



# 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 landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$1,256.75 for damage to the unit, site or property, to retain the tenants' security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee.

On July 4, 2022, the hearing commenced, and the landlord stated that they submitted an updated Monetary Order Worksheet in the amount of \$2,333.54. The landlord was advised that due to their application not being amended pursuant to the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) that the landlord had the choice to either withdraw their application and re-file for the higher amount or to proceed with the original amount claimed of \$1,256.75 that was served on the tenant. The landlord testified that they would like to proceed with the lower amount and understood that they were unable to divide a claim under RTB Rule 2.9. As a result of the above, the hearing continued.

After the above matter was dealt with, the landlord requested an adjournment as her husband's cancer took a turn for the worse and that her husband was awaiting a bed at hospice. As a result, I advised the parties I would be granting an adjournment pursuant to RTB Rule 7.9, Criteria for Adjournments. I find that this matter was only related to a monetary claim and that an adjournment would not prejudice either party and that it provides the parties a fair opportunity to be heard.

An Interim Decision dated July 4, 2022, was issued to both parties and should be read in conjunction with this Decision. The landlord, VA (landlord) and the tenants, TM and JM (tenants) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask

questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised any issues about the service of documentary evidence or having the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act.

### Preliminary and Procedural Matters

Between the original hearing date of July 4, 2022, and the reconvened hearing date of November 4, 2022, landlord FA passed away according to landlord VA. Accordingly, I have removed FA as an applicant as they have passed away since the application was filed.

The parties confirmed their email addresses. The parties were advised that the Decision would be emailed to the parties.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2020, and was scheduled to convert to a month-to-month tenancy after November 1, 2021. Monthly rent was \$2,100 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,050 and a pet damage deposit of \$1,050 for a total of \$2,100 in combined deposits (combined deposits). The landlord continues to hold the tenants' combined deposits.

The landlord's monetary claim for \$1,256.75 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpet cleaning	\$168
2. Housing cleaning	\$638.75
3. Repair screw holes and damages to walls, blinds and flooring.	\$350
4. Filing fee	\$100
<b>TOTAL</b>	<b>\$1,256.75</b>

Regarding item 1, the landlord has claimed \$168 for carpet cleaning. The incoming and outgoing Condition Inspection Report (CIR) was submitted in evidence. Although the landlord did not submit photo evidence for my consideration, the landlord did provide a receipt in the amount of \$168 in support of their claim. The incoming CIR was dated October 30, 2020, and the outgoing CIR was dated on October 31, 2021.

In terms of carpets, the only mention of carpets in the outgoing CIR are as follows:

- A. Master bedroom carpet: "Worn / Cleaned, tenants stated professionally, no receipt." The incoming CIR indicates "Very Worn" for the same carpet.
- B. Bedroom 2 floor carpet: "cleaned/no receipt of professional cleaning". The incoming CIR indicates "Very worn/stains."
- C. Basement: Nothing mentioned. The incoming CIR indicates "Carpet poor".

The incoming and outgoing CIR are signed by DS, the property manager (Agent) of the landlord. In terms of carpet-related wording, the addendum to the tenancy agreement (Addendum) includes the following wording:

5. The carpeted floors on the premises will be cleaned by a Professional Company (in the carpet cleaning business) at the end of the tenancy or at the end of the first 2 years of the tenancy, and each subsequent 2-year period. Paid invoice from the cleaning company is to be provided to the Owners Agent.

The landlord stated that as the tenants failed to provide a receipt for carpet cleaning to the Agent or the landlord, that the landlord was forced to clean the carpets. The tenants testified that they had to clean the carpets before they moved in due to the poor condition. The tenants also testified that they used a steam cleaner to clean the carpets before they moved in and after they moved out.

Regarding item 2, the landlord has claimed \$638.75 for the cost to have the home professionally cleaned. The outgoing CIR was reviewed and does not mention code "DT" for "dirty". The only cleaning mentioned in the outgoing CIR were as follows:

D. Master bedroom shower: "To be cleaned"

The landlord testified that all three toilets were very dirty, as was the dishwasher and shower. The landlord also stated that the inside of the windows and tracks were dirty, that there were small black marks on windows which were "bug poop" on the walls and windows. The receipt submitted in evidence indicates 3 cleaners spent a total of 18.25 hours at \$35 per hour as follows:

Cleaner 1: 9:00 to 5:30	(8.5 hours)
Cleaner 2: 10:00 to 3:30	(5.5 hours)
Cleaner 3: 1:15 to 5:30	(4.25 hours)

The landlord also presented an email from the landlord's cleaning company, RCS (Cleaning Company). In that email dated November 10, 2021, the Cleaning Company writes the following:

- Main bathroom 1.25 hrs – sink clogged
  - Downstairs bathroom 1.25 hrs
  - Left bedroom 1 hr
  - Right bedroom 1 hr
  - Entry way .5 hr
  - Downstairs excluding bathroom 2 hrs – walls very dirty and marked up, except laundry room as they were just plaster and gyprock
  - Kitchen 3 hrs – walls, cupboards (in&out), walls, window were cover in tiny bug (fly?) poop
  - - A lot of scrubbing
  - -years of hardwater and soap build up in shower
  - -didnt look like any attempt to clean before end of tenancy
  - Side Entry 1 hr
  - Stairs .5 hr
  - Upstairs Windows, sills, patio door, walls, baseboards 3 hrs
- [reproduced as written]

The tenants' response to this item was that everything was verbal during the inspection. The tenants submitted in evidence, a document from their cleaner, VM (Cleaner) dated May 25, 2022, which reads as follows:

I [REDACTED] have been a professional house cleaner for 30 years. A team of five people helped clean the house from top to bottom and clean the dog kennel. I personally steam cleaned the rugs when the [REDACTED] moved in and moved out. The rugs were in better shape when they moved out than when they moved in. They were old & stained - and worn. I viewed the pictures that were sent to the [REDACTED] in this dispute. The quality of pictures was very poor so hard to tell what the claim is about. What I witnessed was a very clean home.

Q [REDACTED]

M [REDACTED]

[reproduced as written]

The tenants also testified that the house was left in a cleaner condition than when they moved into the house. The tenants affirmed that the photo evidence provided by the landlord are blurry and mostly black and pink. The landlord admitted that the photos did not print out well and that the photos were printed instead of sent electronically, like they were in colour when uploaded to the RTB DMS. As a result, the photos were not identical, which I will address later in this Decision.

The tenants stated that the sliding patio door required grease to open and close properly, and as such, while it may not have looked clean, the grease was necessary for the operation of the patio door. The tenants testified that dishwasher was never used during the tenancy and the outgoing CIR indicates "DID NOT USE" for the dishwasher at the end of the tenancy.

Regarding item 3, the landlord has claimed \$350 for the following listed on their application as follows:



The remaining \$350 is conservative estimate to repair screw holes in drywall and damage to walls from 20+ taxidermy mounts hung on the walls, missing drawstrings on blinds & extensive floor damage. No outside yard maintenance as per contract.

[reproduced as written]

The landlord confirmed that they did not submit any photos to support that there were over 20 taxidermy mounts. The landlord testified that at the end of the tenancy there was one wall with a large scrape, large screw holes, and that in 2013/2014 the landlords installed vinyl plank flooring and that at the end of the tenancy there was "fresh damage to floors." The CIR mentions scratches on the laminate flooring; however the incoming CIR also indicates scratched on the laminate floor at the start of the tenancy.

The landlord presented an estimate from HV in the amount of \$375 before tax. The estimate for work required by HV submitted for my consideration states as follows:

Repairs

Drywall Repairs (paint ready)

- materials included

Scope

Location: Living room, hallway & Kitchen

Repair drywall dents, scrapes, pin holes, damages to paint ready.

This means no sanded and/or primed.

Subtotal:	\$375
GST:	\$18.75
TOTAL:	\$393.75

[reproduced as written]

During the hearing, the landlord referred to a photo that was not submitted in evidence. The landlord testified that they missed sending it. The landlord referred to a photo of cut venetian blind cords, but also confirmed there were no quotes submitted to repair or replace the venetian blind cords. The landlord stated that the blinds were installed in 2017.

In terms of yard maintenance, the landlord testified that the tenants did not do the yard maintenance. Terms 15 and 25 of the Addendum states the following:

15. Keep the premises (including the grounds) clean, free from refuse and in good repair. The Tenant(s) shall be responsible for snow removal in the Tenant(s) parking space and on the walkway to the Tenant(s) entrance.
16. Be responsible for maintaining the premises in good repair.
25. Tenants will look after lilacs and rose bush (wrap/cover rose bush for the winter).

[reproduced as written]

I will address these terms later in my analysis below. The landlord also referred to a photo titled "Specified Rosebush Lilac Plant Beds not maintained" which is blurry and there is no before photos to support that there was a rosebush or lilac plants in that area for my consideration. The tenants claims that they did not damage a rosebush or lilac plant and that the yard looked that way when they moved in. The tenants emphasized that the landlord has not submitted any before photos of plants.

Regarding the dog run/kennel (Kennel) the landlord alleges that it was left in poor condition and required work to clean up carcasses that were left behind by the tenants. The tenants denied that they left carcasses behind and referred to a letter dated May 25, 2022 from WM who writes that they helped the tenant move and clean the Kennel and that it was left in "awesome condition." WM also writes that it was raked and that all holes were filled in and that the photo evidence is "no where near how it was left."

The landlord confirmed that they had not seen the house in four years and had their agent deal with things. The tenant responded by stating that the tenants are not responsible for any lack of communication between the landlord and their agent, and that the landlord failed to submit photos they are referring to or that the CIR does not mention the damages being alleged. The tenants also testified that they used existing holes to hang things and never used the blinds, so they disagree that they caused any drywall damage.

In terms of yard work, the tenants testified that when they first moved in, the yard was in bad shape with 8 to 10-inch ruts in the lawn where trucks and trailers had been driven causing damage. They tenants stated that they levelled the yard to remove the ruts and also filled in the driveway potholes also. The tenants stated that they brought in gravel and used their quad to level the gravel.

That landlord testified that the tenants installed a large "quonset" (Quonset) which they did not approve, leaving the grass dead underneath the Quonset. The tenants stated that the landlord's Agent had given them permission to install the Quonset and that they parked their vehicles under it. The tenants provided a copy of the photo evidence they

received from the landlord, which were blurry and mainly pink and black and were not the same or even close to the same as the colour photos uploaded to the RTB DMS.

After 73 minutes, the hearing concluded.

### Analysis

Based on the documentary evidence presented, the testimony of the 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 the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

**Item 1** - The landlord has claimed \$168 for carpet cleaning. I have carefully reviewed the CIR and find that the tenants had the right to rely on the contents of that CIR as the Act requires both an incoming and outgoing CIR to be completed pursuant to sections 23 and 35 of the Act. In the master bedroom and the second bedroom the landlord's agent wrote "cleaned" at the end of the tenancy and only noted that the tenants did not provide a receipt for professional carpet cleaning.

I will now address the term of the Addendum which reads:

5. The carpeted floors on the premises will be cleaned by a Professional Company (in the carpet cleaning business) at the end of the tenancy or at the end of the first 2 years of the tenancy, and each subsequent 2-year period. Paid invoice from the cleaning company is to be provided to the Owners Agent.



[reproduced as written]

I find that section 5 of the Act applies and states:

**This Act cannot be avoided**

5(1) Landlords and tenants may not avoid **or contract out of this Act or the regulations.**

(2) **Any attempt to avoid or contract out of this Act or the regulations is of no effect.**

[emphasis added]

In addition, RTB Policy Guideline 1 – *Landlord & Tenant – Responsibility for Residential Premises* (Guideline 1) under “Carpets” it reads as follows:

**CARPETS**

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

According to PG1, in section Carpets number 3 does not require the carpet cleaning to be by a professional company, only that they are either steam cleaned or shampooed. In the matter before me I the CIR confirming that the carpets were “cleaned” and the tenants’ testimony that they steam cleaned the carpets both at the start of the tenancy and the end of the tenancy. I also note that the CIR indicated that the carpets were “very worn” at the start of the tenancy. As a result, I am not persuaded by the landlord’s invoice for carpet cleaning that the carpets required additional cleaning. Therefore, I find that any additional cleaning by the landlord was to a higher standard of clean than the Act requires. Section 37(2)(a) of the Act only requires the rental unit to be left reasonably clean and undamaged except for reasonable wear and tear. I find the landlord has failed to provide sufficient evidence that the carpets were unreasonably

clean at the end of the tenancy due to the conflicting CIR which indicated they were clean. I also find the tenants are not responsible for communication issues between the landlord and their property manager/agent. Given the above, I dismiss this portion of the claim due to insufficient evidence, without leave to reapply.

**Item 2** - The landlord has claimed \$638.75 for the cost to have the home professionally cleaned. The outgoing CIR was reviewed and does not mention code “DT” for “dirty”.

I have considered that the landlord testified that all three toilets were very dirty, as was the dishwasher and shower. I have also considered the cleaning receipt for \$638.75 and the cleaner’s email to the landlord indicating that the inside of the windows and tracks were dirty, that there were small black marks on windows which were “bug poop” on the walls and windows. I find that the CIR contradicts the cleaning invoice; however, and therefore I do not grant the full amount claimed for this item.

The only cleaning mentioned in the outgoing CIR were as follows:

A. Master bedroom shower: “To be cleaned”

I afford the landlord’s photos very little weight as I find the landlord failed to serve identical evidence, which the RTB Rules require. Therefore, based on the CIR alone and the fact that the tenants signed the outgoing CIR on October 31, 2021, I find that at the very least the shower required additional cleaning, which is listed on the outgoing portion of the CIR.

As a result, I find the tenants breached section 37(2)(a) of the Act by failing to reasonably clean the master bedroom shower. I afford little weight to the tenant’s letter from VM as that letter does not mention the master bedroom shower. As mentioned above, while I do not grant the full amount of \$638.75, I do grant the landlord a nominal amount of **\$100**. This nominal amount addresses the breach of the Act by the tenants; although I find the amount claimed of \$638.75 is not justified based on the evidence before me. Any amount exceeding \$100 I dismissed without leave to reapply for this item, due to insufficient evidence.

**Item 3** - The landlord has claimed \$350 for this item as follows:

conservative estimate to repair screw holes in drywall and damage to walls from 20+ taxidermy mounts hung on the walls, missing drawstrings on blinds & extensive floor damage. No outside yard maintenance as per contract.

Firstly, the landlord failed to submit any photos of 20+ taxidermy mounts and as a result, I grant no compensation for that portion of this item. Similarly, I find there is insufficient evidence to support that the laminate floors were scratches as the CIR indicates laminate scratches at the start of the tenancy.

Furthermore, I find that the quote from HV does not prove that the tenants damaged the rental unit given that the incoming CIR lists damage and scratches at the start of the tenancy. Given the above, and due to what I find is the lack of supporting evidence to support the blind cords, wall marks and outside maintenance costs claimed, I find the remainder of this item the landlord has failed to meet the burden of proof.

In terms of the lilacs and rose bush, I would at the very least expected the landlord to have provided before photos with the lilacs and rose bush alive and in good condition. I do not have that evidence before me. I also have no supporting evidence from the Agent to indicate whether or not the Quonset was permitted and given the size of the Quonset, I think it would be more likely than not that if the Agent did not agree to the Quonset being erected, that the Agent would have notified the landlords and followed up with either a written caution letter or a 1 Month Notice to End Tenancy for Cause, neither of which are before me. As such, **I dismiss** item 3 due to insufficient evidence, without leave to reapply.

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$200**, comprised as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Carpet cleaning	<i>dismissed</i>
2. Housing cleaning	Nominal award of \$100
3. Repair screw holes and damages to walls, blinds and flooring.	<i>dismissed</i>
4. Filing fee	\$100
<b>TOTAL</b>	<b>\$200</b>

As the landlord continues to hold the tenants' combined deposits of \$2,100, and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain

**\$200** from the tenants' security deposit of \$1,050, which has accrued \$0.00 in interest in full satisfaction of the landlord's monetary claim. As the landlord's claim does not exceed the combined deposits of \$2,100, I make the following order pursuant to section 62(3) of the Act:

**I ORDER** the landlord to return the tenants' combined deposit balance of **\$1,900** no later than January 1, 2023.

Should the landlord fail to comply with my order, and pursuant to section 67 of the Act, I grant the tenants a monetary order for their security deposit balance of \$850, plus the \$1,050 pet damage deposit, for the total combined deposit balance of \$1,900.

Should the landlord comply with my order and pay the tenants \$1,900 before January 1, 2023, the monetary order will be of no force or effect.

#### Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of \$200.

The landlord has been authorized to retain \$200 of the tenants' security deposit of \$1,050, which has accrued \$0.00 in interest, in full satisfaction of the landlord's monetary claim.

I have made the above-noted order for the landlord to return the \$1,900 combined deposit balance owing by the landlord to the tenants no later than January 1, 2023.

Should the landlord fail to comply with my order, the tenants are granted a monetary order pursuant to section 67 of the Act, for the balance owing by landlord to the tenant of \$1,900.

Before enforcing the monetary order, it 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.

Should the landlord comply with my order and pay the tenants \$1,900 before January 1, 2023, the monetary order will be of no force or effect.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord, if necessary.

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 25, 2022

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Residential Tenancy Branch