settlement**

---

During the second hearing on March 18, 2025, the parties reached an agreement to settle part of their dispute.

Under section 63 of the Act, the Arbitrator may assist the parties to settle. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Both parties agreed to the following as a final and binding resolution of part of the Landlord's claims and that they did so of their own free volition, without any element of coercion.

The Tenant agreed to pay the Landlord the following:

ITEM	AMOUNT
Utilities.	\$847.00
Cleaning - Carpet	\$262.50
Cleaning	\$921.00
<b>TOTAL</b>	<b>\$2,030.50</b>

Further to the agreement between the parties, I grant an award in the Landlord's favour in the amount of **\$2,030.50**.

### **Preliminary Issue –Attendance**

---

Rule 7.3 states if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Landlord requested the hearing proceed in the Tenant's absence. He stated he had spent hours preparing, was feeling stressed by the repeated proceedings, and simply wanted the matter resolved.

I considered the circumstances including the failure of the Tenant or agent to attend and the lack of any explanation. Accordingly, I proceeded with the completion of the hearing.

### **Preliminary Issue –Tenant's Evidence**

---

Rule 7.4 requires that evidence be presented by the party who submitted it, or by that party's agent. If neither attends the hearing, any written submissions provided may or may not be considered.

In this case, the Tenant presented substantial evidence and gave testimony during two earlier hearings, totaling four hours, including submitting many documents and written submissions. The Tenant was scheduled to continue presenting their evidence at this hearing, after which the Landlord would have had the opportunity to cross-examine and respond.

Given the circumstances, I will consider the Tenant's submitted evidence in making my decision. However, I will assign it limited weight, as the Landlord has not had the opportunity to question the Tenant about it.

### **Issues to be Decided**

---

Is the Landlord entitled to:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to apply the deposit to the award under section 72
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Is the Tenant entitled to:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*.
- An Order that a fixed term tenancy has ended due as frustrated pursuant to section 44(1)(e)

## **Background and Evidence**

---

### *Tenancy*

The Landlord submitted a copy of the tenancy agreement.

The tenancy started on September 1, 2024. Rent was \$4,842.82 payable on the first of the month. The Tenant provided a security deposit of \$2,475.00 which the Landlord holds. Accumulated interest is \$30.15 for a total of \$2,505.15.

The parties agreed the Tenant did not provide notice she was moving out and did not pay rent for February 2025.

The parties disagreed on when the Tenant moved out. The Landlord stated the Tenant moved out February 1, 2025 although a roommate stayed in the unit until mid-month. The Tenant said she moved out in late January 2025 and acknowledged her roommate stayed until mid-February 2025.

The Landlord testified the unit required significant cleaning and repairs, which prevented it from being re-rented after the Tenant moved out. The Landlord expects the unit will be ready for occupancy by June 1, 2025, and is seeking compensation for lost rent for February and March 2025.

### *Condition Inspection – Move-In*

The Landlord submitted a signed copy of the condition inspection report on moving in dated October 1, 2024.

The report states that the unit is in good condition overall although some itemized damage is noted.

#### *Condition Inspection – Move-Out*

The parties scheduled a condition inspection on February 13, 2025. The Tenant did not attend. The Landlord completed a report in her absence, a signed copy of which was submitted.

The report notes many damages, including

- The unit was in a state of disrepair and uninhabitable.
- The unit was left in a filthy and damaged condition.
- The ceiling of living room and dining room was water damaged.
- The carpeting on the second and third floor of the unit was dirty, stained and marked by burns.
- The Tenant left debris and abandoned items.

The Landlord submitted many supporting photographs of the condition of the unit showing damage, uncleanliness, and debris.

#### *Forwarding address*

The Landlord testified the Tenant provided her forwarding address on February 13, 2025.

#### *Landlord's Claims*

The Landlord claimed compensation for the following.

	<b>ITEM</b>	<b>AMOUNT</b>
1.	Rent February 2025	\$4,842.82
2.	Rent March 2025	\$4,842.82
3.	Water damage - Deductible	\$1,000.00
4.	Carpet	\$6,659.00
5.	Repairs	\$3,970.00
6.	Junk removal	\$1,449.00

7.	Claims agreed upon (above)	\$2,505.15
	<b>TOTAL</b>	<b>\$25,268.79</b>

The Landlord stated he embarked on repairs to the unit as soon as possible. He arranged for repairs after receiving quotes. He submitted receipts of the cost of repairs, carpet replacement and junk removal. He expects the unit will be ready for occupancy June 1, 2025.

### *Tenant's Claims*

The Tenant claimed that the Landlord's behaviour caused her to move out at the end of January 2025. Her primary complaint was that the Landlord gave her many notices to enter the unit which disturbed her. He therefore frustrated the fixed term tenancy. She is not responsible for rent for February or March.

The Tenant denied she is responsible for the damages claimed by the Landlord.

The Landlord's conduct amounted to loss of quiet enjoyment for which the Tenant seeks compensation.

## **Analysis**

---

### ***Standard of Proof***

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 their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?

3. Has the applicant proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act.or loss.

I consider each of the above four tests in my decision.

Each claim is addressed as follows.

1.	<i>Rent February 2025</i>	<i>\$4,842.82</i>
2.	<i>Rent March 2025</i>	<i>\$4,842.82</i>
	<b><i>Total</i></b>	<b><i>\$9,685.64</i></b>

After the Tenant left, the unit remained vacant for February and March to allow cleaning and repairs. The Landlord is seeking compensation for lost rent for those months.

The parties agreed that the Tenant did not give notice she was moving out. The Landlord claimed she left the unit damaged and requiring cleaning. At the time of the hearing, he said repairs were still ongoing and the unit could not be rented for April or May either.

The Landlord said that he discovered severe water damage to the unit during an inspection on December 22, 2024. A restoration company, the insurer, and various professional repair companies dealt with remediation, providing quotes, and conducting repairs.

The Tenant disagreed with the Landlord's version of events, saying she did not owe rent for February or March 2025. She said she left before the end of January because of the Landlord's intolerable behavior. The Tenant acknowledged, however, that her roommate may have continued living in the unit until mid-February.

The Tenant also agreed that on December 22, 2024, the Landlord found water damage in the unit that required plumbing and structural repairs. She confirmed that a restoration company, the insurance company's representatives, and repair workers attended the unit several times to address the issue.



Even so, the Tenant argued she should not have to pay rent because, in her view, the Landlord made it impossible for her to keep living there. She said the constant notices of entering the unit made the situation unlivable and brought the tenancy to an end.

The Tenant summarized her position in her application claiming many unacceptable actions by the Landlord:

[The Landlord] has repeatedly harassed me and my household by threatening name calling stealing property, coming up with excuses and trying to make me responsible for pipe leaks etc ...he has been very aggressive and calling me and emailing me up to 20 times a week just to verbally attack me , he has forced him self in my home 5 times to do a inspection in 3 1/2 weeks dispute me having pneumonia and emailing him a note from my doctor , he is scary

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find the Landlord did not frustrate the tenancy or make it impossible for the Tenant to live there. He was carrying out normal duties of a landlord to maintain and repair the property. I do not find the Tenant's evidence to be a reliable version of events and I give it little weight.

I accept the Landlord's supported evidence and find the Tenant left the unit requiring cleaning, repairs and debris removal which resulted in the Landlord's inability to rent the unit for February and March 2025.

Accordingly, I find the Landlord has met the burden of proof for compensation for rent due for the months of February and March 2025.

I grant the Landlord an award for rent in the amount claimed for a total of \$9,685.64.

3.     *Deductible*

*\$1,000.00*

The Landlord claimed as follows. The Tenant damaged the plumbing causing leaking which was discovered December 22, 2024. The Tenant tried to do the plumbing repairs herself or failed to report the leaks.

The leaks damaged the ceiling below and required considerable repairs in the amount of \$9,000.00. The Landlord sought compensation the insurance deductible of \$1,000.00.

The Landlord submitted many documents in support of their claim such as a plumber's invoice of January 16, 2025. This invoice stated, "someone has been playing plumber". The Landlord's evidence does not state the Tenant is responsible for the damage or for failing to report it.

The Tenant denied she did any damage to the plumbing or failed to report it.

Under the Act, the landlord is responsible for regular repairs and maintenance. The tenant is required to pay for repairs where damages are caused, either deliberately or because of neglect, by the tenant or guests. The tenant is not responsible for reasonable wear and tear. These obligations are discussed in *RTB Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises* and sections 32 and 35 of the Act.

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.

The landlord has the burden of proving their claim. They have failed to do so in this case. I am not satisfied that the Landlord has met the burden of proof that the Tenant is in any way responsible, either by damaging the plumbing or failing to report it to the Landlord. I find it unlikely the Tenant damaged the plumbing or attempted repairs.

I find the Landlord has not met the burden of proof with respect to this aspect of their claim which is dismissed without leave to reapply.

4. *Carpet*

*\$6,659.00*

The Landlord submitted many pictures of damage to the carpet which included burns. The carpet could not be cleaned or repaired.

The landlord stated the carpet was 4 years old and had an expected life under RTB *Policy Guideline 40* of 12 years.

The Landlord claimed compensation for 2/3 of the cost of the replacement of the carpet of \$9,989.72 which reflects its remaining life. The landlord submitted a receipt.

The Tenant denied she is responsible for any damage to the carpets.

The condition inspection report on moving in, signed by both parties, states the carpet was in good condition. In considering the many photographs and other documentary evidence submitted by the Landlord, I observe the carpet was stained and marked when the Tenant moved out. I accept the Landlord's evidence in its totality and find the Tenant damaged the carpet during the tenancy, it could not be repaired or cleaned, and the Landlord replaced the carpet at a reasonable cost.

I find the Landlord has met the burden of proof for a claim under this heading under all four headings.

I grant the Landlord an award of \$6,659.00 for compensation for replacement of the carpet.

5.	<i>Repairs</i>	\$3,970.00	0
----	----------------	------------	---

The Landlord requested compensation for repairs in support of which he submitted many photographs and receipts. The repairs included:

- Repainting of three rooms which required special cleaning and six coats of paint as the Landlord believed the room was used for smoking crack cocaine.
- Replacement of three interior doors required by removal of locks and nail holes

The Tenant denied any responsibility for the damage.

The parties' condition inspection report on moving in stated the unit was in good condition in all aspects.

At the hearing, the Landlord reduced his claim by \$500.00 to reflect the withdrawal of part of the listed repairs related to water damage.

I accept the Landlord's evidence in its totality regarding the damages for repairs. I find the Tenant caused the damage, the Landlord incurred the repair costs claimed, and the repairs were both reasonable and necessary.

On a balance of probabilities, I find the Landlord has met the burden of proof and established all four elements of the legal test for compensation.

Accordingly, I award the Landlord \$3,470.00

6.	<i>Junk removal</i>	\$1,449.00	0
----	---------------------	------------	---

The Landlord submitted an invoice in the amount claimed, along with photographs showing debris and personal items left behind by the Tenant.

The Tenant stated that she intended to return for the items and denies responsibility for the cost of their removal. However, she did not claim compensation for the items nor assert that they held any value.

At the end of a tenancy, a tenant must remove all their property from the rental unit unless they have made prior arrangements with the landlord to store it.

On a balance of probabilities, I find the Landlord has met the burden of proof and established all four elements of the legal test for compensation. I accept the Landlord's evidence that the Tenant abandoned the unit leaving some items behind, that he incurred expenses for their removal, and that he is entitled to compensation in the amount claimed.

Accordingly, I award the Landlord \$1,449.00.

*Tenant's Claims - Frustration*

The Tenant did not attend the final hearing. However, as stated earlier, I have considered the Tenant's submissions and evidence.

The Tenant claimed the tenancy ended because of frustration under section 44(1)(e) and she is entitled to compensation for loss of quiet enjoyment under section 28. She said the Landlord harassed her throughout the tenancy and made it impossible for her to continue to live there. She cited three 10 Day Notices for late rent, and a One Month Notice to end tenancy for cause.

As well, the Landlord and persons on his behalf entered many times for a variety of reasons, some of which were unnecessary and designed to aggravate her. The totality of the Landlord's alleged actions, not all of which are referenced in this decision, made it impossible for her to continue to live there and amounted to loss of quiet enjoyment. The Tenant had no alternative but to move out.

The Landlord denied his actions frustrated the tenancy and drove the Tenant out. He did not disrupt the Tenant's right to quiet enjoyment. He discovered serious water damage to the unit on December 24, 2024 which resulted in repairs of \$9,000.00. The notices of entry for remediation personnel, insurers and repair professionals were prudent and necessary. The Landlord he did not issue frivolous notices to end tenancy. All communication with the Tenant was compliant with the Act, prudent and necessary.

Residential Tenancy Act Policy Guideline 34 provides guidance on the legal doctrine of frustration and outlines the resulting liabilities of the parties when a contract is deemed frustrated.

Frustration occurs when, through no fault of either party, an unforeseen event renders the contract incapable of being performed. The event must radically alter the circumstances of the tenancy such that the original agreement can no longer be carried out as intended. When a contract is frustrated, the parties are discharged from further obligations under it.

The Guideline emphasizes that the threshold for frustration is high. The change in circumstances must significantly alter the nature, meaning, purpose, effect, and consequences of the contract for one or both parties. Mere hardship—economic or

otherwise—is not sufficient if the contract can still be performed according to its original terms.

A contract is not considered frustrated if the event in question was foreseeable or contemplated by the parties at the time the agreement was made. Furthermore, a party cannot rely on frustration if the alleged frustrating event was caused by their own deliberate or negligent act or omission.

While there was a change in circumstances (water damage), I find this did not justify the Tenant considering the tenancy at an end. While the repairs may have been inconvenient for the Tenant to accommodate, the situation did not call for the Tenant to move out.

I accept the Landlord's chronology of events, his concern at the condition of the unit from damage caused by the Tenant when he inspected the unit, such as burns to the carpet and the suspected smoking.

Having considered all the evidence, I find that the Tenant has not met the burden of proof to establish that the tenancy was frustrated. I dismiss the claim under this hearing without leave to reapply.

#### *Tenant's Claims – Loss of Quiet Enjoyment*

Section 28 of the Act guarantees a tenant's right to quiet enjoyment of the rental unit. This includes the right to reasonable privacy, freedom from unreasonable disturbances, and access to common areas without interference.

Residential Tenancy Policy Guideline 6, *Entitlement to Quiet Enjoyment* provides further guidance in evaluating claims under this section.

The Guideline makes clear that such interference may arise from a landlord's own actions or from the landlord's failure to take reasonable steps to address disturbances caused by others, provide the interference is frequent and ongoing.

In assessing these claims, the Arbitrator considers the seriousness of alleged interference, the extent and timing of any loss of use, the value of the loss to the tenancy, and the reasonableness of the landlord's response.

The Tenant has not met the burden of proof on a balance of probabilities to support a claim for loss of quiet enjoyment. I find the Landlord responded to the water damage and necessary repairs in a timely and reasonable manner. The totality of the Landlord's conduct does not constitute frequent or ongoing interference with the Tenant's right to quiet enjoyment. I do not provide much weight to the Tenant's version of events.

Accordingly, the Tenant's claim for compensation under this heading is dismissed without leave to reapply.

### Summary

---

In summary, I award the Landlord the following:

	ITEM	AMOUNT
1.	Rent February 2025	\$4,842.82
2.	Rent March 2025	\$4,842.82
3.	Water damage - Deductible	0
4.	Carpet	\$6,659.00
5.	Repairs	\$3,470.00
6.	Junk removal	\$1,449.00
7.	Claims agreed upon (above)	\$2,505.15
	<b>TOTAL</b>	<b>\$23,768.79</b>

I grant the Landlord an award for the cost of the filing fee and authorization to apply the deposit and interest to the award under section 72 as follows:

ITEM	AMOUNT
Award	\$23,768.79
Filing fee	\$100.00
(Less deposit and interest)	(\$2,505.15)
<b>TOTAL</b>	<b>\$21,363.64</b>

I grant the Landlord a Monetary Order of **\$21,363.64**.

## Conclusion

---

I grant the Landlord a Monetary Order of \$21,363.64. This Monetary Order may be filed and enforced in the courts of the Province of BC.

I dismiss the Tenant's claims 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 *Residential Tenancy Act*.

Dated: May 9, 2025

---

Residential Tenancy Branch