



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlords: MNDL-S, FFL  
For the tenants: MNSD, FFT

### Introduction

This hearing dealt with Applications for Dispute Resolution (“applications”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlords have requested a monetary order for damages to the unit, site or property, to retain all or part of the tenants’ security deposit, and to recover the cost of the filing fee. The tenants have requested the return of their security deposit and to recover the cost of the filing fee.

The landlords and tenant PB (“tenant”) attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

At the outset of the hearing that parties confirmed that they had received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. As a result, I find there were no issues raised in terms of the documentary evidence. In addition, the tenant stated that he was representing both tenants at the hearing.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of their filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2017 and was scheduled to end on June 30, 2018 the same date the tenants vacated the rental unit. The tenants paid a security deposit of \$900.00 at the start of the tenancy which has accrued no interest to date, which the landlords continue to hold and which the landlords have claimed against in their application.

A copy of the condition inspection report ("CIR") was submitted in evidence. The incoming portion of the CIR was signed and dated by the parties on June 20, 2017. The outgoing portion of the CIR was signed and dated by the parties on "07 2018" as the day in July is missing. Therefore, the parties agreed verbally during the hearing that the actual date in July of the outgoing inspection was on July 4, 2018. I consider the missing "4" an inadvertent error as the parties agreed July 4, 2018 they both met and went through the rental unit together and signed the outgoing portion of the CIR. The tenant did not agree with the outgoing portion of the CIR; however, which I will address later in this decision.

*Landlords' claim*

The landlords have claimed a total amount of \$900.00 and although the amount adds up to \$1,020.00 the landlords confirmed that they are only seeking a maximum of \$900.00 in total before the filing fee which is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repair to transition strip in master bedroom	\$262.50
2. Stain under vanity in bathroom	\$210.00
3. Blocked toilet	\$157.50
4. Cleaning suite	\$390.00
<b>TOTAL</b>	<b>\$1,020.00</b>

Regarding item 1, the landlords have claimed \$262.50 for the cost to repair a transition strip in the master bedroom. The landlords testified that the transition strip covered the transition between the carpet and the hardwood flooring and photographic evidence was provided by the landlords to show damage to the transition strip. The tenant did not deny damaging the transition strip. Instead he stated that his heel may have caught on it and blamed a lack of support under the carpet for the damage. The tenant failed to provide photographic evidence of any lack of support under the carpet in evidence to support his testimony. The CIR indicates that the master bedroom was in good condition at the start of the tenancy and was “smashed” at the end of the tenancy and damaged.

Although the landlord provided a quote for \$250.00 plus GST to repair the transition piece, the landlord testified that he did not have that company repair the transition piece and that he repaired it himself and that the transition piece cost him \$60.00 but that that amount did not include labour. The landlord did not provide any testimony as to an amount he was charging for his labour to repair the transition piece.

Regarding item 2, the landlords have claimed \$210.00 for the cost to repair a stain under the vanity in the main bathroom. The landlords referred to a colour photo which shows several blue-coloured stains in a rectangle shape under the main bathroom vanity. The landlords referred to the same quote as item 1 which lists \$200.00 plus GST to “supply and install white laminate piece to cover damaged bottom of vanity”. The landlords stated that the rental unit was new before the tenants moved into the rental unit and that they are no longer renting the rental unit as a result of this tenancy. The tenant testified that “I did not see that stain” during the move out inspection. He did not specifically deny making those stains during the hearing.

Regarding item 3, the landlords have claimed \$157.50 for the cost to repair a blocked toilet. The landlords stated that after the tenants vacated the rental unit the landlords attempted to flush the bathroom toilet and that it filled up with water. The landlords stated that they used a plunger however after attempting a second flush, the toilet again filled with water. As a result, the landlord removed the toilet from the floor and found a total of 9 pickles inside of the toilet. The landlords referred to at least five colour photos showing the pickles inside of the toilet and removed into one location where there was a total of 9 pickles. The tenant denied that he flushed any pickles down the toilet. The landlords stated that the toilet was new before the tenants moved into the rental unit and that the pickles must have been flushed by the tenants as a result.

In support of the amount claimed, the landlord referred to a quote from a company in the amount of \$157.70 to remove pickles from inside of the toilet by removing the toilet bowl and reinstalling with a new wax ring. The quote indicates that a toilet snake did not work to remove the blockage of pickles inside the toilet. The tenant questioned whether the flooring shown in the photo evidence was the flooring of the bathroom. The landlords stated that the toilet was not placed on the tile of the bathroom due to the mess of the wax ring and was placed in the mechanical room six feet away from the bathroom where the toilet was removed. The landlords also stated that they did not and would not flush pickles in their own toilet to cause damage as that would be ridiculous.

Regarding item 4, the landlords have claimed \$390.00 for cleaning costs. The landlords stated that they are charging \$39.00 per hour for ten hours and that they were given the amount of \$39.00 based on a verbal quote for cleaning over the phone. The landlords stated that they performed the cleaning themselves and referred to many colour photos submitted in evidence. The landlords testified that the tenants did not look after the brand new apartment. The tenant disputed the cleaning costs as excessive and stated that cleaning was done before vacating and submitted photographic evidence in support of his testimony. The tenants' photos were taken at a much further distance than the landlords' photos which were taken very close up. The tenants' position is that their photographic evidence supports a reasonably clean rental unit and that the landlords' cleaning costs are not justified.

#### *Tenants' claim*

The tenants are seeking the return of their \$900.00 security deposit under the *Act*, plus the recovery of the cost of the filing fee.

#### *Analysis*

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the above, I will first deal with the landlords' claim and then address the tenants' security deposit.

#### Landlords' claim

**Item 1** – The landlords have claimed \$262.50 for the cost to repair a transition strip in the master bedroom. After considering the evidence of the parties, I find the tenant admitted that his heel may have caught the transition strip and I find the tenant has provided insufficient evidence to support that there was a deficiency with the installation of that transition strip or lack of support under the carpet as the tenant claims. In addition, as the CIR indicates that the master bedroom was in good condition at the start of the tenancy and was “smashed” at the end of the tenancy and damaged I find the tenant is responsible for the damage caused. I find; however, that the amount claimed is excessive though compared to the actual cost to repair the transition strip.

Section 7 of the *Act* and part 4 of the test for damages or loss indicated above require the person making a monetary claim to do what is reasonable to minimize the damage or loss and I find the landlord has done the opposite regarding this item. I accept the landlord paid \$60.00 for the transition piece which I find reasonable; however, the landlord failed to give testimony regarding how much per hour he was charging for labour to install the transition piece and I find the quote to be excessive considering the

landlord provided no evidence that the installation took many hours to complete. Therefore, as some installation time was required, I award the landlord a nominal amount of \$50.00 for the time to install the transition strip and the \$60.00 cost of the transition strip for a total of **\$110.00** for this portion of the landlords' monetary claim. I dismiss the remainder due to insufficient evidence, without leave to reapply.

**Item 2** - The landlords have claimed \$210.00 for the cost to repair a stain under the vanity in the main bathroom. I find the photographic evidence supports that toilet bowl cleaner likely caused the blue-coloured stains inside the main bathroom vanity cabinet. The landlords referred to the same quote as item 1 which lists \$200.00 plus GST to "supply and install white laminate piece to cover damaged bottom of vanity". I also accept the landlords' undisputed testimony that the rental unit was new at the start of the tenancy and that the CIR supports that the tenants damaged the area claimed for this portion of the landlords' claim. I find the tenant's response of "I did not see that stain" during the move out inspection not to be compelling and that he did not specifically deny making those stains during the hearing. Therefore, I find the landlords have met the burden of proof and I find the tenant negligent by leaving stains which I find more likely than not was caused from a bottle of toilet bowl cleaner that either was not closed properly or where some cleaner was dripping from the lid and was not wiped off before putting back under the sink. I grant the landlords **\$210.00** as claimed for item 2 accordingly.

**Item 3** - The landlords have claimed \$157.50 for the cost to repair a blocked toilet. I find that it is more likely than not that the tenants or a person invited into the rental unit by the tenants flushed pickles down the toilet on purpose and are liable for the repair costs as a result. I also find that the amount claimed is reasonable given that the toilet had to be removed to ensure all 9 pickles were removed as supported by the photographic evidence and that a new wax ring would be required to reinstall the toilet and that the repair would cost less than installing a brand new toilet. Therefore, I find the tenants are liable for the cost of **\$157.50** as claimed and I award the landlords that amount as claimed as I find the burden of proof has been met. I also agree with the landlords that it would be ridiculous to assume that the landlords flushed pickles down their own toilet.

**Item 4** - The landlords have claimed \$390.00 for cleaning costs. The landlords stated that they are charging \$39.00 per hour for ten hours and that they were given the amount of \$39.00 based on a verbal quote for cleaning over the phone. I find that the photographic evidence from both parties are of limited weight. Firstly, I find the landlords' photos were taken too close to be of greater weight. I also find that the tenants'

photos were taken too far away to be of greater weight. In addition, I find that the landlords' version of "reasonably clean" differs from the tenants' version of "reasonably clean". Section 37(2) of the *Act* applies and states as follows:

**Leaving the rental unit at the end of a tenancy**

**37** (2) When a tenant vacates a rental unit, the tenant must

**(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[My emphasis added]

I have reviewed the photographic evidence from both parties and find that the tenant left the rental unit in almost a reasonably clean condition and I find the landlords' version of clean to be unreasonable as the landlords can't expect the rental unit to be in "new" condition at the end of the tenancy as the *Act* allows for some wear and tear in every tenancy as noted above.

In addition, I find the cost of \$39.00 per hour to be excessive and that the standard rate for a cleaner is approximately \$20.00 per hour so in essence, I find the landlord has claimed for almost double the amount they are entitled to. I do find the tenant did leave the lower vanity cabinets damaged which required an attempt to clean by the landlords and other areas dusty and not reasonably clean including the stove and fridge. Therefore, based on the above I find the tenants did breach section 37 of the *Act* but not to the extent claimed by the landlords. Therefore, I find the landlords are entitled to 5 hours of cleaning at \$20.00 per hour which I find to be a reasonable amount and I dismiss the other 5 hours of cleaning at \$39.00 per hour without leave to reapply due to insufficient evidence. Accordingly, I find the landlords have met the burden of proof in the amount of **\$100.00** for this portion of their claim.

As the landlords' claim had merit, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$677.50** comprised of \$110.00 for item 1, \$210.00 for item 2, \$157.50 for item 3, and \$100.00 for item 4, plus \$100.00 for the recovery of the cost of the filing fee.

### *Tenants' claim*

The tenancy ended on June 30, 2018 and the landlords' application for dispute resolution claiming against the tenants' security deposit was filed on July 14, 2018. As a result, I find the landlords complied with section 38 of the *Act* which requires that the landlords file their application within 15 days of the later date between either the end of tenancy date or the date the tenants' served their written forwarding address on the landlords.

As a result, I do not grant the tenants the recovery of the cost of their filing fee as the landlords' complied with section 38 of the *Act* and I grant the landlords authorization under section 38 and 67 of the *Act* to retain **\$677.50** from the tenants' \$900.00 security deposit which has accrued no interest to date under the *Act*, in full satisfaction of the landlords' monetary claim. I find the landlords now must return the tenants' remaining security deposit balance of **\$222.50**. Should the landlords fail to immediately return that amount, I grant the tenants a monetary order in that amount which must be served on the landlords.

### Conclusion

The landlords have established a total monetary claim of \$677.50 which I have deducted from the tenants' \$900.00 security deposit which has accrued no interest to date. The landlords have been ordered to immediately return the tenants' remaining security deposit balance of \$222.50.

The tenants are granted a monetary order pursuant to section 67 of the *Act*, for the security deposit balance amount owing by the landlords to the tenants in the amount of \$222.50. Should the tenants require enforcement of the monetary order the tenants must first serve the landlords and then the monetary order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that court.

The decision will be emailed to the parties as noted above and the monetary order will be emailed to the tenants only for service on the landlords as required.



This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2018

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Residential Tenancy Branch