



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$8,000.00 for damages for the Landlords, retaining the security deposit to apply to the claim; and to recover the \$100.00 cost of their Application filing fee. However, the Landlords said that the actual amounts were higher than this, although, they acknowledged that they had not amended their Application to inform the Tenants about this change.

The Tenants and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenants said they had received the Application and the documentary evidence from the Landlords and had reviewed it prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB or to the Landlords.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application, and the Parties confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2021, with a monthly rent of \$2,150.00, due on the first day of each month. They agreed that the Tenants paid the Landlords a security deposit of \$1,075.00, and no pet damage deposit; the Landlords confirmed that they still hold the security deposit in full. They agreed that the tenancy ended on March 31, 2022.

The Parties agreed that the residential property is a single family dwelling with four bedrooms and two bathrooms. The Landlords said it was built in 1972, and that renovations have been done on a piecemeal basis over the years. They said the flooring was replaced in 2015.

The Parties agreed that they conducted an inspection of the condition of the residential property at the start of the tenancy, and again at the end of the tenancy. They agreed that the Landlords provided the Tenants with a copy of the condition inspection report ("CIR") at the start of the tenancy.

The Landlords submitted a monetary order worksheet with the following claims set out:

	Receipt/Estimate From	For	Amount
1	[M.H.]	House cleaning	\$300.00
2	[construction company]	Repair of damage	\$9,927.60
		Total monetary claim	\$10,227.60

#1 HOUSE CLEANING → \$300.00

In the hearing, the Landlords explained this claim, as follows:

I submitted some pictures showing that the vent in the bathroom had Kleenex and Q-tips, there was dust, a window full of flies, dust – the window sills weren't wiped down or cleaned properly. We have a heat register – all kinds of garbage and dust was in that. It hadn't been cleaned. It was not vacuumed; the floors were sticky and dusty. The walls had pencil crayon drawings, and an unknown substance splashed on it. It was not left horrible, but it was not clean enough for a new tenant. The cleaning company was there for 8 hours.

The Tenants responded:

We did a pretty good job cleaning the floors. The heat registers – that hasn't been painted for about five years. The bathroom with Q-tips – it's not even a register; it's a dead hole. There's nothing that goes there but insulation.

When we moved in, I had to clean out the kitchen cupboards; it had oil or grease that needed to get wiped down. The window sills had a ton of flies and bugs as well. Garbage was left around the house. There was stuff in those holes and hideaways, and underneath the desk and workshop. I'd say we had to do some cleaning, as well. We had to wash the walls – they weren't washed when we moved in. Basically, it was not clean when we moved in.

I asked the Landlords how they calculated the \$300.00 for the cost of cleaning the house. They said:

We came to this because there were two people there cleaning, and they started at 10 a.m. to 5 p.m. so that's seven hours of cleaning for the bulk of them. In the inspection with the new tenants, they noted that it was quite dirty, so they were not happy. They had their stuff waiting to come inside. Our new tenants hired the cleaning company to come in and clean it, and they sent us the bill, and we paid it. It's a small town with limited services available, especially at the last minute.

The Tenants said:

I have a problem because you said you hired a professional cleaning company, but the person who cleaned it was a friend of mine; she called me that she found

a couple things I'd left behind. It was [T.D.] and her husband, and their two kids cleaning. She said it wasn't astronomically dirty - the walls a little bit - and boards. But I know that she was the one that cleaned it. She wasn't a professional, and she said the house wasn't left really dirty - not that bad.

The move-in portion of the CIR shows that the following items were dirty at the start of the tenancy:

- Light fixtures, bulbs,
- Refrigerator,
- Freezer, and
- Trim in kitchen was marked up.

However, there were no notations on the move-out portion of the CIR indicating that anything was left dirty.

#2 REPAIR OF DAMAGE → \$9,927.60

Holes in Walls → \$1,800.00

The Landlords said that their town was flooded in the fall, resulting in many homes needing to be renovated. They said, "...there are not a whole lot of contractors available; we were lucky to get a quote". They said actual repairs are not likely to be done until the end of next year.

I asked the Landlords what was damaged in the residential property, and they said:

There was a hole in the wall in the landing areas by the main bathroom – see photos – this needs to be filled in and repainted. There's another hole above the stairway, which needs to be filled and repainted.

The Landlords submitted photographs of the holes. One is more of a gouge that breaks through the drywall and is noticeable. The second photograph shows a few small dents in the wall labelled as "holes above second set of stairs". I find that the former needs to be repaired, but the latter are minor bumps reflective of reasonable wear and tear.

In the CIR, the move-out portion indicates a hole in the wall in the entry way and a hole in the wall going upstairs. In the "basement" portion of the CIR, it notes "holes in ceiling", but the Landlords did not direct me to a photograph of this damage, nor could I find one.

The Tenants said: “We’re not disputing that there were a couple holes in the walls.”

In the Landlords’ estimate, it states the “Material costs to fix drywall and paint” before taxes is \$800.00, and “reinstall trim work” is billed at \$1,000.00 before taxes.

Re-Painting Needed → \$3,000.00

The Landlords continued to itemize the damage to the residential property from this tenancy, as follows:

Some paint needs to be fixed. In the main bedroom they had put up those hooks with stickies on the back. They peeled off the paint and drywall when removing some. They left other ones up. We’ve started to remove them, but they are peeling the paint.

The second bedroom has paint in there that peeled, as well. It looks like it was furniture against the wall that rubbed the paint.

In the second living room downstairs, it looks like they had put up an LED light, and it ripped the paint off the top of the walls. In the claim, we have put in for the different paint

The Tenants responded, as follows:

As for the paint, those hangers we put up are 3M hooks and they are supposed to go on and come off without problem of wrecking the paint. So, our question is, are these painted walls – what is the life expectancy? What about the drywall expectancy? We can’t be responsible for the whole house repainting.

I asked the Landlords when the interior was painted last, and they said it has been done in pieces. They said:

The main bedroom was painted in 2020. The second bedroom in 2017; the second living room was painted in 2016, and the hallway and landing were done in 2020, just before we moved out.

In the Landlords’ estimate, painting is noted as having \$3,000.00 for labour, although, there are no hours set out. The material cost for paint is also combined with the previous heading of “material cost to fix drywall and paint”.

Flooring Damage → \$3,080.00

The Landlords continued:

The flooring in the living room and dining room had bad gouges. They had gouged right into the floor itself. It was caused by potentially moving a couch or sliding it back and forth – this is beyond normal wear and tear.

It's laminate and the whole floor has to come up. You can't take it apart and put it back together. Pieces were damaged, but it doesn't come apart. That flooring was put in about 6½ - 7 years ago, and we haven't been able to match the colours. We will have to replace the whole floor.

I asked the Landlords for the size of the gouge, and they said:

It runs from the dining to the living room. Somebody pushed furniture across the flooring. It's three to four inches, then other pieces – the gouges are two to three feet long. When they were moving things around, they caught the edges and chipped the edging. Some chips are as small as a dime and others are significant.

The Tenants said:

The flooring is seven years old – close to its life expectancy. As for gouges – two to three inches – we don't have any pictures of this long a gouge. We would never do that. As for some of the nicks in the floor – they're wear and tear, too. I think for the short time we've been there, quite a few tenants in that house and we're taking the full brunt of replacing everything in the house.

I know what you're talking about in the living room. We didn't mean to gouge it. We were moving furniture and it happened. A piece by the kitchen – there's a piece that slides a good inch or so; if it was professionally laid it would have been solid.

Labour to level floor – that's not something we've done; that's how the house is build, so we shouldn't bear that cost. For how many tenants that have lived there, we were only there for a year. Who's to say we did every single scratch. That much damage in those little months? And we were out for a month or so, because we had to leave because of the flooding

The Landlords said:

The flooring that was damaged in the living room/dining room was put in in 2015. [T.] mentioned leveling in the quote, but we agree that [the Tenants] shouldn't pay for that. But I did account for leveling and we did recognize it and we took those amounts off.

But there's also damage to the second living room flooring – gouges from moving furniture, I assume. It's not as bad as the main living room – from the size of a dime and to an inch long – it all has to be taken out to be fixed.

Also, there's significant damage to the flooring in the bedroom downstairs.

The Landlords submitted photographs labelled: "damaged flooring in second living room", but there were no photographs labelled as damage to any other living room, nor to the dining room.

The move-in CIR indicates that the flooring in the living room, the dining room, and the second bedroom was in good condition at the start of the tenancy. However, in the move-out CIR, the living room flooring is noted as "has been gouged" with an "S" to indicate "scratched" in the Code column. In the dining room portion, it says the flooring has "scuff/gouges in floor", with a code "D" to indicate damaged. In the second bedroom, it states that the floor was "gouged" with a code "D" for damaged.

In the estimate for repairs, it quotes "rip out old flooring and reinstall new flooring". It states that this will take 22 hours of work at \$140.00 an hour for a total of \$3,080.00 before tax.

In the photographs, I found that the damage to flooring in the fourth bedroom includes: -close-up photos of a few nicks. The photographs of damage to flooring in the second living room shows: a scratch, but there is nothing available for context to show the size of the scratch; three corner nicks; there is one photograph with part of a shoe in the photo, which shows the small size of the nick next to the shoe. Further, it is difficult to tell if the photographs are of the same scratch(es) (as was partially the case in the bedroom), or different photos of different scratches.

Shed Door → ??

The Landlords said that their shed doors were also damaged by the Tenants. The

Landlords said:

The shed doors had fallen out. They mentioned that they tried to put them back on after the flood, but they never told us about it. We found out at the move out, and one was still on the ground. The contractors said they need to be repaired not replaced. They fell off and were left on the ground, and were damaged from being on the ground for winter. We are able to repair them – that's in the quote for the repairs.

The cost to repair this was not a distinct item in the repair estimate, and there was not another invoice labelled "shed door". As such, it is not clear how much the Landlord is claiming for this item.

Analysis

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

Before the Parties testified, I advised them of how I analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claims on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

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

("Test")

Section 32 of the Act states that tenants "...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." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

The tenant is also generally required to pay for repairs where damages are

caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

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. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

#1 HOUSE CLEANING → \$300.00

The Tenants noted that they had to do a lot of cleaning at the start of the tenancy; however, they had the opportunity to raise this as an issue with the Landlords at their move-in condition inspection, as the subsequent tenants did. The Tenants were still required by the Act to leave the residential property reasonably clean and sanitary when they vacated the premises, regardless of the condition at the start.

The residential property is a sizeable building, with four bedrooms and two bathrooms. However, I find that the amount of time taken by two people to clean this residential property is inconsistent with the lack of notations on the move-out CIR indicating that anything was dirty. The Tenants did not deny that they were responsible for some of the dirt and debris the Landlords mentioned was present. Accordingly, I find it more likely than not that the premises required some cleaning before the next tenants moved in.

In this set of circumstances, I find it reasonable for one cleaning professional to have taken this long to clean. As such, I find that the Landlords have not provided sufficient evidence to prove on a balance of probabilities that cleaning the residential property should have resulted in a \$300.00 bill. I find a more standard rate is \$30.00 an hour for seven hours, or \$210.00 - even in a small town with limited services. Accordingly, I **award the Landlords with \$210.00** from the Tenants pursuant to sections 37 and 67 of the Act.

#2 REPAIR OF DAMAGE → \$9,927.60

First, I note that the Landlords' total claimed amount does not correspond to the individual amounts claimed in the categories set out below.

Holes in Walls → \$1,800.00

As noted above, I found that the Landlords provided evidence of the Tenants having caused one hole that was more than normal wear and tear. However, the Landlords have claimed \$800.00 plus tax in their estimate for this repair, in addition to a portion for labour costs. I find these estimates to be unreasonable for the extent of damage done. Further, the repairs have not been completed, although that appears to be due to an inadequate supply of trades people, given the extent of damage to structures in the area following flooding last fall.

I find that the Landlords failed to provide sufficient evidence as to how they calculated the damage to be repaired in the residential property in this regard. However, as there was clear damage to a piece of drywall in the residential property, I award the Landlords a nominal amount of **\$100.00** for drywall repair, pursuant to Policy Guideline #16 and section 67 of the Act.

Re-Painting Needed → \$3,000.00

As noted above, section 32 requires tenants to repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The Tenants acknowledged having stuck hooks or hangers on the wall, anticipating that they would come off easily. However, removing these items peeled the paint and in some cases parts of the drywall from the walls.

The Landlords have claimed \$3,000.00 for painting labour. If a professional painter charged \$40.00 per hour, this would see them working for 75 hours. The Landlords have not provided sufficient evidence to indicate that this much work was required, even if it included puttying and sanding first for the few areas noted as being damaged. The Tenants lived there for less than a year and I find that the Landlords have not provided sufficient evidence to establish that they should be responsible for 75 hours of painting labour, let alone the material supplies of \$800.00.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital

property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

In PG #40, the useful life of interior paint is four years. The evidence before me is that different areas of the residential property were painted periodically by the Landlords. The Landlord indicated that the following rooms were damaged by the sticking hooks or furniture rubbing against the wall:

<u>Damaged</u>	<u>Last painted</u>	<u>Years old</u>
main bedroom	2020	two
2 nd bedroom	2017	five
2 nd living room	2016	six

Only the paint in the main bedroom has useful life left, although only two years or 50% of its useful life left. The CIR indicates that the main bedroom walls were in good condition at the start of the tenancy, except that on one wall the paint was marked. There are no notations in the move-out portion of the CIR for the master bedroom.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

I find that the only rooms needing paint/repair, according to the Landlords were those noted above. However, the second bedroom and the second living room had no useful life left in the paint, and therefore, the Landlords would have to have repainted these rooms, anyway, according to depreciation.

The main bedroom had marks on the paint from the start of the tenancy, but nothing is noted as being damaged at the end of the tenancy. I find the Landlords did not provide sufficient evidence to determine how much damage was done and how much it would cost to repair each room. I find there was some damage done, so the Landlords have fulfilled the first two steps of the Test; however, they have not provided sufficient evidence to establish the third or fourth steps – the value of the damage, and that they took any steps to mitigate their claims in this regard. Further, as there was no damage

noted on the move-out CIR for the only room with undepreciated interior paint, I find that the Landlords have not proven their claim in this regard. Accordingly, and pursuant to section 62 of the Act, **I dismiss this claim without leave to reapply.**

Flooring Damage → \$3,080.00

As noted above, the Act states that tenants are responsible for repairing damage they made to a rental property, aside from normal wear and tear.

There are no photographs of the condition of the rental unit from the start of the tenancy, therefore, I must rely on the CIR for assistance, as well as the photographs from after the tenancy.

Other than her comments in the hearing, I find that the Landlord did not provide context in the photographs to indicate the size of the marks made on the flooring. I did not see any photographs with what looked to be two to three foot long gouges. Without such context, I find that the Landlord has not provided sufficient evidence to prove on a balance of probabilities that the damage to the flooring is more than normal wear and tear.

The Tenants acknowledged having done some damage to the flooring; however, I find that it would be unreasonable for the Tenants to have to replace the Landlords floors for what I find to be normal wear and tear. Rather, I find that the Landlord has provided sufficient evidence, along with the Tenants' acknowledgment of having caused some damage, to warrant a nominal award for damage, pursuant to Policy Guideline #16. I, therefore, award the Landlord a nominal fee of ten percent of their claim for **\$308.00**, pursuant to section 67 and Policy Guideline #16.

Shed Door → ??

The Landlords did not submit any documentary evidence identifying this repair, nor did they testify as to the cost incurred for this item. As such, I find that the Landlords have provided insufficient evidence to prove this claim on a balance of probabilities. **I dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

Summary and Set Off

	Receipt/Estimate From	For	Amount
1	[M.H.]	House cleaning	\$210.00
2	Estimate	Holes in walls	\$100.00
3	Estimate	Re-Painting	\$0.00
4		Flooring Damage	\$308.00
5		Shed door	\$0.00
		Total monetary order claim	\$618.00

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of **\$1,075.00** in complete satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain **\$618.00** of the Tenants' security deposit and return the remaining **\$457.00** to the Tenants, as soon as possible.

I award the Tenants with a monetary order of **\$457.00** representing the remainder of their security deposit, after the Landlords' claims have been satisfied.

As the Landlords were largely unsuccessful in their claims against the Tenants, I **decline to award** them with recovery of the **\$100.00 Application filing fee**, pursuant to section 72 of the Act.

Conclusion

The Landlords are partially successful in their Application, although, much of their claims have been dismissed for insufficient evidence to prove their claims on a balance of probabilities. Given their limited success, I declined to award the Landlords with recovery of the \$100.00 Application filing fee.

I award the Landlords with **\$618.00** from the Tenants for this Application. I authorize the Landlords to retain \$618.00 from the Tenants' **\$1,075.00** security deposit in complete satisfaction of this award. The Landlords are Ordered to return the remaining \$457.00 of the Tenants security deposit to the Tenants as soon as possible. I grant the Tenants a monetary order of **\$457.00** in this regard, to serve on the Landlords, if necessary.

This Order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: June 29, 2022

Residential Tenancy Branch