



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## **DECISION**

Dispute Codes      MNDL-S, LRSD, FFL / MNSDB-DR, FFT

### Introduction

This hearing dealt with Applications for Dispute Resolution (the Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord seeks:

- Compensation for damage to the rental unit under sections 32 and 67 of the Act;
- Authorization to retain the Tenant's security deposit and pet damage deposit under section 38 of the Act; and
- To recover cost of the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant seeks:

- The return of their security deposit under section 38.1 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

### Service of Notice of Dispute Resolution Proceeding and Evidence

Both parties confirmed receipt of the Notice of Dispute Resolution Package for the other's Application and the other's evidence. No issues with service were raised. Given this, I find these records were served as required under sections 88 and 89 of the Act.

### Preliminary Issue – Amendment

The Landlord requested compensation for cleaning with their claim for damage to the rental unit. Strictly speaking, a claim for cleaning is not considered damage. Under section 64(3)(c) of the Act and rule 7.12 of the *Rules of Procedure* (the Rules) I therefore amend the Landlord's Application so that the request for cleaning costs is considered under a claim for compensation for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement under section 67 of the Act, which would encompass cleaning.

The claim for cleaning costs is clearly outlined in the Application. As such, I find this amendment does not unfairly prejudice the Tenant.

### Issues to be Decided

- Is the Landlord entitled to the requested compensation?
- Can the Landlord retain the Tenant's security deposit and pet damage deposit? If not, is the Tenant entitled to their return?
- Are either party entitled to recover the filing fee for their Application from the other?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Evidence was provided showing that the tenancy began on January 15, 2024 with monthly rent of \$1,950.00 due on the first day of the month. A security deposit and a pet damage deposit of \$975.00 each were paid by the Tenant, which the Landlord still holds in full. The Tenant vacated the rental unit on October 29, 2025 after giving notice to end the tenancy to the Landlord.

#### *The Landlord's claims*

The walls in the rental unit were freshly painted at the start of the tenancy. By the end of the tenancy there was damage to the walls throughout the property with scratches and holes noted.

The Landlord provided photographs of the rental unit which they affirmed were taken on October 29, 2025 or a few days after. A copy of an invoice dated November 5, 2025 for \$1,110.00 was provided by the Landlord.

A completed condition inspection report was not provided as evidence. The Landlord testified that a report was completed at the start of the tenancy, but a copy was not provided to the Tenant. At the move out inspection on October 29, 2025, after things became heated the Tenant left with the report, which was the only copy the Landlord had.

The Landlord testified that pallets were left behind in the back yard of the rental unit by the Tenant, which they then had to remove and take to the dump. No records of any payments associated with the removal of the pallets were provided, though the Landlord sought to rely on paragraph 19 of the addendum to the tenancy agreement which reads as follows:

*“Any garbage left by tenant at end of tenancy will be taken to the City Landfill, the tenant will surrender \$500 per trip needed to clear out what is left behind.”*

The Landlord took the position that the Tenant left the rental unit in an unclean state, which required at least two hours of professional cleaning. The Landlord affirmed they paid a cleaner in cash and did not provide a record of the payment, though they referred to paragraph 17 of the addendum to the tenancy agreement which reads as follows:

*“Specialty repairs needed by tradespeople will be contracted out at standard rates at the time. Cleaning will be done on an hourly basis by cleaners hired by the landlord. The 2024 rate is \$75.00 per hour, minimum two hours. Ninety dollars (\$90) will be a basic charge in addition to the \$75.00 per hour.”*

The Landlord's claims are summarized as follows:

<b>Item</b>	<b>Amount</b>
Damage	\$1,110.00
Removal of pallets	\$500.00
Cleaning	\$240.00
<b>Total</b>	<b>\$1,850.00</b>

### *The Tenant's response*

The Tenant acknowledged the rental unit was freshly painted when the tenancy began. They argued that there was wear and tear and superficial changes to the condition of the walls was consistent with a 17-month tenancy, though it was accepted that a door trim was marked when moving a bed frame, and there were scratches made to areas during the tenancy. The Tenant said the Landlord had agreed they could patch any holes from hanging items on the wall with filler, which they did. They were under the impression that the Landlord would be painting the rental unit at the end of the tenancy anyway.

The Tenant disputed the notion that the Landlord's images were taken on October 29, 2025, taking the position that they were taken during a previous visit on October 18. The Tenant provided images of their own as evidence, which they affirmed were taken on October 29.

Regarding the condition inspection report, the Tenant denied there was ever a start of tenancy report prepared. They also denied taking any reports away from the Landlord and indicated that a blank document was presented at the end of tenancy inspection. The Tenant acknowledged they had put down pallets to form a decking area, which they had discussed with the Landlord, though there was no discussion regarding removal of the pallets.

The Tenant testified that they had cleaned the rental unit well and left it in immaculate condition. They argued the photographs they provided supported this.

### *Claims regarding the deposits*

The parties agreed the Tenant provided their forwarding address in writing to the Landlord some time on or after October 29, 2025. The Landlord acknowledged receipt of the Tenant's forwarding address, though was unsure of the precise date, though believed it was between October 26 and November 5.

### Analysis

Rule 6.6 states that 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.

### **Is the Landlord entitled to the requested compensation?**

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in breach of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord seeks compensation from the Tenant for a range of alleged breaches of the Act relating to damage of the rental unit and the level of cleanliness of the rental unit at the end of the tenancy.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant, or a person permitted on the residential property by the tenant. Additionally, section 37(2) of the Act sets out that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

For the purposes of a landlord's claim for damage, not only is the condition of the rental unit at the end of the tenancy of relevance, but when it comes to assessing any alleged damage to the rental unit, the condition at the start of the tenancy is also of importance as this allows for the scope and nature of any purported damage during the tenancy to be determined.

As set out in section 21 of the Regulation, a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

A tenant is only responsible for damage caused by them, and not for wear and tear, and it is for the Landlord to prove on a balance of probabilities any damage was caused by the Tenant as a starting point for their claims relating to damage to the rental unit. In order to be successful in their claim for cleaning costs, the Landlord must prove the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy. The standard of cleaning imposed by the Act is one of reasonableness and not one of perfection.

### *Damage*

The Landlord did not provide a start of tenancy condition inspection report in support of their Application. The parties provided conflicting testimony as to the reasons for this, with the Landlord in essence taking the position that the Tenant had taken off with the original and sole copy of the report at the end of tenancy inspection.

Under section 23(5) of the Act and section 18(1) of the Regulation, the Landlord was required to give a copy of the start of tenancy report to the Tenant within seven days of the inspection being completed. It is clear that the Landlord failed to do this. It is also clear from the legislation mentioned that the Landlord bears the responsibility for keeping a copy of the report, so any failure to maintain a copy is on them.

I have already set out the evidentiary weight carried by the condition inspection report above. Despite this, it was undisputed that the rental unit was freshly painted at the start of the tenancy. The Landlord provided images of the rental unit taken towards the end of the tenancy, though the parties disagreed about the precise date, though it was agreed to be within a window of under two weeks. For the purposes of this claim I do not find the precise date the images were taken to be a significant issue as there was no evidence the Tenant engaged in repairs of any of the alleged damage.

I find the Landlord's end of tenancy images show two areas of woodwork that have been scratched significantly. The paint finish appears to have been breached by the scratches, so given it was undisputed the rental unit was newly painted when the tenancy began, I find it more likely than not that the scratches occurred during the tenancy. I also find the scratches are fairly categorized as damage and not wear and tear.

The Tenant also acknowledged that a door trim was impacted when moving a bed frame. I also find this goes over and above reasonable wear and tear. I find a significant

amount of the marks and scuffs seen in the image would fall under reasonable wear and tear, though there are a noticeable amount of nail holes in certain areas, particularly above one of the doors and in one area of the ceiling. I find these holes represent damage over and above reasonable wear and tear. I note the term at paragraph 5 of the addendum prohibits this. In these circumstances, I find the Landlord has established this is also damage to the rental unit.

I note some of the costs outlined on the invoice is for repair of a kitchen drawer. Since the Landlord provided no evidence that establishes the pre-tenancy condition of the drawer, I find they have failed to establish this element of the claim.

I do not find the Tenant's argument that the Landlord would be expected to re-paint the rental unit at the end of their tenancy in any case to have merit. As noted in Policy Guideline 40 - *Useful Life of Building Elements*, an interior paint finish is expected to last for approximately six years. This was a relatively short-lived tenancy at just under 17 months, so I find it is reasonable that with reasonable use, the paint finish would not require re-painting after this tenancy as it was only around a quarter through its expected useful life.

To summarize the above, I find elements of the damage claimed by the Landlord falls under reasonable wear and tear. The paint finish was also a reasonable amount of time through its useful life in any case. In these circumstances, awarding the full amount claimed would not be justifiable. Under section 67 of the Act, I determine \$350.00 to be an appropriate level of compensation for the Tenant's breaches of section 37 of the Act.

#### *Removal of pallets*

It was undisputed that the Tenant brought pallets into the yard of the rental unit and did not remove them when they vacated. I find this is a clear breach of section 37(2)(a) of the Act on the Tenant's part.

The pallets appear to be in poor condition, are falling apart and dilapidated, and there appears to be signs of rot setting in. There appears to be no discernable use or value in the pallets left. I find this is akin to the Tenant leaving unwanted garden furniture behind and they would reasonably bear responsibility for the costs.

Whilst the Landlord has established their claim, I find issues with the amount sought. The \$500.00 claimed is based on a term in the tenancy agreement. There was no

evidence provided that supported how this pre-determined loss was calculated. I find the amount is extravagant and, in all likelihood, significantly more than the true cost of removing the pallets would be and could result in betterment if the compensation requested was awarded. I find the term at paragraph 19 of the addendum the Landlord seeks to rely on is a penalty clause, which is not enforceable. I am however prepared to award nominal damages of \$100.00 to the Landlord for this claim.

### *Cleaning*

The Landlord's images show areas of the rental unit in an unreasonably clean state. The date the images were taken is important for the purposes of this claim since if they were taken on October 18, 2025 there was still a significant amount of time for the Tenant to remedy the cleanliness issues and the images would not be an accurate reflection of the rental unit when the Tenant vacated on October 29.

The Tenant provided images of their own which, whilst they are not taken from as close up as the Landlord's, I find they show the rental unit in a reasonably clean manner. Given the rental unit is seen to be entirely empty, I find it plausible that they were taken around the time they vacated.

There was no end of tenancy condition inspection report prepared by the Landlord. This would have provided additional evidence as to the condition of the rental unit when the Tenant vacated. The Landlord took the position the Tenant left suddenly at the start of the inspection. If this were accepted, the Landlord still had the option to conduct the inspection and provide a copy to the Tenant for their comments.

Overall, I find significant frailties in the Landlord's evidence regarding the condition of the rental unit when the Tenant vacated. The Landlord's images are not time stamped, the Tenant disputes the Landlord's evidence with their own pictorial evidence. I found the Tenant's testimony on the issue to be at least as plausible as the Landlord's. From this, I find the Landlord has failed to establish a breach of section 37 of the Act on the Tenant's part. I dismiss the claim without leave to reapply.

Aside from the above, again, I find issues with the amount claimed. This was again unsupported by written evidence. No record of the purported cash payment to a cleaner was made, such as an invoice or receipt. The amount claimed again appears to be a penalty based on an extravagant hourly rate for a cleaner. Had the Landlord established the claim, a reduction in compensation would likely have been appropriate.

**Can the Landlord retain the Tenant's security deposit and pet damage deposit? If not, is the Tenant entitled to their return?**

Section 38(1) of the Act requires a landlord to either repay the security deposit and pet damage deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, whichever is later.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit and pet damage deposit.

It was undisputed that the Tenant vacated the rental unit on October 29, 2025 and the Tenant provided their forwarding address in writing to the Landlord around this time. The Landlord acknowledged receipt of the address some time between October 29 and November 5. The Landlord submitted their Application on November 6. Given this, the Landlord has applied within the fifteen-day timeframe set out in section 38(1) of the Act.

Though the Landlord has extinguished their right to claim against the deposits for damages under section 24(2)(c) of the Act by failing to provide a copy of the start of tenancy condition inspection report to the Tenant, they retain the right to claim for other losses such as those relating to cleaning, as the Landlord has done in this case. In these circumstances, the doubling provisions of section 38(6) of the Act do not apply.

As I have made a payment order in favour of the Landlord, as outlined previously in this Decision, I authorize the Landlord to retain \$450.00 from the Tenant's deposits full satisfaction of the payment order under section 72(2)(b) of the Act. I find the Tenant has not extinguished their right to the return of their deposits. I therefore order the Landlord to return the remainder of the deposits, with interest to the Tenant.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as \$47.49 using the Residential Tenancy Branch interest calculator using today's date.

**Are either party entitled to recover the filing fee for their Application from the other?**

As the Landlord was at least partially successful in their Application, I find they are entitled to recover \$50.00 of the \$100.00 filing fee from the Tenant under section 72(1) of the Act.

I find the Tenant's Application was unnecessary since all they requested was the return of their deposits, which was an issue that was to be determined under the Landlord's Application. The Tenant filed their Application over two weeks after they acknowledged receipt of notice of the Landlord's dispute, so I find they should bear the costs of the filing fee for their Application.

Conclusion

The Tenant is issued a Monetary Order for the return of part of their security deposit and pet damage deposit. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenant's obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below:

<b>Item</b>	<b>Amount</b>
Return of deposits, plus interest	\$1,997.49
Less: Landlord's compensation for damage	(\$350.00)
Less: Landlord's compensation for removal of pallets	(\$100.00)
Less: Landlord's filing fee	(\$50.00)
<b>Total</b>	<b>\$1,497.49</b>

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: February 06, 2026

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Residential Tenancy Branch