



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL, MNDL-S, FFL

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlords served the tenants with their application for dispute resolution via registered mail. I find that the landlords' application for dispute resolution was served on the tenants in accordance with section 89 of the *Act*.

### **Preliminary Issue**

The landlords withdrew their claim for a Monetary Order for unpaid rent. I therefore dismiss the landlords claim for unpaid rent with leave to reapply.

### **Issues to be Decided**

1. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?

2. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2014 and the tenants moved out on September 30, 2019 and finished cleaning on October 1, 2019. Monthly rent in the amount of \$1,296.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenants to the landlords and was not returned to the tenants at the end of this tenancy. The landlords applied for dispute resolution on October 15, 2019. The tenants provided the landlords with their forwarding address in writing via registered mail on October 28, 2019.

Both parties agreed to the following facts. The landlords did not ask the tenants to complete move in or move out condition inspections and inspection reports. No move in or move out condition inspection reports were completed by either party. The landlords did not enter into evidence any documents proving the move in condition of the subject rental property.

The landlords claim the tenants damaged the subject rental property and are seeking the following monetary compensation for the below listed damages:

<b>Item</b>	<b>Amount</b>
Replace carpet	\$3,343.58
Insurance deductible for water damage	\$2,500.00
Drywall and door repair	\$1,420.00
Replace curtains	\$480.00
Repair/replace screen door, shed, landscaping	\$700.00
Replace baseboard heaters	\$97.98
Replace thermostat cover	\$15.78

Replace two blinds	\$151.34
Replace range hood	\$178.00
Replace gutter	\$37.06
Replace toilet	\$158.00
Replace flooring in upstairs bathroom	\$357.64
Landlords' labour for completing repairs	\$279.84
Expenses incurred in preparation for this hearing	\$76.67
Filing Fee	\$100.00
<b>Total</b>	<b>\$9,895.89</b>

### Replace carpet

The landlords testified to the following facts. The house was built between 2006 and 2007 making the carpet 13-14 years old when the tenants moved out. The carpet was clean and in good condition when the tenants moved in and was filthy, stained and beyond repair when the tenants moved out. The landlords entered into evidence photographs of stained and dirty carpet. The landlords entered into evidence an estimate for the carpets to be replaced in the amount of \$3,343.58 and are seeking this amount from the tenants.

The tenants testified to the following facts. The carpet was old but in good condition when they moved in and was stained and dirty when they moved out. The tenants were going to hire a carpet shampooer to clean the carpets before they vacated the subject rental property, but landlord M.S. told them that they did not have to as it was her responsibility as a landlord to clean the carpets when they left, so the tenants did not clean the carpets.

Landlord M.S. confirmed the tenants' above testimony but added that she agreed to have the carpets cleaned before she saw them and before she realized how damaged they were.

### Insurance deductible for water damage

The tenants testified to the following facts. The tenants went away on holidays from July 20-28, 2019 and when they returned to the subject rental property, they found that the dishwasher had leaked all over the floor. The tenants cleaned it up to the best of

their ability and turned off the water to the dishwasher to prevent further leakage. The tenants did not notify the landlords of the leak.

The landlords testified that they did not learn of the leak until after the tenants moved out. The leak from the dishwasher allowed water to enter the subfloor and the kitchen cabinets and because the water was not properly cleaned up immediately after the leak, the damage to the kitchen was significantly worse than it otherwise would have been.

The landlords testified that the cost of the repairs to the kitchen was \$4,951.19 which were covered by their insurer; however, the landlords had to pay an insurance deductible of \$2,500.00. The invoice for the repair work in the amount of \$4,951.19 was entered into evidence. No documentation regarding the landlords' insurance claim or deductible were entered into evidence.

The tenants testified that they did not inform the landlords of the leak because they did not want to bother the landlords and knew that they would be moving out soon. The tenants testified that they did not know that their efforts to clean up the water leak were not successful.

#### Drywall and door repair

The landlords testified to the following facts. The drywall and interior doors at the subject rental property were approximately 13-14 years old when the tenants moved out. The drywall and doors were in good condition when the tenants moved in. The drywall and interior doors were damaged in every room after the tenants moved out and every room will need to be patched, sanded and re-painted. The landlords entered into evidence photographs of damaged walls. The landlords received several estimates to repair the walls at the subject rental property and the lowest estimate was a verbal estimate in the amount of \$1,420.00. The landlords drafted an invoice to express the verbal estimate they received, which was entered into evidence.

The tenants testified to the following facts. The walls and interior doors of the subject rental property were in good condition when they moved in and the walls had dings when they moved out but no major holes, other than those caused by the installation of one baby gate. The tenants lived at the subject rental property with three children for approximately five and a half years and the marks on the walls are consistent with normal living activity.

Replace curtains

The landlords testified to the following facts. The curtains were 13-14 years old when the tenants moved out. The curtains were all in good condition when the tenants moved in. When the tenants moved out the curtains in the bedroom were moldy and the curtains in the living room were damaged. The landlords entered into evidence photographs of the damaged curtains. Landlord M.S. testified that she attended at a fabric shop and based on the prices she saw at the fabric shop, she estimated it would cost \$480.00 to purchase new fabric to make new curtains. The landlords drafted an invoice to express landlord M.S.'s estimate, which was entered into evidence.

The tenants testified to the following facts. The curtains were in good condition when they moved in and when they moved out two curtains required replacement. The tenants testified that they owe the landlords for the curtains but objected to the landlord's estimate of \$480.00 as the curtains were old and were not worth that amount. The tenants testified that they also owe the landlord for the cost of one curtain rod.

Repair/replace screen door, shed, landscaping

The landlords testified to the following facts. The screen door was 13-14 years old when the tenants moved in. The screen door was in good condition when the tenants moved in. When the tenants moved out the screen door was broken. The landlords entered into evidence a photograph of a broken screen door.

The tenants testified that they did not break the screen door.

The landlords testified to the following facts. The exterior shed was 13-14 years old when the tenants moved in. The shed was in good condition when the tenants moved in. When the tenants moved out the shed had a large hole in it. The landlords entered into evidence photographs of a dilapidated shed which looked to be constructed of plywood and have substantial water damage.

The tenants testified that they did not damage the shed and that it deteriorated on its own. The tenants entered into evidence photographs of the shed showing it to be in poor condition with rotting sections. The landlords testified that a shed does not break down on its own.

The landlords testified that the tenants parked in the front lawn at the subject rental property and damaged the lawn. The tenants testified that landlord M.S. gave them verbal permission to park on the lawn. Landlord M.S. denied giving the tenants permission to park on the lawn. The landlords entered into evidence photographs of the front yard showing that the grass died where the tenants' truck was parked.

The landlords testified that they estimate all of the above listed damages would cost \$700.00 to repair. The only estimate entered into evidence was an invoice drafted by the landlords for \$700.00. The invoice does not provide a breakdown as to how this sum was arrived at.

#### Replace baseboard heaters

The landlords testified to the following facts. The baseboard heaters at the subject rental property were 13-14 years old when the tenants moved in and were in good condition. When the tenants moved out several baseboard heaters at the subject rental property were dented and rusty. Photographs of same were entered into evidence. The landlords entered into evidence an estimate from a home renovation store for new baseboard heaters totalling \$97.98.

The tenants testified that they did not use the baseboard heaters and heated the subject rental property with the gas fire place. The tenants testified that they did not know if the baseboard heaters were dented when they moved in but did not believe they dented them and are not responsible for the rust.

#### Replace thermostat cover

The landlords testified to the following facts. The thermostat covers at the subject rental property were 13-14 years old when the tenants moved in and were in good condition. When the tenants moved out one thermostat cover was broken. A photograph of same was entered into evidence. The landlords entered into evidence an estimate from a home renovation store for a new thermostat cover totaling \$15.78.

The tenants agreed that they broke the thermostat cover and owe the landlords for this.

Replace two blinds

The landlords testified to the following facts. The blinds at the subject rental property (two sets) were one to two years old when the tenants moved in and were in good condition. The tenants took the blinds with them when they moved out. The landlords entered into evidence an estimate from a home renovation store for two sets of blinds totalling \$151.34.

The tenants testified that the subject rental property never had blinds and that they did not take any blinds with them when they left.

Replace range hood

The landlords testified to the following facts. The range hood at the subject rental property was 13-14 years old when the tenants moved in and was in good condition. When the tenants moved out there was a burn mark on the range hood from the attached light. The landlords believe that this is likely from having too high a watt light bulb in the range hood. The landlords entered into evidence a photograph of a range hood with an orange burn mark/discoloration behind the lightbulb. The landlords entered into evidence an estimate from a home renovation store for a range hood in the amount of \$178.00.

The tenants testified that they did not put too high a watt light bulb in the range hood and used it in a normal fashion. The tenants were not sure if the burn mark/discoloration was there when they moved in.

Replace gutter

The landlords testified to the following facts. The gutters at the subject rental property were 13-14 years old and were in good condition when the tenants moved in. When the tenants moved out the gutters were damaged. The landlords hypothesized the tenants must have hit the gutters with their truck. Photographs of a dented gutter were entered into evidence. The landlords entered into evidence an estimate from a home renovation store for new gutters in the amount of \$37.06.

The tenants testified that they did not damage the gutters and were not sure on the condition of the gutters when they moved in.

#### Replace toilet

The landlords testified to the following facts. The toilets at the subject rental property were 13-14 years old and were in good condition when the tenants moved in. When the tenants moved out the lid for the toilet tank was cracked. The landlords were not able to get a new tank cover that fit that toilet so they will have to purchase a new toilet. The landlords entered into evidence an estimate from a home renovation store for a new toilet in the amount of \$158.00.

The tenants testified that they did not break the toilet tank lid.

#### Replace flooring in upstairs bathroom

The landlords testified to the following facts. The flooring in the upstairs bathroom was 13-14 years old and was in good condition when the tenants moved in. When the tenants moved out there was a leak from the toilet which got beneath the linoleum flooring and caused damage to the floor. The flooring had to be torn out and the area beneath the toilet repaired. Photographs of the base of the toilet show staining of the linoleum where it meets the base of the toilet were entered into evidence. More photographs of the subfloor after the linoleum was removed showing water damage were entered into evidence. The landlords entered into evidence a receipt from a home renovation store for flooring in the amount of \$357.64.

The tenants testified that the staining around the base of the toilet was there when they moved in and that they did not know there was a leak.

#### Landlord's labour for completing repairs

The landlord testified that he is seeking \$279.84 for the cost of labour to install all the items listed in the estimate from the home renovation store. The landlord did not explain how this sum was arrived at.

#### Expenses incurred in preparation for this hearing

The landlords testified that they spent \$76.67 on materials used to prepare for and participate in this hearing. Receipts totaling \$76.67 were entered into evidence.



## **Analysis**

Section 67 of the *Act* states that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

Section 32(2) of the *Act* states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 32(3) of the *Act* states that a tenant of a rental unit 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.

Residential Tenancy Policy Guideline 16 states that 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.

Residential Tenancy Policy Guideline #40 (PG #40) is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

PG #40 states that if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

#### Replace carpet

PG #40 states that the useful life for carpets is 10 years; therefore, at the time the tenants moved out, there was no useful life left on the carpet of this unit. Consequently, the tenants are not required to pay for new carpet. I dismiss the landlords' claim for the cost of replacing the carpet.

#### Insurance deductible for water damage

Both parties agreed that the dishwasher leaked in July of 2019 and that the tenants did not inform the landlords of the leak. The landlords testified that the damage caused by the leak was made worse by the tenants' failure to inform them of the leak as restoration work did not commence until after the tenants moved out and the landlords became aware of the problem. The landlords entered into evidence a receipt for restoration work in the amount of \$4,951.19 but testified that their insurer paid for the work to be completed and they paid an insurance deductible of \$2,500.00.

The landlords did not enter into evidence any proof that their insurance deductible was \$2,500.00 or that they paid this amount. The landlords failed to prove part 3 of the 4-point test (quantification of damages), I therefore dismiss the landlords' claim.

Nonetheless, I also find that the tenants' failure to inform the landlords of the leak, on a balance of probabilities, increased the damage to the subject rental property. It is common knowledge that a water leak that is not properly dried out can lead to water damage. I find that in not reporting the water leak to the landlords the tenants were negligent and breached section 32 of the *Act*.

I find that while the landlords have not properly established the quantification of their loss, I find that they have proved that they suffered a loss and the tenants breached the *Act*. I therefore award the landlords \$1,000.00 in nominal damages.

Drywall and door repair

The landlords entered into evidence an invoice they drafted to reflect a verbal quote from a third party that they received for alleged damage to the drywall and doors at the subject rental property. I find that this invoice falls short of proving the value or quantity of the loss or damage that they are alleging. The landlords would have had to enter into evidence document(s) including but not limited to a third-party estimate, receipt or quote to properly prove the value of the loss or damage they are alleging. The landlords failed to prove part 3 of the 4-point test, I therefore dismiss the landlords' claim for drywall and door repair.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure 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. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I decline to award nominal damages as the tenants deny that they damaged the walls and doors at the subject rental property beyond normal wear and tear and the landlords have no proof as to the move in condition of the doors and walls. It is not possible for me to determine if the damage to the doors and walls, as shown in the photographs, is more than reasonable wear and tear because there are no pre-tenancy photographs and no move in condition inspection report to compare them to.

Replace curtains

The landlords entered into evidence an invoice they drafted to reflect landlord M.H.'s estimate as to the fabric replacement cost for the curtains. I find that this invoice falls short of proving the value or quantity of the loss or damage that they are alleging. The landlords would have had to enter into evidence document(s) including but not limited to a third-party estimate, receipt or quote to properly prove the value of the loss or damage they are alleging. The landlord failed to prove part 3 of the 4-point test. I therefore dismiss the landlords' claim for the cost of the curtain replacement.

While the landlords failed to prove the quantification of their loss, I find that, on a balance of probabilities, they have proved that a loss was suffered as the tenants agreed that they owed the landlords for the replacement of two curtains and one curtain rod. I find that the landlords are entitled to nominal damages in the amount of \$150.00.

Repair/replace screen door, shed, landscaping

The landlords entered into evidence an invoice in the amount of \$700.00 they drafted to reflect their estimate for the repair/replacement of a screen door, a shed and some landscaping. I find that this invoice falls short of proving the value or quantity of the loss or damage that they are alleging. The landlords would have had to enter into evidence document(s) including but not limited to a third-party estimate, receipt or quote to properly prove the value of the loss or damage they are alleging. The landlord failed to prove part 3 of the 4-point test. I therefore dismiss the landlords' above claim.

I decline to award nominal damages as the tenants deny that they damaged the screen door and shed, and the landlords have no proof of the move in condition of the screen door, shed or lawn. The landlords bear the burden of proof to prove their claim and have not done so.

Replace baseboard heaters

The landlords testified that the tenants damaged the baseboard heaters. The tenants testified that they did not believe they damaged the heaters but could not recall the move in condition of the heaters.

As the landlords have no proof of the move in condition of the baseboard heaters, I find that they have failed to prove, on a balance of probabilities, that the tenants damaged the baseboard heaters. I therefore dismiss the landlord's claim for the cost of the baseboard heaters.

Replace thermostat cover

Both parties agree that the tenants broke the thermostat cover. I find that in damaging the thermostat cover and not fixing it, the tenants breached section 32 of the *Act*. At the

time the tenants moved out, the thermostat was approximately 13.5 years old (162 months).

Policy Guideline #40 states that the useful life for heating systems is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 18 months of useful life that should have been left for the thermostat cover. I find that since the unit required a new thermostat after only 162 months, the tenant is required to pay according to the following calculations:

$$\text{\$15.78 (cost of new thermostat cover) / 180 months (useful life of thermostat cover) = \$0.09 (monthly cost)}$$
$$\text{\$0.09 (monthly cost) * 18 months (expected useful life of thermostat cover after tenant moved out) = \$1.58}$$

#### Replace two blinds

The landlords testified that the tenants took two sets of blinds with them when they moved out. The tenants testified that the subject rental property did not have blinds and that they did not take any blinds with them when they moved.

As the landlords have no proof of the condition of the subject rental property at the beginning of the tenancy or the contents of the subject rental property at the beginning of the tenancy, I find that the landlords have failed to prove that tenants took blinds with them when they left or otherwise damaged them. I therefore dismiss the landlords' claim for the cost of the blinds.

#### Replace range hood

The landlords testified that the tenants damaged the range hood at the subject rental property. The tenants testified that they used the range hood in a normal fashion and that the burn mark/discoloration may have been present when they moved in.

As the landlords have no proof of the condition of the subject rental property at the beginning of the tenancy, I find that the landlords have failed to prove that range hood was in a poorer condition at the end of the tenancy than at the beginning. I also find that the landlords have failed to prove that the discoloration or burn was the result of

anything other than regular use. I therefore dismiss the landlords' claim for the cost of a new range hood.

Replace gutter

The landlords testified that the tenants damaged the gutters at the subject rental property. The tenants testified that they did not damage the gutters.

As the landlords have no proof of the condition of the subject rental property at the beginning of the tenancy, I find that the landlords have failed to prove that the tenants damaged the gutters. I therefore dismiss the landlords' claim for the cost of new gutters.

Replace toilet

The landlords testified that the tenants damaged the toilet tank lid at the subject rental property. The tenants testified that they did not damage the toilet tank lid.

As the landlords have no proof of the condition of the subject rental property at the beginning of the tenancy, I find that the landlords have failed to prove that the tenants damaged the toilet tank lid. I therefore dismiss the landlords' claim for the cost of a new toilet.

Replace flooring in upstairs bathroom

The landlords testified that the flooring in the bathroom was 13-14 years old when the tenants moved in.

PG #40 states that the useful life for flooring is 10 years. Therefore, at the time the tenants moved out, there was no useful life left on the flooring of this unit. I therefore dismiss the landlords claim for the cost of new flooring.

Landlord's labour for completing repairs

The landlords claimed \$279.84 for the labour required to complete the above repairs; however, the landlords did not provide any information on how that sum was arrived at. I

therefore find that the landlords have failed to prove the value of their loss. Nonetheless, I find that the landlords have expended labour and will expend labour making/purchasing new curtains, and repairing the kitchen and thermostat. I therefore award the landlords nominal damages for labour in the amount of \$200.00.

#### Expenses incurred in preparation for this hearing

The landlords testified that they spent \$76.67 on materials used to prepare for and participate in this hearing. Receipts totaling \$76.67 were entered into evidence.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the landlords claim for all costs incurred when preparing for, or participating in, the dispute resolution process.

#### Filing Fee

As the landlords were successful in their claim, I find that they are entitled to recover the \$100.00 filing fee from the tenants.

#### Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlords made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain the tenants' entire security deposit in the amount of \$625.00 in part satisfaction of their monetary claim against the tenants.

### Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Insurance deductible for water damage- nominal damages	\$1,000.00
Replace curtains	\$150.00
Replace thermostat cover	\$1.58
Landlord's labour for completing repairs- nominal damages	\$200.00
Filing Fee	\$100.00
Less security deposit	-\$625.00
<b>Total</b>	<b>\$826.58</b>

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 *Residential Tenancy Act*.

Dated: February 27, 2020

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Residential Tenancy Branch