



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on December 15, 2022 seeking compensation for unpaid rent, and damage to the rental unit. Additionally, they seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 14, 2023. Both the Landlord and the Tenants (hereinafter, the “Tenant”) attended the hearing. The Tenant confirmed they received the Notice of Dispute Resolution Proceeding and prepared document evidence from the Landlord. The Landlord also confirmed they received evidence from the Tenant.

### Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts and/or damage to the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement that was in place between the parties. The rent was \$2,700 when the tenancy started on March 1, 2022 and did not increase over the course of the tenancy. The Tenant paid a security deposit of \$1,350 on March 22, 2022.

The Tenant signed an agreement as part of the agreement. The Landlord pointed out specific items from that addendum:

- 6: moving in/out must be completed by licensed movers, with verification provided to the Landlord
- 7: all cleaning and repairs arranged by the Landlord at the end of the tenancy, with all costs to be paid by Tenant
- 13: report any damage immediately to Landlord
- 14: nothing to be mounted on walls/ceilings/patio
- 16: Tenant not allowed to repair, alterations, or painting

The tenancy ended by the One-Month Notice to End Tenancy for Cause that the Landlord served on October 27, 2022. The reason was for “extraordinary damage” in the rental unit, without required repairs. The Landlord listed dates from October when they discovered damage in the rental unit, then undertook repair estimates that they sent to the Tenant. The Landlord cited the Tenant’s refusal to undertake repairs in the amount of \$2,300, and then no response from the Tenant to have repairs completed.

The Tenant confirmed the end-of-tenancy date of November 30, 2022. The Tenant was present at the final inspection on November 30. On November 29, the Tenant took photos to document their completed cleaning. According to the Tenant, a lot of what the Landlord observed and recorded was “exaggerated”.

The Landlord completed a Condition Inspection Report, carried over from the start of the tenancy. This was a room-by-room record of the Landlord’s observations. The Tenant did not sign the report at the end of tenancy to indicate their agreement with the report. The Tenant provided a forwarding address as required at that time.

*a. damage in the rental unit*

The Landlord undertook repairs and cleaning after the tenancy ended:

	Items	\$ claim
1.	towel bar replace	41.43
2.	painting and labour	1,315.70
3.	patio lock replace	84.00

4.	sink stopper	29.75
5.	one halogen bulb	40.43
6.	living room blinds	201.60
7.	rental unit cleaning	320.00
8.	electrical/plumbing labour	300.00
9.	"frig depreciation"	300.00
<b>Total</b>		<b>\$2,332.91</b>

The Landlord provided a worksheet dated December 14, 2022, without the final item listed, totalling \$2,332.91. By adding \$300 (*i.e.*, line 9), the Landlord re-wrote the total as \$2,628.91. The Landlord changed the amount listed in line #2. The Landlord provided two sets of evidence for this hearing, duplicating many pages therein.

1. The Landlord provided an invoice dated December 6, 2022 for replacement of this item. The Tenant, in stating that "damage [the Landlord is] claiming was done before move in" provided a photo they took in the bathroom on February 25, 2022, showing the towel rack installed on the wall.
2. On the second version of the Landlord's worksheet, they amended this amount from \$1,315.70, to \$1,311.70. The Landlord listed the "bedrooms, living room, kitchen, "mudroom" and bathrooms" in this spot on the worksheet. The Landlord included one invoice for work started on December 2, finished December 7, for \$1,250. There was separate invoice for \$61.71 of paint.

The Landlord provided an image of strips applied to the corners of walls. In a text message to the Tenant, they termed the Tenant's use of LED lighting strips as "an unauthorized electrical installation", without the Landlord's permission.

The Tenant responded to say that the lighting they used in the rental unit did not damage the drywall as the Landlord alleged. This stems from the Landlord's inspection in the rental unit in October, and the Landlord attempt to arrange for repairs. In the messages provided by the Landlord, the Tenant stated they would repair any deficiencies at the end of the tenancy. They reiterated in their messages to the Landlord that the lighting strips were taped to the walls, and not glued as alleged. They provided their own image of a removal of the tape strip from the wall, leaving no residue or wall damage.

3. The Landlord provided an invoice for the patio door handle, dated December 1, 2022. This was the subject of another disagreement they had with the Tenant, who claimed the patio door lock was working. The Landlord recorded the “patio lock – damaged” in the final inspection report.
4. The Landlord provided two invoices showing the purchase of a sink stopper on December 12, 2022. The Landlord made a note of this damage in the condition inspection report.
5. The Landlord made note of this in the final inspection report: “bathroom halogen missing (special order)”. The Landlord provided an invoice showing the amount they listed on their report.
6. The Landlord provided a note on the final page of the condition inspection report: “blinds damaged”. The Landlord provided an invoice for \$201.60 in their evidence, dated December 5, 2022.
7. The Landlord provided an invoice dated December 13, 2022 for 6 hours of cleaning in the rental unit. The Landlord made note of the addendum item in the hearing that sets out “the Tenant cannot clean, the Landlord will hire”.

*b. rent amount owing*

The Landlord holds the Tenant accountable for December 2022 rent. This is after the Tenant moved out; however, the Landlord needed time to repair all of these items.

The Tenant stated that the Landlord knew they were moving out from the rental unit. The Tenant did not dispute the Landlord’s end-of-tenancy notice when served. The Tenant pointed to their own text messages in the evidence in which they informed the Landlord that they were cleaning the rental unit for the targeted end-of-tenancy date. The Tenant also submitted that the Landlord could have been showing the rental unit to prospective tenants during the final month of the tenancy.

### Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

*a. damage to rental unit*

I have assessed each piece of the Landlord's claim, with regard to the four points set out above:

1. The Landlord did not provide a record of this item being actually damaged by the Tenant. There is no picture depicting this damage. The Landlord did not record this damage in the condition inspection report, so I am not satisfied there was actual damage that was not pre-existing in the rental unit. I dismiss this piece of the Landlord's claim for this reason.
2. I find the Landlord did not provide sufficient evidence to show the need for painting to the extent that they paid for. They seemed intent on making this an issue with the Tenant; however, the evidence they provided does not bear this out. I am not satisfied the work including painting was required. The Tenant was not afforded the opportunity to rectify the situation without the Landlord forcing repairs on them, even ending the tenancy for this reason.

I understand that the Landlord wants to have items in place in their addendum as preventive measures. The clause requiring the Landlord to clean and repair at the end of the tenancy, making the Tenant pay, is purely arbitrary. I find this is not in line with

what is provided for in s. 37 of the *Act*. It is the Tenant's responsibility to leave the rental unit reasonably clean and undamaged. I find this turned into a campaign by the Landlord toward the end of the tenancy, based on some observations of an inspection they had with the Tenant. In line with the principle of minimizing costs, the Landlord should afford the Tenant the opportunity properly clean the rental unit and make repairs; I don't see that the Tenant was given that opportunity here.

3. The Landlord provided no evidence in the form of photos or anything else showing actual damage to the patio lock. As such, I am not satisfied that actual damage exists. I dismiss this piece of the Landlord's claim.
4. As above, the Landlord did not provide evidence of this damage. I am not satisfied the damage existed as noted in the inspection report. The onus of proof is on the Landlord here, and the Landlord is not providing sufficient evidence to show this is damage that the Tenant must pay for. I dismiss this piece of the Landlord's claim for this reason.
5. As above, I find there is no evidence of the need for this lightbulb replacement. For an item of this type, the Landlord must present evidence the item was missing, attributable to the Tenant. With no evidence, I dismiss this piece of the Landlord's evidence.
6. There is no evidence of blind damage. I am unable to make a distinction between actual damage, and reasonable wear and tear at the end of the tenancy. With no evidence of damage from the Landlord, and merely a notation on the condition inspection report, I dismiss this piece of the Landlord's claim.
7. As above, I find there is no evidence of the need for cleaning throughout the rental unit. I dismiss this piece of the Landlord's claim for compensation.

The Landlord imposed this cost unilaterally by including a default payment for this from the Tenant at the end of the tenancy. This is without due regard to the cost thereof, which the Tenant has no input on. Essentially the Landlord is preventing the Tenant from cleaning, then imposing the cost one-way.

I find placing this cost on the Tenant automatically is not in line with the *Act*, as I set out above. This does not afford the Tenant the opportunity to clean the rental unit to a sufficient standard on their own, or even hire cleaners on their own, without the Landlord's input. By placing this clause in this manner as the Landlord has done here, I find it does not alleviate the need for actual evidence when they are trying to prove this expense. I am not satisfied of the need for cleaning, based on the Landlord's lack of

evidence. I don't understand why the Landlord was vigilant on damage in the rental unit and the need for cleaning, yet did not produce the evidence when required, in order to justify the expenses that they are expecting the Tenant to pay.

8. There is no evidence of the cost, or the need for electrical or plumbing labour. I find this is completely fabricated by the Landlord. I dismiss this piece of the Landlord's claim entirely.
9. As above, there is no reference to what the Landlord is referring to in their amended monetary worksheet. I find this is fabricated, and there was no evidence centering on the refrigerator. I find this, combined with the item above, is underhanded in the extreme, minus any evidence of an omission on the Landlord's part which I find unlikely given the duplication of the evidence in place in the Landlord's documents for this hearing.

In sum, because there was no evidence that the separate pieces of damage or loss exist, I dismiss the Landlord's claim for damage and cleaning in the rental unit in its entirety, without leave to reapply. The Landlord appears to be vigilant when it comes to holding a tenant accountable for damage or loss in the rental unit; however, clauses in place in the addendum do not alleviate the need for actual proof, and paid invoices don't reveal evidence of actual damage attributable to the Tenant. Without proof, I accept the Tenant's statement that the Landlord was exaggerating the damage here.

There was no evidence showing damage or loss in the rental unit; therefore, I dismiss the Landlord's claim.

*b. rent amounts owing*

Given what appears in the tenancy agreement addendum, I find the Landlord is basically setting the Tenant up to fail. The Tenant is essentially not allowed to clean on their own, with the cost by default landing with the Tenant. Given the clauses as they appear in the addendum, it is the Landlord who, by their choice entirely, must arrange for that cleaning/repair in a timely manner. I find the Landlord did not do so here, with one invoice item being two weeks after the tenancy ended. I find the scheme is fundamentally unfair to the Tenant, and, with regard to the common-law purposes of compensation, self-defeating for the Landlord. With regard to the four considerations listed above, I find this is not the Landlord minimizing expenses.

I dismiss the Landlord's claim for an extra month's rent amount. The Landlord took on the responsibility of arranging for cleaning, making it clear that was entirely outside of the Tenant's responsibility, contrary to the *Act*. The Tenant cannot be expected to pay for the Landlord not undertaking to ensure that cleaning was completed in a timely manner.

The Landlord was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee to them.

The Landlord withheld the return of the security deposit from the Tenant at the end of the tenancy. The Landlord applied within the 15-day timeframe after the end of the tenancy as required in s. 38 of the *Act*. The Landlord was not successful in this Application; therefore, I order the return of the security deposit, in full, to the Tenant forthwith.

### Conclusion

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,350 for the return of the security deposit. I provide the Tenant with this Monetary Order, and they must serve this Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file this Monetary Order with the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 3, 2023

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Residential Tenancy Branch