# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- a monetary order for unpaid rent of $2,800.00;
- a monetary order of $3,393.44 for damages;
- a monetary order of $1,400.00 for other money owed, retaining the security deposit to apply to these claims; and
- recovery of his $100.00 Application filing fee.

The Tenants and the Landlord 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 Landlord 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. 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 Landlord provided the Parties' email addresses in the Application 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

consider only 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

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 1, 2021, ran to October 31, 2021, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenants to pay the Landlord a monthly rent of $2,800.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $1,400.00, and no pet damage deposit. The Landlord confirmed that he retained the security deposit in full to apply to this Application.

The Parties said that they reviewed the condition of the rental unit at the start of the tenancy; however, they agreed that a condition inspection report ("CIR") was not produced, as evidence of the starting condition of the rental unit. They also agreed that they reviewed the condition at the end of the tenancy, but again, I was not directed to any documentation about either inspection.

**#1 UNPAID RENT OWING → $2,800.00**

The Landlord has applied for recovery of rent for February 2022. He said that he sent the Tenants a text dated December 8, 2021, in which he said:

> Good day, wish everything are well!
> Due to my own circumstances, I need to retake my property that you folks are living in the sooner the better, I wish I have other choices, but not. Let me know if January 31 is the good time or maybe sooner.
> Thank you!

The Tenants texted back on December 13, 2021:

> Please do email or send me an official notice if you want to end the month to month. So we can make appropriate plans. Thank you. [Tenant]

The Landlord replied further on December 13, 2021:

> At this moment, I can't find a plan that will work for me based on your situation, therefore don't worry about moving. When and if it comes to that point, I will let you know. Thank you!

The Tenants replied:

> Sorry I have made arrangement based on our previous conversation. We will be moving out end of February. [Tenant]

The Landlord replied:

> No, I don't need the unit, please re think. Stay if you can.

In the hearing, the Landlord explained his first claim, as follows:

> I did not – I asked for February rent and they stayed for the month of February. I didn't take over the unit until the 24th of February. I did not serve – legally I didn't serve any paper, I just enquired. Losing a month's rent is not worth it. If they can – they had compromised by moving out a month early, but my arrangement didn't work out for me. Four or five days later they had their arrangement? I didn't really serve it. They said if you want to make it legal, send me a formal letter by email – where's the letter? I didn't serve that form at all.

In the hearing, the Tenants said:

> Basically, when we read the text message, we have a three-year-old and it was during Christmas time. The funny part was, a month before they came – his wife was saying: 'You should stay here.' We want to send our daughter to a school near here. We really want you guys to stay here, hard to move from a house to – but we had no choice. It's been  over six months, and we still haven't bought a house, we wanted to stay there.
>
> The way the text was written, this was our first time tenanting, I was insulted by "get out of my house" – a month you were going to stay here, and then get out. We signed a six-month agreement; we were still looking for a house. It takes a couple months to move in – you're giving us this short time. Move out by January 31st? How were we supposed to find a place? We didn't want to go to another

> rental. When we told him, okay, give us a formal notice, and then after a few days – 'You guys can stay'.
>
> [Landlord] was trying to anticipate us getting into a six-month tenancy, it was a tactic by him. That's very nice, but when you send a text like this. What if he comes up again after 15 days or a month, and get out of our house again?

I asked the Tenants why they thought the Landlord gave them a Two Month Notice, if he did not provide anything more formal than the December 8th text. They said:

> In writing, the text message is saying, 'You guys need to move'. At that point we're making other arrangements. Hey, on December 8th he told me to leave by the end of the month – that's a two month notice. On a month-to-month tenancy, he's given us a two month notice and we are entitled to the last month paid for.

The Landlord replied:

> Five days to find a place? Unbelievable. They still lived there; that's their house. I was just enquiring yes or no and they said no, and I didn't serve that notice two months prior. On December 8th – January is the full month and February is the full month. But I didn't want February - that's a personal thing. If they say it didn't work, it didn't work for me then. In between was five days.

**#2 COMPENSATION FOR DAMAGE BY TENANTS → $3,393.44**

The Landlord made four claims under this category, which we reviewed in the hearing. The Landlord said that the residential property was new in 2007 and has not been renovated since then.

**A. OVEN REPLACEMENT → $2,298.45**

The Landlord said that the oven was new in 2007. He said:

> Oven when they moved in - it was fine - but [at the end of the tenancy] it was covered in burned foil. In the contract they agreed to maintain said appliances and to clean them. The bottom of the oven – they agreed not to put tin foil at the bottom of the oven. It was in tenancy agreement they signed.
>
> Technicians came and they cannot remove tin foil in the bottom. It's not good for ovens, it's like a big - it melts the tin foil onto the oven lining.

> They agreed that they put tin foil in there. I went to this place for appliances and one the same size as mine and the cheapest model - that's the price.

On page three of the tenancy agreement at clause 4 (c) it states:

> **c)** Tenants(s) agrees to maintain said appliances in a clean and good state. And, Tenant(s) agree not to put tin foil at bottom of oven(s).

In the hearing, the Tenants said:

> Honestly, to be on the subject, first, it's functional. It was built in 2007, so it's convenient how he wants us to replace it. I was baffled to – why replace it? It's a rental property, now it's just [the Landlord] trying to score some money off of it. He's probably using the same oven. It's fully functional and will be for over 12 to 13 years old.

**B. CARPET REPAIR → $630.00**

The Landlord confirmed that the carpet was new in 2007. I asked him what was wrong with it, and told me that the Tenants agreed that when they were doing laundry, there was a brief, flash overflow onto the carpet from the washing machine. The Landlord said that this caused the carpet colour to change, because if bleach. He said it was installed carpet, not an area rug.

The Landlord said that he went to a carpeting store and they told him he could cut an area out of the carpet and have it replaced. He said the amount is a quote from this company. He said he has not replaced it yet, as he does not have enough money.

The Landlord said that he has rented out the unit in this condition, but that the new tenants are "not too happy, because they want a nice place, so I have to give them a break on the rent."

The Landlord submitted an estimate from a local carpet store dated November 3, 2022, which states:

> Carpet Repair
> Stain from bleach. Cut the carpet from closet and fix. $600.00 + $30.00 tax.

The Tenants responded:

> I had send this as evidence from the initial walk through – pictures showing dots on the carpet, and throughout the whole house, that his agent took these pictures; the agent forwarded it to me. After 12 – 13 years, it ‘s banged up pretty bad.

The Landlord said that everything, including the carpet, was new in 2007.

The Tenant’s photograph labelled “bleach_mark_on_carpet” is a photo of an open dryer, with a very small portion of carpeting showing. I find this is not helpful to my considerations.

The Tenant continued:

> The thing is the laundry was in a closet upstairs, and the washer is next to the carpeting. I used bleach, and I’m pretty sure the dots wouldn’t have happened. It’s like wear and tear - a few dots around it - and he wants us to pay for the entire carpet. The carpet is already old, and trust me, we had to do so much cleaning to stay there. It was already like that. It’s probably not our fault. I used the bleach, but there were previous dots – there was a lot of wear and tear in the property. See our pictures as part of the evidence. And he’s definitely renting it for more money. I feel like is he’s making big grand gestures out of little things, to blow it out of proportion.

The Landlord submitted a black and white photograph of the carpet with a number of small white spots.

**C. STRATA FINES - PARKING VIOLATIONS → $400.00**

The Landlord said that he had provided the Tenants with a Form K indicating that they would be responsible for any Strata fines incurred by the Tenants during the tenancy. He said the form was signed by both Tenants on April 15, 2021, prior to the start of the tenancy on May 1, 2021. The Landlord submitted a copy of this form, with the Parties’ signatures and initials on it.

The Landlord said that in this case the Tenants repeatedly parked in an area other than their assigned parking stalls, contrary to Strata Bylaw 32 (1). In his written submissions, the Landlord said [reproduced as written]:

> Through the 10 months of rental, numerous complaints of the [Tenants] parking at various visitor’s stalls that is not allowed (Page 2, item 3[o]. Strata president

> called and asked me to persuade the [Tenants] not to park at visitor stall(s) or would be given fines. [The Tenant] ignored the plead. Two violation fines were given by the strata at $200.00 each in two different dates, totalling $400.00. Till this date still not paid as was promised by [the Tenant].

The Tenant said:

> We were not aware at the beginning that we were not allowed to park there. There are parking passes – you must display the pass on the vehicle. [The Landlord] didn't inform us. We were not aware, until our neighbours – someone left a note on vehicle - saying you aren't allowed to park there. And since then, we stopped parking there. I even asked [the Landlord].
>
> My father and mother-in-law would come visit weekly. [The Strata] automatically assumed its our vehicle, and assumed it's ours and they towed their vehicle. Then I contacted Strata directly to say this is not fair. They refunded me the towing fee, issued by mistake.
>
> Even if he decided to pay that fine, how come he didn't inform us about those fines? All of a sudden this is coming up. If we were informed, we would have paid. He never informed us. I see the letter he wrote, but where's the proof that he paid the fines?

I asked the Landlord for his proof of having paid the fines for the Tenants. He said:

> I didn't lie, all she said is a complete lie. No truth at all. They were told the first month they were there. I told them don't park there. I told them because on the Strata, I showed them the Strata bylaw – given to them from the agent – they signed for it. Form K.

The Tenants said:

> I got the Strata information from the neighbour. [The Landlord] never gave us anything. How can the Strata come to us, when we are not the owner. It was a note written by a pen on the windshield. My husband used to come for lunch and park right in front of us. We didn't know until the written notice on the windshield. Never informed of this fine.

The Landlord said that he has not paid the fines yet, that he still owes the $400.00 from these parking fines.

I asked the Landlord when he gave the Tenants information about visitor parking and the need for a pass. He said there is no pass. I asked how the Strata knows if someone parking there is a visitor, a tenant or other. He said:

> They are watching. Whoever lives there have to register their plate number with the Strata, which was done. Any visitor can park there not more than 3 days at a time.

I asked the Landlord how and when he told the Tenants about this and he said: "The Strata member which is doing that. I'm not in the Strata board and they have 3 to 5 members."

I asked the Landlord how he knew the Tenants were told about this, and he said: "That's why they served the Form K when they signed the lease."

The Tenants said:

> We came to know when we got the written notice on the vehicle. He said verbally about visitor parking, and we never parked there again. My father-in-law parked in the morning for the night and the car was towed. Strata paid me back and I got the letter from them, which I forgot to submit it.
>
> After six months or so, we were never informed by him about anything. He should be informing us beforehand. We have to do our own work to figure out what's going on.

The Landlord submitted a letter to him from the Strata dated August 24, 2021, in which they are notifying the Landlord of "a reported violation of the Strata Corporation's Bylaws". They indicated that a vehicle of the kind the Tenants said they had and a licence plate number was in visitor parking on August 19th, 2021.

This letter ends not by imposing a fine, but by stating:

> Pursuant to section 135 (1) of the Strata Property Act, you are hereby given the opportunity to answer the complaint in writing, including the right to request a hearing if you wish. A **written response** must be received by your Strata Manager by email at [email address provided] within fourteen (14) days from the date of this letter.

The Landlord also submitted a Statement of Account from the Strata Corporation for the

period of May 1, 2021, through March 25, 2022. However, there is not indication in this Statement of Strata fines having been imposed on the Landlord. The Landlord did not direct me to and I could not find in his evidence any sign of Strata fines, other than the warning letter dated August 24, 2021.

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, the Landlord must prove:

1. That the Tenants 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")

**#1 UNPAID RENT OWING → $2,800.00**

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. However, section 49 (7) states that the notice to end the tenancy must comply with section 52 of the Act, as to form and content. The requirements of section 52 are that this notice to end tenancy:

- Be signed and dated by the Party giving the notice,
- gives the address of the rental unit,
- states the effective date of the Notice,
- states the ground(s) for ending the tenancy, and
- be in the approved form.

The approved form is RTB-32, entitled: "Two Month Notice to End Tenancy for Landlord's Use of Property" ("Two Month Notice"). I find that the Landlord's text messages do not comply with section 52 of the Act, as they did not contain all of the

required content, nor was it in the approved form.

Further, the Landlord withdrew what I find to be his suggestion about ending the tenancy when the Tenants said they did not want to comply with that. The fact that the Tenants were able to find alternate arrangements as quickly as they did leads me to find that the Tenants were not in as dire a situation as their testimony implies. There is no evidence before me that the Tenants called the RTB to ask about the Landlord's text message and to determine what their rights and obligations were in this situation.

Accordingly, I find that the Tenants were not served a Two Month Notice pursuant to the Act, and therefore, that they were not obligated to vacate the residential property because of the Landlord's text. Rather, the Tenants were required to give the Landlord notice to end the tenancy, pursuant to section 45 of the Act.

Section 45 (1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. A notice to end a tenancy given under this section must comply with section 52, as to *form and content of the notice*.

Further, section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord in this set of circumstances. As a result, I find that the Tenants were required to pay the Landlord rent in February 2022, and therefore, I **award the Landlord $2,800.00** from the Tenants pursuant to sections 26 and 67 of the Act.

**#2 COMPENSATION FOR DAMAGE BY TENANTS → $3,393.44**

**A. OVEN REPLACEMENT → $2,298.45**

The Landlord did not say that the oven does not work properly, because of the foil in the bottom. The tenancy agreement does not provide a consequence for the Tenant's non-compliance with clause 4 (c) of the tenancy agreement.

In terms of the Test, I find that the Landlord proved that the Tenants breached section 4 (c) of the tenancy agreement; however, the Landlord did not provide evidence of the

loss he suffered as a result, pursuant to Step 2 of the Test. As a result, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

**B. CARPET REPAIR → $630.00**

Without a CIR, it is difficult to know what damage was caused during this tenancy. The Tenants said that they submitted photographs that the Landlord had taken at the start of the tenancy, which I gather is in lieu of a CIR not having been prepared. However, the photograph of the carpeting shows a dryer and very little carpeting, and therefore, I find it is not helpful in making my decision.

As the carpeting was new in 2007, it was 15 years old at the start of the tenancy. Policy Guideline #40 states that arbitrators "…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 replacement."

The Landlord has applied for the Tenant to compensate him for spots made on the carpeting near the washing machine. I find it consistent with common sense and ordinary human experience that rental unit carpeting would incur a fair amount of wear and tear throughout its life, and that very little, if any of the useful life of carpeting would remain after fifteen years. As a result, I find that the Landlord has not provided sufficient evidence that the Tenants caused any more than mere wear and tear to the dated carpeting. As a result, I **dismiss this claim without leave to reapply**, further to section 62 of the Act.

**D. STRATA FINES - PARKING VIOLATIONS → $400.00**

The Landlord did not provide me with evidence that these fines had been imposed on him by the Strata. He received merely a warning letter dated August 24, 2021. As such, I find that the Landlord has not provided sufficient evidence to meet his burden of proof on this matter on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

Summary and Set Off

| Award | Description |
|---|---|
| $2,800.00 | -rent for February 2022 |
| $ 0.00 | -oven replacement |
| $ 0.00 | -carpet replacement |

$ 0.00 -Strata fines
$2,800.00 **Total awarded**

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' **$1,400.00 security deposit** in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the $1,400.00 security deposit, pursuant to section 72 of the Act.

Given that the Landlord was only partially successful in his Application, I award him only **$50.00** recovery of the $100.00 Application filing fee, pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Order** from the Tenants of **$1,450.00** for the remainder of the monetary awards owed to the Landlord by the Tenants, pursuant to section 67 of the Act.

Conclusion

The Landlord is partially successful in his Application, as he provided sufficient evidence to meet his burden of proof for unpaid rent for February 2022. The Landlord is also awarded recovery of half of the $100.00 Application filing for a total of $50.00. The Landlord's other claims are dismissed without leave to reapply, as the Landlord failed to provide sufficient evidence to meet his burden of proof in these matters.

The Landlord is authorized to retain the Tenants' $1,400.00 security deposit in partial satisfaction of the Landlord's monetary award. I grant the Landlord a **Monetary Order** from the Tenants of **$1,450.00** for the remainder of the monetary awards owed to the Landlord. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) 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: May 08, 2023

Residential Tenancy Branch