



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDL-S, FFL

### Introduction

This decision pertains to the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks two monetary orders under sections 67 and 72(1) of the Act for the following:

1. compensation in the amount of \$6,319.95 for various cleaning and repairing of the rental unit; and,
2. compensation in the amount of \$100.00 for recovery of the filing fee.

Dispute resolution hearings were convened on October 11, 2018 and again on November 22, 2018, at which the landlord, the landlord's husband, and both tenants attended. The tenants' lawyer was in court and unavailable to attend the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issue, at either hearing, in respect of service of documents.

### Issues

1. Is the landlord entitled to compensation in the amount of \$6,319.95?
2. Is the landlord entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

The landlord testified that the tenancy of the rental unit, a single-family dwelling, commenced on May 1, 2014. Monthly rent was \$2,400.00, which at some point increased to \$2,470.00. The tenants paid a security deposit of \$1,200.00 and a pet damage deposit of \$300.00. Submitted into evidence by the landlord was a copy of the written tenancy agreement.

On June 7, 2018, the tenancy ended. Thirteen days later, on June 20, the landlord filed an application for dispute resolution seeking compensation from the tenants in the amount of \$2,526.37 (later amended to \$6,319.95) for, as stated in the landlord's particulars:

Cleaning for an extremely dirty house, carpet cleaning, door re-keying as they only returned one set of keys and they kept another one, plumbing labour to repair plugged sinks throughout the house and plugged bath tub; labour to take their belongings out of the crawl space (please refer to pdf attached: [street name] Condition), estimate for broken doors and blinds; and for power brush of the built in vacuum.

In addition, the landlord seeks to recover the \$100.00 filing fee in submitting her application.

The landlord submitted an amended Monetary Order Worksheet which listed the following specific claims:

House cleaning	\$595.35
Carpet cleaning	\$343.30
Key door relocking	\$113.74
Plumbing and shed roof	\$500.00
Replacement of broken door	\$165.61
Carpentry labor	\$165.00
Replace broken blinds	\$557.10
Paint for walls	\$442.35
Painting labour	\$2,987.50
Hauling items from packed	\$450.00
<u>Total monetary order claim</u>	<u>\$6,319.95</u>

At the commencement of the arbitration hearing I canvassed the parties as to the possibility of a settlement. The landlord responded that she was willing to settle the claim for an amount equivalent to the amount of the security and pet damage deposits, in the amount of \$1,500.00. Tenants' counsel briefly conferred with the tenants, and then advised that they would not be amendable to a settlement.

The main argument advanced by the landlord is that the tenants left the house in an extremely dirty condition with several items left broken, missing, and inoperable.

The main argument submitted by the tenants is that the house was in an extremely dirty condition at the start of the tenancy, and that they should not be penalized for a house that was not in any worse condition at the end of the tenancy.

At the start of her testimony, the landlord acknowledged that she did not conduct a move-inspection at the start of the tenancy and that no Condition Inspection Report was ever completed.

During the tenancy, the landlord explained that whenever there was an issue, she was responsive to the tenants' needs. Or, that whenever the tenants were unable to pay rent on time (she said that this occurred on three occasions), she was always flexible in working out some sort of arrangement.

Before the tenants moved in, the landlord had the carpets cleaned and did her best to "make everything

nice.” She wanted to make sure everything was “reasonably clean and tidy when showing the house, that “common sense [is that] you wouldn’t show a dirty house, and that she did her best to make the house look nice.

On March 15, 2018, the landlord engaged in negotiations to end the tenancy, and offered the tenants three and half months to remain. The tenants said that the house would not be ready to leave by then. The parties both testified about various dates surrounding the expected end of tenancy, though I note the anticipated, changing dates of the end of tenancy are not material to the dispute.

There was attempts made by the landlord to conduct a move-out inspection with the tenants, who apparently were not available during the proposed times. The final inspection was to occur on June 11 or 12, and there were several back-and-forth texts between the parties about inspection times, with the tenant being generally unable or unwilling to do them. There are also multiple texts between the parties wherein the tenants acknowledge having to remove their property from the shed, crawlspace, and yard. The final inspection, after the landlord provided notices to the tenants about the final inspection went unconfirmed, occurred on June 17, 2018. In the end, “the tenants never showed up.” The tenants left one set of keys in the mailbox for the landlord; the landlord had to re-key the doors on account of not having the complete set of keys returned.

Upon arriving at the rental unit after the tenants vacated, the landlord found the house to be in disarray: there were holes in the walls, the kitchen, fridge, and stove were filthy, the bathroom was dirty, the sink was plugged and there was excrement in the toilet. She noted that the blinds were broken (“every single one was broken”). There was dog excrement on the carpet, a broken door, the carpets were stained, and broken doors were stained, and what appeared to be animal hairs on them. According to the landlord, the tenants had two dogs and 4-5 cats. There was also what appeared to be children’s writing on the walls. And there was stuff underneath the washer and dryer; the landlord’s husband briefly testified that there was “a dead bird behind the dryer.”

The landlord testified briefly about the state of the outside of the property, where there was “no more grass” and “debris left behind.”

In all, the landlord stayed a whole week cleaning the rental unit. A cleaning company contacted by the landlord refused to accept the job on account of how extensive the cleaning would be. Another cleaning company ended up accepting the contract.

The crawlspace of the house, according to the landlord, was packed with stuff that took her fifteen hours to clear out.

Submitted into evidence by the landlord were many photographs of the rental unit, and copies of text messages between the parties.

Tenants’ counsel briefly cross-examined the landlord, asking her whether the tenants had proper access to the house in order to clean it. The landlord responded that “either way, no cleaning took place.”

During tenant T.G.’s testimony, the tenants confirmed that they did have two cats, and that they watched a schnauzer dog for a few weeks for a friend.

The tenant argued that the photographs submitted by the landlord is a poor representation of how the house was kept. Regarding the carpets, the tenant testified that the carpets were in bad condition at the start of the tenancy, and emails submitted by the tenants confirmed this understanding of the state of the carpets between the parties. The carpets are older than ten years old. There was wear and tear to the fridge, but this wear and tear did not occur during the tenancy. The walls of the rental unit were “very old and very dirty” when they moved in, and that the tenant had to wash them. Indeed, the tenant testified, she spent hours cleaning when they moved in.

The tenant conceded that there was a hole in the wall near where they hung their coat, and that there was paint on the walls where their daughter drew her name on the wall.

The tenant testified that they were never given an opportunity to come in and do a proper cleaning. And, “the truth is, when we moved in the house was not cleaned.” The house was tidy, but it needed cleaning. The carpets had not been cleaned when they moved in.

When the tenants were in the process of moving out of the house, their life was in disarray, with one of the tenant’s parent suffering a life-threatening illness and the other tenant starting a new job. Thus, the process of moving out and attempting to get the place back in order took longer than ordinary. The tenant submits that the photographs submitted by the landlord are photos of the house before the tenants moved out.

In rebuttal, the landlord testified that the photographs are time-stamped and reflect that the photographs are time-stamped on June 8, 2018.

### Analysis

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.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In determining whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other’s non-compliance done whatever is reasonable to minimize the damage or loss?

At the outset, I note that the landlord did not complete an Condition Inspection Report at the start of the tenancy. That such a report was not completed, while not necessarily fatal to a landlord's claim, will largely determine which damages may be compensable, and which may not. The purpose of such a report is, of course, to establish the condition of the rental property when tenants move in, and to establish the condition of the rental property when the tenants move out, thereby establishing whether any change in condition may have occurred either through normal wear and tear or through a tenant's negligence. Without any documentary evidence or proof that a rental unit was in a stated condition at the start of a tenancy, it is difficult for a landlord to prove—specifically in cases where a tenant disputes the landlord's claims about the condition of the rental unit upon moving out—that the tenants made the condition of the rental property worse when they moved out.

Section 37(2) of the Act states that when a tenant vacates, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The landlord's claims may be divided into types: (1) claims related to the tenant purportedly not leaving the rental unit reasonably clean upon vacating, and (2) claims related to the unit being damaged upon vacating.

Based on the photographic evidence submitted by the landlord, there are several examples of the first type: dirty floor of kitchen, dirty fridge (interior), dirty freezer (interior), dirty oven, toilet "plugged with poop," "dog pop" on floor, "dog or cat poop [on] carpet," hairs on sink, children's writing on doors, plugged sink in bathroom, plugged sink in the laundry room, detritus under the washer, detritus under the dryer.

While there is no Condition Inspection Report for the house at the beginning of the tenancy, it is unreasonable to find that the above-noted examples of uncleanness cannot be attributed to the tenants' failure to make any reasonable steps to leave the rental unit reasonably clean.

Regarding these aspects of the landlord's claim, I find that the tenants failed to comply with section 37(2) of the Act as it pertains to leaving the rental unit reasonably clean. But for the tenants leaving the rental unit in this state of uncleanness, the landlord would not have had to clean the rental unit.

In this case, the landlord claims for the following items and amounts:

House cleaning	\$595.35
Carpet cleaning	\$343.30
Key door relocking	\$113.74
Plumbing and shed roof	\$500.00
Replacement of broken door	\$165.61
Carpentry labor	\$165.00
Replace broken blinds	\$557.10
Paint for walls	\$442.35
Painting labour	\$2,987.50
<u>Hauling items from packed</u>	<u>\$450.00</u>
<u>Total monetary order claim</u>	<u>\$6,319.95</u>

The landlord submitted several photographs of the rental unit depicting its condition at the end of the tenancy. In the absence of a Condition Inspection Report, I cannot make any finding that the carpets needed cleaning (indeed, the parties agreed that the carpets were in an already poor shape upon the start of the tenancy), that the tenants cause plumbing issues, that the tenants were responsible for the shed roof or that they caused damage to the shed roof, that they broke the door, that the blinds were not already broken upon move in, that carpentry labor was a result of the tenants' breach of the Act or tenancy agreement, and, finally, that the claim for paint for walls or painting labour was a result of the tenants' actions or negligence.

As such, in the absence of evidence in the form of either a Condition Inspection Report or photographs taken at the start of the tenancy, I do not find that the landlord has met the onus of demonstrating that the tenants breached the Act or tenancy agreement leading to the landlord having to bear these costs. While I do not doubt that the rental unit likely needed extensive repairs, what I cannot find is a claim for damages caused by the tenants.

In summary, I dismiss the following claims by the landlord, without leave to reapply: carpet cleaning, plumbing and shed roof, replacement of broken door, carpentry labour, replacement of broken blinds, and painting costs and labor.

However, the tenants did not dispute that the key door required relocking. In addition, the tenants admitted to the landlord (in text messages) that they would not be able to haul items away that were stored at the rental unit, inferring that they were responsible for so doing. As such, I find that the landlord has met the onus of proving her claims for the key door relocking in the amount of \$113.74 and for the "hauling items from packed" in the amount of \$450.00.

As I noted above, there are a list of issues having to do with the cleanliness of the house (e.g., dirty oven, feces in toilet and on floor) that a reasonable tenant ought to have addressed before vacating a rental unit. It is not necessary to have a Condition Inspection Report before me to find that the tenants negligently, if not wilfully, left the rental unit in an unreasonably unclean condition. As such, I find that the landlord has met the onus of proving her claim for house cleaning costs in the amount of \$595.35. Given the nature and level of uncleanliness of the rental unit, the amount claimed is reasonable.

While I acknowledge and recognize that the tenants were going through a particularly difficult time around the time that they were in the process of vacating the rental unit, with one tenant going through a job change and the other tenant experiencing painful family issues, these are, with respect, not reasons to not clean the rental unit.

Finally, I grant the landlord a monetary award of \$100.00 for recovery of the filing fee.

Given the above, I grant the landlord a total monetary award of \$1,259.09. I order that the landlord may retain this amount from the security deposit with a balance owing to the tenants in the amount of \$240.91.

### Conclusion

I hereby grant the landlord a monetary award of \$1,259.09. I order that the landlord may retain this amount from the security deposit held, and that the landlord must refund the balance to the tenants in the amount of \$240.91.

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: November 26, 2018

---

Residential Tenancy Branch