



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S MNRL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order of \$2,964 for damage to the unit, site or property, for unpaid rent or utilities, to retain the tenant's security deposit, and to recover the cost of the filing fee.

The tenant and an agent for the landlord, GM (agent) appeared at the teleconference hearing and gave affirmed testimony. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing and the parties also provided affirmed testimony and to make submissions to me. I have considered all of the relevant evidence and testimony provided pursuant to Rule 3.6 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

The parties agreed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. As a result, I find the parties were served in accordance with the Act.

### Preliminary and Procedural Matters

At the outset of the hearing, the agent confirmed that the security deposit was already dealt with in a previous hearing and as such, I will not consider that aspect of the application before me. In addition, the agent confirmed that the tenant has paid all unpaid rent and as such, I will not consider that aspect of the application before me. Given the above, I will only be dealing with the remaining claim for damages to the rental unit, site or property and the filing fee.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act?
- Is the landlord entitled to recover the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on January 16, 2021 and ended by way of a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenancy ended on January 31, 2022.

The landlord is claiming for the following damages:

1. Repair and paint the wall at \$714
2. Cleaning bathroom fan at \$50

Regarding item 1, the landlord is seeking \$714 to repair and paint the walls for “the foyer, living room, bedroom and den” and to “supply paint and paint the repaired walls”. The landlord confirmed that the quotation was not a final invoice. The landlord stated the work has been completed though.

The landlord presented 5 videos and 3 photos in support of this item, which I will address later in my analysis below. The outgoing Condition Inspection Report (CIR) dated February 1, 2022 states the following items that were not in good condition as follows and only relate to this portion of the landlord’s claim:

1. Entry walls and trim described as poor, specifically “4 holes and a lot of scratches.”
2. Living room walls and trim described as fair, specifically “TV mount holes”.
3. Master bedroom walls and trim described as poor, specifically “certain rod holes.”

The tenant did not agree with the outgoing CIR whatsoever and wrote on the outgoing CIR that there was “no damage” to the suite, “normal wear and tear” and “holes from previous tenant.”

The tenant stated that the incoming CIR was completed while the previous tenant was still there, and the agent conceded that they were not 100% sure if the prior tenant was still there during the incoming CIR. The tenant also stated that the TV from the prior

tenant was still on the wall during the incoming CIR. The agent conceded that they could not remember if the TV was on the wall from the prior tenant during the incoming CIR.

The tenant attempted to present photo evidence, none of which could be opened due to an incompatible file format or a corrupted uploaded file.

Regarding item 2, the landlord is claiming \$50 for cleaning the rental unit to a reasonable standard. The agent presented 2 photos of a kitchen exhaust fan that the agent claims was dirty and oily. The agent also presented a bathroom fan photo which shows a dusty bathroom fan that was not cleaned. I will address all photo evidence in my analysis below. The agent testified that it took 2-3 hours to clean the exhaust fan and the dusty bathroom fan and that they are seeking 2 hours at \$25 per hour for a total of \$50.

The tenant did not agree that it would take 2-3 hours to clean what is shown in the photos by the landlord. The tenant also stated that they are five-foot and two-inches tall and that they were not tall enough to reach the bathroom fan to clean the dust.

### Analysis

Based on the documentary and digital evidence, the testimony of both parties, 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 the landlord 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 tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or loss 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.

**Item 1** - The landlord has claimed \$714 for the cost to repaint the foyer, living room, bedroom and den and to supply paint and paint the repaired walls. I have carefully reviewed the videos and photo evidence and I find that the TV mount holes are normal wear and tear and do not constitute damage. I also find that the number of holes to be minimal and not excessive by any means. I make the same finding regarding the curtain rod holes in the master bedroom.

RTB Policy Guideline 1: *Landlord & Tenant – Responsibility for Residential Premises* states the following regarding nail holes:

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

I find there is not an excessive number of nail holes and that the holes were not beyond what can be expected through normal wear and tear. Therefore, I find the landlord has failed to meet part one of the test for damages or loss and **I dismiss** this item as a result, without leave to reapply.

**Item 2** – The landlord has claimed \$50 to clean the rental unit in relation to a kitchen exhaust fan and a dusty bathroom fan. I have reviewed the 2 photos related to the kitchen exhaust fan and I find that the kitchen exhaust fan is not unreasonably dirty and that only the sliders on the side of the kitchen exhaust fan have a minor amount of residue on them. As such, I find the photo evidence does not support the need for further cleaning to the kitchen exhaust fan and that the photo supports reasonable wear and tear as claimed by the tenant.

I agree with the landlord that the bathroom fan photo shows a dusty ceiling exhaust fan that was not cleaned, and the tenant does not dispute that. I disagree with the landlord that the kitchen exhaust fan and bathroom fan would take between 2 and 3 hours to clean. Rather, I find it would take 5 to 10 minutes at most to clean the two items shown in the photos presented by the landlord for my consideration. As a result, and

considering the height of the tenant (five-foot two), I find the amount claimed to be unreasonable and I decline to grant any award for the sole purpose of cleaning of one bathroom fan that is beyond the reach of the tenant. Further, I find that it would take mere minutes to dust the bathroom fan.

Based on the above, **I dismiss** this item as I find the landlord has failed to meet parts three and four of the four-part test for damages or loss described above. I do not grant leave to reapply.

As the landlord's claim had no merit, I decline to award the filing fee.

### Conclusion

The landlord's claim is dismissed in full as it has no merit.

This Decision will be emailed to both parties.

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: October 26, 2022

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Residential Tenancy Branch