



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDL-S, FFL  
Tenant: MNSDS-DR, FFT

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants and an agent for the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Preliminary Issue- Service

Both parties agreed that they were served with the other's application for dispute resolution and evidence. I find that both parties were sufficiently served with the other's application for dispute resolution and evidence for the purposes of this Act pursuant to section 71 of the Act because receipt was confirmed.

### Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit?
2. Are the tenants entitled to recover the filing fee for this application from the landlord?
3. Is the landlord entitled to a Monetary Order for damages?
4. Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to the presented documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and agent's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on May 1, 2021 and ended on December 30, 2022,
- monthly rent in the amount of \$2,600.00 was payable on the first day of each month,
- a security deposit of \$1,300.00 was paid by the tenants to the landlord in April of 2021,
- the landlord received the tenants' forwarding address on September 3, 2022 and December 30, 2022.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed that they completed joint move in and move out condition inspection reports at the start and end of the tenancy respectively. The move in and move out condition inspection reports were entered into evidence.

The landlord is seeking the following damages from the tenants:

<b>Item</b>	<b>Amount</b>
Cleaning and junk removal	\$440.00 plus GST
Wall repair	\$750.00 plus GST
Carpet cleaning	\$210.00

Fridge parts	\$221.70
Cabinet replacement	\$800.00

### Cleaning and junk removal

The agent testified that the tenants did not clean the subject rental property at the end of the tenancy and left some junk outside the front of the subject rental property. The agent entered into evidence photographs taken at the end of the tenancy showing that the following areas were dirty: walls, windowsills, rangehood, oven, fridge, fan, dryer, cabinets and bathroom. The agent testified that a cleaner/junk remover was hired to clean the property and remove the junk. The agent entered into evidence an invoice for cleaning and junk removal totalling \$440.00 plus GST.

The move in condition inspection report states that the entire subject rental property was in good condition at the start of this tenancy. Both parties agree that the subject rental property was brand new at the start of this tenancy. The move out condition inspection report states that at the end of the tenancy the whole house required cleaning.

Tenant A.C.R. testified that there was a storm when they were moving out which delayed their move and prevented people hired to assist with the move from attending. Tenant A.C.R. testified that they agree that the cleaning at the subject rental property was not up to the landlord's standards and that the landlord is entitled to a cleaning fee.

Tenant A.C.R. testified that no junk was left at the subject rental property. The landlord entered into evidence a photograph showing a few items left outside the garage of the subject rental property. The tenants entered into evidence a photograph of a large pile of junk left outside the garage of the subject rental property which they testified was picked up by private garbage men.

### Wall repair

Both parties agree that at the start of the tenancy the walls were brand new and in excellent condition. The agent testified that at the end of the tenancy every wall was damaged with holes drilled into every wall for items including shelves, a television and curtains. Photographs of same were entered into evidence. The agent testified that in one bedroom the tenants put sticker decals on the walls which peeled off the drywall when the tenants removed them. Photographs of same were entered into evidence. The

agent testified that a repair person was hired to fix the holes and paint the affected areas. The agent testified that only the damaged areas were patched and painted, and that the entire property was not re-painted. The landlord entered into evidence a receipt for wall damage repair and paint for \$750.00 plus GST.

The move in condition inspection report states that the walls in the subject rental property were all in good condition at the start of the tenancy. The move out condition inspection report states that there is wall damage in the following rooms: kitchen, living room, master bedroom and bedroom #2.

Tenant A.C.W. testified that when they removed wall sticker decals in their son's room the wall was damaged. Tenant A.C.W. testified that the tenants agree that they owe for that repair but not for the other holes left in the walls. Tenant A.C.W. testified that the holes constitute regular wear and tear.

#### Carpet cleaning

Both parties agree that the tenants did not have the carpets cleaned at the end of this tenancy. The agent testified that the landlord had the carpets professionally cleaned after the tenants moved out. The agent entered into evidence a receipt for carpet cleaning in the amount of \$210.00. The tenants agreed that they were required to have the carpets cleaned and agreed to pay this charge.

#### Fridge parts

Both parties agree that the fridge was brand new at the start of this tenancy. Both parties agree that the tenants broke the filter holder and a crisper drawer in the fridge. The agent testified that the filter holder required two new parts which were ordered. The agent entered into evidence receipts in the amount of \$12.10 and \$85.80 for the filter holder replacement parts. The landlord testified that the crisper cost \$123.80 to replace, a receipt for same was entered into evidence. The agent testified that the landlord is seeking to collect the fridge repair costs from the tenants.

Tenant A.C.W. testified that the landlord could have purchased discounted replacement pieces from the manufacturer because the fridge was still under warranty. No documentary evidence to support this testimony was presented in the hearing. Tenant A.C.W. testified that they agreed to pay \$135.89 in fridge parts and that they are not responsible for the total cost.

Cabinet replacement

Both parties agree that the cabinets in the subject rental property were brand new at the start of this tenancy. The agent testified that at the end of the tenancy in the main bathroom on the top floor two cabinet doors were damaged by water and in the powder room, two cabinet doors and one drawer face were water damaged. The agent testified that he contacted the builder who built the subject rental property and asked for a quote for the replacement of the damaged cabinet doors and drawer. The agent testified that the builder quoted him \$500.00 for materials and \$300.00 for delivery and installation. The landlord entered into evidence a text message from "S" dated January 5, 2023 which states:

Both bathrooms 4 doors and one drawer front new \$500 if you pick up from my shop [name of shop and address]

Delivery and installation \$300 extra

The agent testified that the doors and drawer were never purchased, and new tenants moved in with the damaged cabinets in place. The move in condition inspection report states that the bathroom cabinets were in good condition. The move out condition inspection report states that the main bathroom and powder room had cabinet damage. Photographs of the damaged cabinets and drawer were entered into evidence.

Tenant A.C.W. testified that since they moved in there were water leaks and pooling problems. Tenant A.C.W. testified that the water ingress issues were reported to the landlord and the landlord sent the builder in on three occasions to repair water related issues. Tenant A.C.W. testified that towels lived on the bathroom floor to soak up the water that was constantly leaking. Tenant A.C.W. testified that she told her husband and kids to keep everything as dry as possible. Tenant A.C.W. testified that she does not take accountability for the water damage as it was not caused by the tenants.

The agent testified that the damage to the bathroom cabinets was not related to the various water leaks reported by the tenants and that the damage is not normal wear and tear.

### Security Deposit

The landlord and the tenants both filed for dispute resolution on February 15, 2023.

Tenant A.C.W. testified that the landlord did not return their deposit within 15 days of receiving their forwarding address in writing as required under the Act. The tenants entered into evidence a letter from the tenants to the landlord dated January 23, 2023 in which the tenants set out what they agree to pay as follows:

\$220.00 (cleaning)

\$250.00 (wall decal damages)

\$210.00 (carpet cleaning)

\$135.89 (fridge parts)

Total: \$815.89 – to be deducted from the security deposit of \$1300, which leaves a balance of: \$484.11

**I have written this letter in good faith in hopes of not filing a RTB Dispute Resolution where I will be entitled to two times the amount of the security deposit. On February 1<sup>st</sup>, I expect to receive the requested deposit amount, or I will file a RTB dispute.**

Both parties agree that the landlord did not return any portion of the deposit to the tenants.

### Analysis

#### Damages

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

#### Useful life of building elements

Residential Tenancy Guide #40 (PG #40) states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator 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 or replacement.

I find that when building elements are replaced, a useful life calculation is necessary to determine the loss suffered by the landlord. I find that when items are repaired, a useful life calculation is not required because the repair will not likely increase the useful life of the repaired item, but will return it to its pre-damaged state.

#### Cleaning and junk removal

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the testimony of both parties and the photographs entered into evidence, I find that the tenants did not leave the subject rental property reasonably clean at the end of this tenancy contrary to section 37(2)(a) of the *Act*. Based on the photograph of junk left outside the subject rental property and the agent's testimony, I find that on a balance of probabilities, the tenants left some junk at the subject rental property at the end of the tenancy. I accept the tenants' testimony that most of their junk was picked up as their photograph of junk left outside the garage showed a significantly larger amount than that the photograph presented by the agent. I find that in leaving junk at the subject rental property the tenants breached section 37(2)(a) of the *Act*.

Based on the receipt entered into evidence, I find that the landlord has proved that the tenants' breach of section 37(2) (a) of the *Act* resulted in a loss totalling \$462.00 (\$440.00 \* 1.05 (GST)). I find that the landlord acted reasonably in hiring someone to clean and remove the junk from the subject rental property. I find no mitigation issues present. In accordance with my above findings and section 67 of the *Act*, I award the landlord \$462.00 for cleaning and junk removal.

#### Wall repair

Residential Tenancy Branch Policy Guideline #1 states that the tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.



Based on the photographs entered into evidence by the agent, I find that the holes in the walls were larger than standard nail holes and were caused by screws or large nails. I find that the tenants are responsible for the holes and the damage left by their sticker decal removal. I find that the tenants left the subject rental walls damaged contrary to section 37(2)(a) of the Act and that this resulted in a loss to the landlord. I find that the agent has proved the value of this loss by the receipt entered into in the amount of \$750.00 plus GST ( $\$750.00 * 1.05 \text{ (GST)} = \$787.50$ ).

I find that since the entire property was not repainted, the wall repair and patch painting is more in the nature of a repair than a replacement and so a useful life calculation is not necessary.

I find that the landlord acted reasonably in hiring someone to repair the walls. I find no mitigation issues present. In accordance with my above findings and section 67 of the Act, I award the landlord \$787.50.

#### Carpet cleaning

Residential Tenancy Policy Guideline #1 states that 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. I find that this tenancy was longer than one year and the tenants breached section 37(2)(a) of the Act by leaving the carpet uncleaned. I find that the agent has proved the value of the loss suffered by the landlord as a result of this breach by the receipt of \$210.00 entered into evidence.

I find that the landlord acted reasonably in hiring someone to clean the carpets. I find no mitigation issues present. In accordance with my above findings and section 67 of the Act, I award the landlord \$210.00 for carpet cleaning.

#### Fridge parts

Based on the testimony of both parties I find that the tenants damaged the filter holder and a crisper in the fridge of the subject rental property. I find that the tenants breached section 37(2)(a) of the Act by leaving the fridge damaged. I find that the landlord has proved that the tenants breach of section 37(2)(a) of the Act resulted in a loss to the landlord totalling \$221.70 which the landlord incurred when the fridge was repaired. As

only the damaged parts of the fridge were replaced, I find that the replacement of damaged parts is a repair of the fridge and thus a useful life calculation is not necessary.

I find that in ordering parts from a parts supplier the landlord acted reasonably. I am not satisfied that the landlord had a cheaper option available as no documentary evidence supporting this conclusion were presented in the hearing. The landlord is not required to take every possible step to mitigate damages but must do what is reasonable. I find that ordering part from a parts supplier is reasonable. In accordance with my above findings and section 67 of the Act, I award the landlord \$221.70 for fridge repairs.

#### Cabinet replacement

The agent testified that the bathroom cabinets and drawer have not been replaced. I therefore find that the landlord has not suffered a monetary loss as no funds have been expended. I find that the landlord is therefore not entitled to a monetary order under section 67 of the Act.

In addition, I am not satisfied that the landlord has proved, on a balance of probabilities, that the various water leaks present in the subject rental property during this tenancy were not the cause of the damage to the bathrooms. The landlord's claim is also dismissed for this reason.

#### Security Deposit

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

Residential Tenancy Branch Policy Guideline # 17 states that the landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to:

- (a) return the security deposit plus interest to the tenant,

- (b) reach written agreement with the tenant to keep some or all of the security deposit,
- (c) or make an application for dispute resolution claiming against the deposit.

Based on the testimony of both parties, I find that this tenancy ended on December 30, 2022. I find that the landlord received the tenants' forwarding address on September 3, 2022 and December 30, 2022. The landlord therefore had until January 14, 2023 to either:

- (a) return the security deposit plus interest to the tenant,
- (b) reach written agreement with the tenant to keep some or all of the security deposit,
- (c) or make an application for dispute resolution claiming against the deposit.

I find that the landlord failed to do any of the above and therefore the tenants are entitled to double their security deposit. I note that the tenant's January 23, 2023 letter was sent to the landlord after the 15 day requirement to receive written permission to keep all or some of the security deposit and so the tenants are entitled to double the security deposit. I also find that the January 23, 2023 letter was more in the nature of an offer to settle, and not a stand alone written agreement for the landlord to retain a portion of their deposit.

In accordance with my above findings, I award the tenants double their security deposit totalling \$2,600.00. I find that the interest accrued on the \$1,300.00 security deposit as of the date of this hearing is \$21.18. I order the landlord to return the accrued interest.

As both parties were successful in their applications for dispute resolution, I find that they are each entitled to have the other pay their filing fee.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$1,781.20 from the tenants award. I order the landlord to return the remaining \$939.98 to the tenants.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

<b>Item</b>	<b>Amount</b>
Doubled security deposit	\$2,600.00
Interest accrued on security deposit	\$21.18
Filing fee awarded to tenants	\$100.00
Less cleaning and junk removal	-\$462.00
Less wall repairs	-\$787.50
Less carpet cleaning	-\$210.00
Less fridge repairs	-\$221.70
Less filing fee awarded to landlord	-\$100.00
<b>TOTAL</b>	<b>\$939.98</b>

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: November 02, 2023

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Residential Tenancy Branch