



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Tenants) B.B. and T.P.	110064535	MNSDS-DR, FFT
(Landlord) Jaster Holdings Inc. T.W. and J.W., Agents	110069491	MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied for:

- the return of \$1,545.00 for double the security deposit that the Landlord is holding; and
- recovery of their \$100.00 application filing fee.

The Landlord applied for:

- compensation of \$470.00 for monetary loss or other money owed;
- compensation for damages to the rental unit of \$801.44; and
- recovery of the \$100.00 application filing fee;

The Tenants, B.B. and T.P., and an agent for the Landlord, T.W. (the "Agent"), 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 the hearing process.

During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and 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; 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. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications, and they confirmed these 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 Tenants entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is either Party entitled to recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2021, with a monthly rent of \$1,545.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$772.50, and no pet damage deposit. The Agent said the Landlord retained the security deposit to apply to their claims. The Parties agreed that the Tenants vacated the rental unit on February 1, 2022, and that they provided the Landlord with their forwarding address on or about February 15, 2022.

I asked the Parties if they had done a move-in condition inspection of the rental unit at the start of the tenancy. The Agent said they did it verbally, because there were no

issues. Although, the Tenants said there were scratches on the living room floor and on bedroom floors. The Agent directed me to a copy of an addendum page to the tenancy agreement, which has the following handwriting on it:

Walk-in – Dec 29. 2020

- 1) Landlord forgot inspection form. Some surface scratches on flooring in front facing bedroom & living room floor by heat register. Couple across [illegible words] area & opposite wall.
- 2) Paint marks on ceiling from roller
- 3) Scratches on fridge door from magnets.

Standard wear & tear noted – no damage apparent.

This note appeared to have the initials of both Parties on it.

The Parties agreed that the Landlords did a move-out condition inspection with the Tenant, T.P. In addition, they agreed that they produced a condition inspection report ("CIR"), as a result of this move-out inspection.

### **TENANTS' CLAIMS:**

We started analyzing the Tenants' claim first, because they happened to apply first, but this gave them no advantage over the Landlord's claims in my decision-making.

The Tenants explained their claim in the hearing, as being for the return of double the security deposit from the Landlord.

The Agent responded, saying:

In all fairness, we were great Landlords to them. We truly were ever only going to recoup the funds for the damage and nothing more than that. Just to be fair, we're not greedy or trying to be unjust. There was a delay settling where their security deposit was going, because [T.P.] was along with the walk out inspection. I told him I didn't know how to fill out the form - the walk out inspection, because it asks what would be held back. We had no time to check into cost or replacement, as I had to deal with it at that time.

The Tenant said: "Because of us not getting our security deposit back, we're a single income family. It's been a lot for to not have it."

The Agent said:

I would say as per the agreement they signed in the addendum - they were required to let us know of any damage whether it was intentional or not, give us a chance to repair it, and that would have helped us a lot to return security deposit to them immediately.

### **LANDLORD'S CLAIMS:**

The Landlord submitted a monetary order worksheet with their claims that we reviewed in the hearing.

	<b>Receipt/Estimate From</b>	<b>For</b>	<b>Amount</b>
1	Online supplier	Broken refrigerator drawer	\$61.52
2	Renovation company	Bathroom wall/trim repair	\$420.00
3	Online supplier	Shade/blind replacement	\$319.92
4		Printing costs for claim	\$13.96
5	Local cleaning company	Cleaning for two hours	\$70.00
6		Discounted 1 mth rent	\$300.00
7	RTB	Application filing fee	\$100.00
		<b>Total monetary claim</b>	<b>\$1,285.40</b>

#### **#1 BROKEN FRIDGE DRAWER → \$61.52**

The Agent said that the refrigerator was purchased in 2015. She explained this claim in the hearing, as follows:

It was completely broken. According to [the Tenant, B.B.], she had only notified us that it was broken, once we agreed to allow them to leave early. She texted that it had broken shortly after they moved in. We immediately ordered the part and had it installed prior to them exiting.

The Agent said a receipt for this expense was provided in their evidence, which I found for a cost of \$61.52, including taxes and shipping.

The Tenant responded: “We let them know a little late, I guess, but we told them about the fridge drawer; there’s no reason for us not to tell them.”

The Tenant explained what happened to the drawer:

I’m the one that noticed it, a few months into moving in. We went grocery shopping and the drawer slid off and wouldn’t go back then. It wasn’t a big deal; we didn’t have it in the fridge for most of the time anyway.

I asked the Agent how they found a replacement drawer, and she said: “We asked [the Tenants] to take pictures of the unit for us, and then my husband was able to Google it and find the replacement part, and he ordered it right away.”

## **#2 BATHROOM WALL/TRIM REPAIR → \$420.00**

I asked the Agent when the residential property was built or last renovated, and she said it was new at the end of 2015.

The Agent explained this claim in the hearing, as follows:

This would have been the most upsetting issue, because when we entered the walk-out inspection and we had walked into the bathroom, everything was removed that they owned, including the toilet paper. The only thing that remained in the house was a garbage can in the bathroom. When I moved the can I saw the damage.

[T.P.] claimed he had no idea that it existed. It’s not a lot of space, but the moment you removed that can – there was a stain on the wall. We had never had this issue before. One other set of tenants lived there for three years. They never had a problem. Had these Tenants told us that water was leaving the tub, we could have installed... It has gone down the wall and pooled and cause rot to the drywall, and it leaked under that wall to a back bedroom, which distorted the trim on that baseboard, too.

[The renovator] is a tenant upstairs and did us a favour at a discounted rate, because he had to keep coming back to finish it.

The previous tenants did a complete walk-through and fixed all drywall issues, and touched up and painted. There was no issues with the drywall in the entire unit for them.

The Tenant said:

We had never mentioned anything, because we didn't see anything. We have no benefit to not telling them about damage. They never conducted routine inspections. We had a shower curtain up. I don't know where the leak was. As far as I remember, we didn't leave a garbage can there.

The tub was only used in a normal fashion - normal wear and tear. This was about the tub and the leak is what we're talking about. The bathtub was used in a normal fashion, so any damage was normal wear and tear.

The Agent said:

To reiterate, there was no damage prior to them moving in. The same couple with their children resided there for three years and had zero water damage, and there was one garbage can left blocking the site of the damage on the walk-out inspection.

### **#3     BROKEN SHADE/BLIND REPLACEMENT → \$319.92**

The Agent said that the blind was new in 2015. She described the damage to the blind, as follows:

See the pictures of the blind on the back of the bathroom door. There is a bracket on the bottom and shaped pieces to hold it. Those were broken off, and landed on the inside. They went somewhere, as well as the pull cord - the piece on the end was crushed.

The Agent described how she found a replacement blind:

Because of what's happened in the industry – I tried to replace parts that were no longer available. It was frustrating; I reached out to our original installer, but they said they no longer installed those blinds. He tried to locate the pieces on the black market, because that's the only way.

The Tenant was getting upset with me taking so long, but I said she could help to locate pieces for the repair, but she got very upset and said 'Deal with it'. I had to have a like-blind installed. We have never had any issues with blinds being broken. We didn't install anything more expensive; it was a like piece.

It's hard, because at first, they denied that there was any damage, then it turned into saying both the blind and the tub rot was basic wear and tear. She said 'who cares - it's basic wear and tear'. The gentleman from the blind said it was forcing the unit to try to open it when it was still hooked in on the bottom, so that's not basic wear and tear.

The Tenant responded:

After moving out, when we still hadn't gotten our security deposit, I had an amount of time asking her if she had contacted the blind company. The blind wasn't broken, either. We never knew it was damaged. In the lease, it says not to conduct repairs. The blinds could have been noted in a periodic inspection. We didn't notice, and there's no benefit to not saying anything. We told them about other damage - the fridge. But she said I could try and find a company to do the blind, and pay for it, but in the lease, it says we're not supposed to do that stuff.

The Agent replied:

I was going to say, in that lease addendum 7, it said not to be doing it without speaking with us first. [The Tenant] can say there's no benefit to not saying anything – of course there is - it's to avoid having it fixed.

[T.P.] was there on that walk-out. The blind was broken and we've confirmed by the gentleman who replaced it - no benefit to us.

Clause 7 of the addendum to the Parties' tenancy agreement includes the following:

7) . . . If an issue should arise with the property, it is the tenants responsibility to advise the landlord. The tenant is not to complete any repairs or improvements to the property unless specifically requested in writing by the landlords. If the landlord should choose to agree to any specific one off arrangements or repairs, this will be on a case by case one off agreement and will be in writing.

The Landlord submitted photographs showing the bottom slats of the blind to be broken off of the bottom clasp. The Landlord also submitted a copy of an invoice for the replacement blind, which cost \$319.92.

#### **#4 COST TO PRINT PICTURES/TEXT → \$13.96**

The Agent explained that this claim was for the costs the Landlord incurred to reprint

copies of pictures and text for service on the RTB and the Tenants. However, I advised the Parties in the hearing that these costs are not recoverable under the Act.

**#5     CLEANING TWO HOURS → \$70.00**

The Agent explained this claim, as follows:

Referencing back to when I asked [the Tenant] to provide a copy of the cleaning receipt, apparently, they hired a company to clean the night before. It wasn't verified, because I took pictures of all the dirt, of sweeping up dirt, of the appliances not cleaned, windows not cleaned. I used the same hourly rate that they had claimed for their cleaning company.

The Tenant responded:

We hired [D.] Cleaning, because we have a little one and we had Covid, so we did the countertops. I noticed with the move-out inspection. We used our own microwave, so theirs was in the closet our whole time. That would have been dirty from the previous tenant

We paid for a cleaning company and did what we could. [T.P.] also asked them about the paint for the suite, so we could patch for the suite. He did painting and patching, and it would have cost them well over \$500.00. He had a painting company and has done it a long time.

The Parties discussed damage to the walls briefly, although that was not claimed by the Landlord in their application.

The Tenants submitted an invoice from a cleaning company dated February 7, 2022, which quoted 2.5 hours of labour at \$35.00 an hour, plus GST for \$91.88.

**#6     DISCOUNTED ONE MONTH'S RENT → \$300.00**

In the hearing, the Agent explained that they had a new tenant to move in as soon as the Tenants' tenancy ended; however the Landlord discovered damage in the rental unit, which could not be repaired before the new tenant moved in. The Landlord said:

Once we found out there was damage, the person needed access to come measure and complete the work. When the renos were done for the drywall for

the side of tub – the person had to do multiple entries, because he had to allow dry times between tasks. So, I felt bad for the new tenant coming in – they had to inconvenience her about six times with repairs. You have to let the drywall patches and paint dry between coats. We asked the tenant if deducting \$300.00 off her first month's rent would be fair, and she said yes. So, if we hadn't had to do those fixes, we wouldn't have had an issue with the new tenant.

The Tenant replied:

With early access, we asked for early access with no mention of a fee. I think with that they could have probably planned ahead in case there was any damages. Say with the move in date they could have said a week from when we moved out in case.

The Agent said:

You had it exactly correct – there was nothing extra from them for early access - that was speaking of our willingness to work with these guys, and not resolve things in a bad manner. Our tenant coming in was inconvenienced. Had we known about the damage when they were in the unit, we could have dealt with it then, and an inconvenience for them, not the next tenant.

The Tenant said:

Just like I said, I don't see why I wouldn't mention any damage. We went through and cleaned and painted and had it ready all through the house. It was empty and clean we and didn't see anything wrong with the place. We did the walkthrough and pointed out all the damage. I had seen really bad houses. This was a good job.

### 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 let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim 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, each Party, as applicant, must prove:

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

("Test")

### **TENANTS' CLAIMS:**

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38(6) of the Act.

As noted above, the tenancy ended on February 1, 2022, and the Tenants provided their forwarding address to the Landlord on February 15, 2022. As a result, the Landlord was required to return the \$772.50 security deposit to the Tenants within fifteen days after February 15, 2022, namely by March 2, 2022, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that they returned any amount of the security deposit. Further, the Landlord did not apply to the RTB to claim against the deposit until April 18, 2022. Therefore, I find the Landlord failed to comply with their obligations under section 38 (1).

Since the Landlord has failed to comply with the requirements of section 38 (1), and pursuant to section 38 (6) (b) of the Act, I find the Landlord must pay the Tenants double the amount of the security deposit. There is no interest payable on the security deposit. I, therefore, **award the Tenants** with **\$1,545.00** from the Landlord, pursuant to sections 38 and 67 of the Act.

### **LANDLORD'S CLAIMS:**

Landlords' and tenants' rights and obligations for repairs are set out in sections 32 and

37 of the Act. Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. Section 37 states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Policy Guideline #1 “Landlord & Tenant – Responsibility for Residential Premises” provides guidance on how to interpret these sections. It states:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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 refer 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    BROKEN FRIDGE DRAWER → \$61.52**

I note that the Tenants did not deny having damaged the refrigerator drawer. They said

it “slid out” and that they put it aside and did not use it during the tenancy. I find it more likely than not that a tenant who discovers damage to the rental unit at the start of the tenancy would advise the landlord of this to avoid being found to have done the damage, themselves. However, the Tenants did not tell the Landlord about this until they were ready to move out.

Given these considerations of the evidence before me, and pursuant to section 37 of the Act, I find it more likely than not that the Tenants are responsible for damaging the refrigerator door, and that they are, therefore, responsible for the cost of its repair or replacement.

Accordingly, and pursuant to sections 37 and 67 of the Act, I **award the Landlord with \$61.52** from the Tenants for the replacement of the refrigerator drawer.

## **#2 BATHROOM WALL/TRIM REPAIR → \$420.00**

As noted above, section 32 of the Act states:

- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37 (2) (a) of the Act requires tenants to leave rental units “reasonably clean, and undamaged except for reasonable wear and tear”. Normal wear and tear is the natural deterioration of an item due to reasonable use and the aging process. I find that using a bathtub in such a way that water pools on the floor and seeps through the wall and baseboards doing damage to the bathroom and the next room is not normal wear and tear. Normal wear and tear is an expected outcome of day-to-day living; however, damage caused by neglect or failure to take care of the rental unit to a reasonable standard is considered a breach of the Act.

I find the Tenants evidence in this regard to be unreliable. For a garbage can to be the only personal belonging left behind in the rental unit, and for it to just happen to be left in front of drywall damage is too convenient to be coincidental. The Tenants said that they had no reason to not tell the Landlords about damage to the unit. However, I find that hiding damage from a landlord is an attempt to avoid facing responsibility for damage done through the actions or neglect of the tenant. That is a reason to not tell the Landlord about damage.

Based on the evidence before me in this matter, I find that the Tenants are responsible for the cost of repairing the damage done to the bathroom/bedroom walls by the unreasonable manner in which they used this bathroom.

I find that the Landlord tried to minimize or mitigate their cost, by using someone they know who was willing to be reasonable with them in the cost charged for the repair. I find the amount claimed is reasonable in the circumstances, and I **award the Landlords** with **\$420.00** from the Tenants for this claim, pursuant to sections 32 and 67 of the Act.

### **#3      BROKEN SHADE/BLIND REPLACEMENT → \$319.92**

To start, I find that the sections of the Act noted above apply to this matter, as well. The Agent's explanation of the damage observed by the installer was that the Tenants tried to open the blind without first unhooking it from the bottom fasteners. I find this indicates that the Tenants neglected to deal with the blind in a reasonable fashion. Again, this was not normal wear and tear.

The Tenants were given the opportunity to assist the Landlord in finding a way to repair or replace the blind, but they chose to misinterpret the addendum clause, which requires the Tenants to alert the Landlords before repairing anything. It does not say that the Tenants cannot repair damage to the residential property for which was caused by their actions or neglect or that of a person permitted on the residential property by the Tenants.

In the hearing, the Tenants continued to deny that there was any damage to the blind, but they then asserted that they were not supposed to repair anything, pursuant to clause 7 of the tenancy agreement addendum. They also blamed the Landlords for not discovering the damage in a periodic inspection. I find that the Landlord has provided sufficient evidence for me to conclude that Tenants were responsible for damage to the bathroom blind. I find that the Tenants were responsible for repairing or replacing the blind, pursuant to the Act.

I find the Landlords did their best to find parts to repair the blind, and when that was unsuccessful, they replaced it with as close to the original blind, as possible. I find that the Landlords were reasonable in this situation and I **award them \$319.92** from the Tenants, pursuant to sections 32 and 67 of the Act.

### **#4      COST TO PRINT PICTURES/TEXT → \$13.96**

The Agent explained that this claim was for the costs the Landlord incurred to reprint

copies of pictures and text for service on the RTB and the Tenants. However, I advised the Parties in the hearing that these costs are not recoverable under the Act.

#### **#5     CLEANING TWO HOURS → \$70.00**

The Landlord submitted some photographs of the residential property to demonstrate the level of cleanliness in which the Tenants left the rental unit. However, I find that the black and white photos do not show the rental unit clearly enough to prove on a balance of probabilities that the Tenants' cleaner did an insufficient job. Accordingly, I **dismiss this claim without leave** to reapply, pursuant to section 62 of the Act.

#### **#6     DISCOUNTED ONE MONTH'S RENT → \$300.00**

I find I agree with the Tenant in this matter, as the reason a landlord collects a security deposit is in case there is damage to the unit at the end of the tenancy. The Agent could have inspected the rental unit on a regular basis in order to keep track of any damage, as it occurred. It was kind of the Landlord to deduct \$300.00 from the new tenant's first rent; however, I find that the Landlord is responsible for the \$300.00, as they failed to do regular inspections during the tenancy, and they did not allow for time for repairs between tenancies. As such, I **dismiss this claim** without leave to reapply, pursuant to section 62 of the Act.

#### Summary and Set Off

The Parties' respective awards are set off against each other, as follows:

	<b>Damage Claims</b>	<b>Awards</b>
	Tenants' award	<b>\$1,545.00</b>
	<b>Landlord's awards:</b>	
1	Broken refrigerator drawer	\$61.52
2	Bathroom wall/trim repair	\$420.00
3	Shade/blind replacement	\$319.92
4	Printing costs for claim	\$0.00
5	Cleaning for two hours	\$0.00
6	Discounted 1 mth rent	\$0.00

7	Application filing fee	\$0.00
	<b>Landlord's Award</b>	<b>\$801.44</b>
	<b>Net award to Tenants</b>	<b>\$743.56</b>

Given that both Parties are successful in their claims, I decline to award either recovery of their respective \$100.00 application filing fee. As the Tenants were awarded more than were the Landlord, I **grant the Tenants a Monetary Order of \$743.56** from the Landlord pursuant to section 67 of the Act for the balance owing. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

### Conclusion

The Parties are both at least partially successful in their respective claims. The Tenants provided sufficient evidence to be awarded double the return of their \$772.50 security deposit for a total award of **\$1,545.00**. The Landlord was awarded a total of **\$801.44** from the Tenants for the Landlord's claims.

Accordingly, the Tenants are granted a **Monetary Order** for the difference between the awards of **\$743.56**. This Order must be served on the Landlord 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: November 15, 2022

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Residential Tenancy Branch