



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding I.B.J. HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

I accept that the landlord has sufficiently pleaded that it seeks to retain the security deposit in satisfaction of a monetary order that it seeks as compensation for damage to the rental unit.

The tenants did not attend this hearing, although I waited until 1559 in order to enable the tenants to connect with this teleconference hearing scheduled for 1500. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by its agents.

The agent MR testified that the landlord served the tenants with the dispute resolution package on 30 August 2014 by registered mail. The agent MR testified that she sent the dispute resolution package to the mailing address provided by the tenants as their forwarding address. The agent provided me with a Canada Post tracking number. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agents, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

I was provided with a tenancy agreement dated 17 August 2013 that all parties signed. This tenancy began 17 August 2013 and ended 14 August 2014. Monthly rent of \$1,300 was payable before the first. The agent MR testified that the landlord collected a security deposit of \$650.00 from the tenants in August 2013.

The agent MR testified that the landlord returned the balance of the security deposit to the tenant. The landlord provided me with a copy of the cheque in the amount of \$53.24. The agent MR testified that the tenants have cashed this cheque. This cheque was provided to the tenants in the same registered mailing that contained notice of this hearing and all of the landlord's evidence.

Clause 4 of the tenancy agreement sets out an obligation on the tenant to have the fireplace cleaned once per year if it is in use:

...the fireplace must be professionally cleaned once a year if it has been in operation. A receipt must be shown to the landlord.

Clause 6 of the tenancy agreement sets out:

The tenant will replace all light bulbs that burn out in light fixtures on the premises during the tenancy. All light bulbs are working when you move in therefore all light bulbs should be working when you leave.

Clause 8 of the tenancy agreement set out:

The tenant will not make any structural alterations to the premises, paint, paper or re-decorate the premises without the written consent of the Landlord. The Tenant will not drive nails or tacks in the walls or woodwork.

Clause 17 of the tenancy agreement sets out:

Rent includes appliances, namely the refrigerator and stove, the washer and dryer. These appliances are all in working order and after 60 days become the responsibility of the tenant to be maintained as such.

The tenant provided me with an addendum to the tenancy agreement, signed by both tenants, which set out that the tenants must clean the filter to the air conditioner every two weeks.

The agent BK testified that the fireplace showed evidence of heavy use. The agent BK testified that a large amount of creosote was dislodged from the chimney.

The agent BK testified that the tenants complained to him that the freezer had stopped working. The agent BK arranged for a technician to come and view the refrigerator. The agent BK testified that the technician reported that the freezer was not working because the tenants had overfilled the fridge resulting in the failure of the vent to circulate air between the fridge and freezer portions. The agent BK testified that the technician instructed the tenants on how to properly use their fridge.

The agent BK testified that the tenants were very difficult to get in contact with.

The agent MR testified that the track to the closet sliding door was bent and the door was off the track.

The landlord provided me with a copy of the twenty-two page, condition move in/out inspection report. There is nothing remarkable about the move-in inspection. The agent MR testified that the tenant had to leave the condition move-out inspection. The agent MR testified that the tenant signed the report acknowledging that the tenants would be charged for:

1. one half of the cost of the weather stripping;
2. two vanes for the dining room patio door;
3. replacement blind for the third bedroom; and
4. any items above not completed before noon tomorrow.

The agent MR later added the following notes, which are the notes that are referenced in the fourth point above:

*Tenant asked for opportunity to come back and fix the following (to be texted to him):*

- *remove nails in living room (3) + rec room + fill*
- *clean all window tracks/patio door track*

- *replace smoke detector battery*
- *clean both bathroom fans*
- *clean furnace filter*
- *replace bedroom #3 light bulbs*
- *clean shower in ensuite shower knob*
- *door stop in bedroom #3 replaced*

The landlord provided me with a copy type of a text from the agent MR sent to the tenant DS on 14 August 2014 at 1803:

*Talked with dad. Items to complete: remove 3 nails in livingroom and rill, fill holes in rec room, clean all window tracks and patio door track, smoke detector battery replaced, clean ensuite drawers, clean shower knob in ensuite, doorstop to basement bedroom replaced. Items that would come off damage deposit: any items not completed, the 2 vanes for patio door, replacement of broken blind in bedroom, half the cost of weatherstripping. ...*

The agent BK wrote to the tenants on 15 August 2014. I was provided with a copy of the letter. In that letter, the agent BK sets out all the same deficiencies that were noted in the condition move-out inspection report. The agent BK noted:

The screen door also had a significant hole(s) in it. [Tenant] said that the “damn cat” had done it. Likewise, [tenant] stated that the cat had also done the damage to the weather stripping on the carport door. If there was a stray cat doing damage to the premises, you should have notified us at the time, not waiting until after you moved out, and we could have contacted [animal shelter] to have the cat removed and repaired the damage at the time.

I was provided with a copy of a receipt dated 27 August 2014 for two screens: one patio door and one window. The patio door screen cost \$39.63 (sales tax included). The window screen cost \$22.22 (sales tax included).

I was provided with a copy of a receipt from a hardware store. This receipt was dated 20 August 2014. That receipts sets out the following costs (sales tax included):

Item	Amount
Battery	\$5.53
Lightbulb	3.45
Weather stripping	5.08
Sliding door kit	40.60

I was provided with a copy of a receipt dated 5 August 2014 from a chimney sweep. That receipt was for cleaning the fireplace. The total cost was \$105.00.

I was provided with a copy of a receipt from a hardware store. That receipt was dated 23 August 2014. The receipt set out a total cost of \$26.51 (including sales tax) for the cost of blinds.

I was provided with a copy of a receipt from a technician. That receipt was undated. The receipt set out a total cost of \$80.00. The technician made the following notes:

*Warm air in freezer, suspected unit was in defrost, also found jar under air flow in fridge, corrected and tested.*

I was provided with a copy of a receipt from a cleaning business run by the agent MR. That receipt was undated and set out total charges of \$130.00 on the basis of an hourly rate of \$20.00. The receipt itemized the following duties:

- clean furnace filter
- clean window tracks
- clean patio door track
- replace weather striping
- pick up and reinstall vanes for dining room blinds
- remove nails, fill holes, sand, prime, paint
- replace blind in bedroom
- remove and replace window screen and patio door screen
- replace smoke detector battery
- replace light bulbs
- clean fans in bathrooms
- fix closet door
- clean drawers in bathroom
- clean shower

I was provided with photographs of the rental unit's condition:

**Photograph of window screen:** This photograph shows three holes in the insect screen. The largest hole involves approximately twelve squares of the mesh screen.

**Photograph bedroom blinds:** This photograph shows two slats of the venetian blinds that have been broken off on their rightmost edge.

**Photographs of ensuite:** These photographs show various unclean bathroom fixtures.

**Photographs of dining room blinds:** One photograph a vertical blind that is not hung. Another photographs shows the top of the blind which appears to be held together by staple and tape.

**Photograph of dining room screen door:** This photograph shows a large hole in the screen door.

**Photograph of the weather stripping:** This photograph shows that the lower portion of the weather stripping is badly damaged.

**Photographs showing nails in walls:** The photographs show nails in walls in various rooms.

**Photographs of dirty objects:** The photographs show the condition at move out of various parts of the rental unit.

The landlord seeks compensation for the following:

Item	Amount
Screen replacement for sliding door and window	\$61.85
Track door replacement, battery for smoke detector, lightbulbs	54.66
Cleaning Costs	130.00
Blind Replacement	23.67
Fireplace Cleaning	105.00
Refrigerator Technician	84.00
Call out for Flood	90.00
Recover Filing Fee	50.00

### Analysis

The landlord has alleged damage the rental unit that is either in contravention of the Act or tenancy agreement or both.

The landlord has elected to create its own condition move in/out inspection report.

Sections 19 and 20 of the *Residential Tenancy Regulations* (the Regulations) deal with the content required in a condition move in/out inspection report. I find that the landlord's report complies with requirements of the Regulations. As such, the landlord is entitled to benefit from the evidentiary presumption in section 21 of the Regulations:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The tenants have not provided any documentary evidence. The tenants have not provided any testimony. As such, the presumption in section 21 of the Regulations applies for the purposes of this application. On this basis, I find that the landlord has shown that the alleged damage to the rental unit occurred during the course of the tenancy.

### *Claim for Breach of Contract*

The tenants entered into the tenancy agreement with the landlord. The tenants agreed to certain conditions including: replacing all lightbulbs that were burned out at the end of the tenancy, cleaning the fireplace, not putting nails or tacks into the walls, and maintain the appliances. The tenants did not abide by these covenants.

*Residential Tenancy Policy Guideline* "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) sets out:

Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable.

...

### **MAJOR APPLIANCES**

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

...

### **FIREPLACE, CHIMNEY, VENTS AND FANS**

The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.

The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.

I find that the term in the tenancy agreement requiring a tenant to maintain appliances is unenforceable under the Act. Further, I find that the term in the tenancy agreement requiring a tenant to professionally clean the fireplace, insofar as it relates to cleaning other than removal of ashes from the fireplace itself, is unenforceable under the Act. I find that the remaining terms are enforceable. I find that the landlord is not entitled to recover for the refrigerator repairs on the basis of breach of contract. I find that the landlord is not entitled to recover the fireplace cleaning on the basis of breach of contract.

*Residential Tenancy Policy Guideline* “16. Claims in Damages Obligations under a tenancy agreement” address damages for breach of contract:

The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

The landlord has provided me with a condition move in inspection report that shows the lightbulbs were functioning at the beginning of the tenancy and a condition move out inspection report that shows that some lightbulbs were not functioning at the end of the tenancy. I find that the tenants breached clause six of the tenancy agreement. The landlord has provided me with a receipt for the cost of the replacement lightbulbs and a receipt for the labour associated with their installation.



The agent MR provided testimony that the tenant left nails in and unpainted patched nail holes on the walls. The condition move in inspection report shows that there were no nails in the walls. The landlord provided me with a receipt for the repair costs associated with this. I find that landlord has proven its entitlement to recover the costs of repairing the walls from nail holes.

*Compensation for Failure to Comply with Section 32 of the Act*

Subsection 32(1) of the Act requires a landlord to maintain residential property 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, makes it suitable for occupation by the tenant. Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Subsection 32(4) of the Act provides that a tenant is not required to make repairs for reasonable wear and tear.

*Claims Pursuant to Subsection 32(3)*

The small holes in the window screen appear to be more in the nature of wear and tear. As repairs for wear and tear is not compensable, the landlord has failed to show its entitlement for compensation for the window screen. The tenants set out in communication, which was provided to me by the landlord, that a cat caused the damage to the door screen; however the tenants did not appear at the hearing to provide any evidence under oath. I accept that the actions or neglect of the tenants or their guests caused the damage to the screen door. The landlord provided me with a receipt for the replacement cost of the screen as well as the cost associated with its installation. I find that the landlord has proven its entitlement to the cost of replacement for the patio screen.

The agent MR testified that the track for the closet door was bent. I find that the bent track is not in the nature of wear and tear. I find that the landlord has shown, on a balance of probabilities, that the tenant caused the damage to the closet door. I find that the landlord has proven its entitlement to the cost of the door's repair.

The landlord provided me with a photograph of the broken blinds (both vertical and venetian). I find that the damage to the blinds is not that of wear and tear, but the result of damage caused by the tenants. I find that the landlord has proven its entitlement to compensation for the replacement of the vertical and venetian blinds.

The photograph of the weather stripping shows signs of damage beyond wear and tear. I find that the landlord has proven that the tenants caused the damage to the weather stripping either directly or through their neglect. I accept the landlord's valuation that the tenants' responsibility for the weather stripping is one half of the cost of repair. I find that the landlord has proven its entitlement to recover half the cost of the weather stripping replacement.

The landlord did not provide me with a receipt that proves the cost associated with the flood. As the landlord has failed to provide me with proof of its costs, I find that the landlord has failed to prove, on a balance of probabilities, its right to recover the cost it claims.

The landlord provided me with a receipt from the refrigerator technician. That receipt shows that the reason the refrigerator was not functioning properly was the result of the tenants' negligence. As the tenants' negligence was the cause of the landlord incurring this cost, I find that the landlord has proven its entitlement to recover the cost of the refrigerator repair.

#### *Claims Pursuant to Subsection 32(2)*

Guideline 1 sets out the tenant's responsibility for cleaning windows:

The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

I find that the tenants failed to clean the rental unit in such a manner that satisfied their obligations pursuant to subsection 32(2). In particular, the tenants neglected to clean the window tracks. The landlord has proven its entitlement to the cleaning costs of the window tracks. Further, the tenants neglected to clean the bathrooms sufficiently. The landlord has proven its entitlement to recover for the cleaning costs of the bathroom. In addition, the tenants failed to clean the fireplace. The landlord has proven its entitlement to recover the cost of cleaning out the fireplace. I value the cost cleaning the fire place at \$20.00.

The landlord claims for the cost of the smoke detector battery. Guideline 1 sets out that the regular maintenance of a smoke detector is the responsibility of the landlord. Regular maintenance includes battery replacement. Accordingly, the landlord is not entitled to recover the cost of the smoke detector battery.

The landlord claims the cost of cleaning the furnace filter. Guideline 1 sets out that the landlord is responsible for servicing the furnace, which includes cleaning or replacing the furnace filters. Accordingly, the landlord is not entitled to recover the cost of cleaning the furnace filter.

### *Calculation of Compensation*

As the landlord has been successful in its application it is entitled to recover the \$50.00 filing fee from the tenants.

The landlord has proven its entitlement to recover the amount of \$376.73 from the tenants under the following terms:

<b>Item</b>	<b>Amount</b>
Damage to patio door screen	\$39.63
Lightbulb (incl. enviro. fee)	3.45
½ weather stripping	2.54
Blinds	26.51
Closet door repair	40.60
Cleaning costs	110.00
Fireplace cleaning	20.00
Fridge technician	84.00
Recovery of Filing Fee for this Application	50.00
<b>Total Compensation Awarded</b>	<b>\$376.73</b>

I have reduced the cleaning costs by one hour as the furnace filter cleaning and the window screen replacement are not compensable.

The landlord has retained an excess of \$220.03 from the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Total Compensation Awarded	\$376.73
Security Deposit	-650.00
Portion of Security Deposit Returned	53.24
<b>Total Monetary Order</b>	<b>(\$220.03)</b>

### Conclusion

I order that the landlord is entitled to retain \$376.73 from the tenants' security deposit. The remainder of the tenants' deposit (\$220.03) should be returned to the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 24, 2015

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Residential Tenancy Branch

