



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenants for return of double the security deposit. Both parties have requested recovery of their filing fees from each other. Both parties attended the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Are the parties entitled to the requested orders?

### Background and Evidence

This tenancy began on November 1, 2014 and ended on May 1, 2016. The rent was \$2400.00 per month. A security deposit of \$1500.00 and pet damage deposit of \$1500.00 were paid at the start of the tenancy. The rental unit is a detached home in Kitimat. Condition inspection reports were completed upon move-in and move-out.

The landlord testified that during this 18 month tenancy, the tenants damaged the rental unit. A summary of the alleged damage is contained in the landlord's application and states as follows:

*The tenants lived in the home for 18 months. During this time damages were done to the home. Some of the damages include excessive nail holes throughout the entire home. Scratches to walls and dents due to shelving being put up on the walls without the landlord's permission. Dents to the stainless steel fridge due to the tenants' son riding his skateboard in the kitchen. Damage to one bedroom ceiling due to tenants installing a jungle gym in it and attaching it to the ceiling. Damage to the railing in the home due to the tenant tacking surround sound speakers and cat scratching the railing. Cat also clawed one bedroom wall paper up. Front entrance light was smashed due to tenant slamming the door shut. Front door has two screws the tenant*

*screwed into the front door trim (around front door glass). Numerous scratches, dents and gouges to the hardwood floor due to the tenants' neglect and not taking proper precaution when moving furniture etc on the floor. Flooring now has to be fixed. Garage door keypad is broken. Cement retaining wall was hit by the tenants' trailer. Front entrance carpet on stairs had to be professionally cleaned and is un-cleanable as per the Carpet Doctor due to pet urine smell.*

The landlord submitted photos showing all the alleged damage.

The tenants also submitted photos of the home that show how parts of the home looked after they had finished moving out and cleaning. The tenants claim that the landlord took many of their photos when the tenants were still living in the home rather than after move out and clean up. The tenants argue that the landlord is claiming for things that fall under "normal wear and tear" and that they are entitled to return of double their security and pet damage deposits.

### Analysis

#### ***Landlord's Claim***

The landlord has made a monetary claim against the tenants comprised of the following:

Cleaning & wall repair	\$3100.00
Wall repair and repaint materials	\$922.04
Freezer door replacement	\$709.75
Retaining wall repair	\$393.75
Front entrance light replacement	\$199.99
Garage door key pad repair	\$84.99
Driveway oil stain removal	\$300.00
<b>TOTAL</b>	<b>\$5710.52</b>

I shall deal with each of these items in turn. In assessing these items I am guided by the general principle that the party making the claim bears the burden of proving that claim on a balance of probabilities and that Section 37 of the Act requires a tenant to "*leave the rental unit reasonably clean and undamaged except normal wear and tear.*"

Cleaning and wall repair labour (\$3100.00) - The landlord claims that the cleaning and wall repair required in the rental unit took two people working for 20 hours each at a rate of \$25 per hour for a total claim of \$3100.00. This claim also includes labour hours to repair damage to the driveway and sundeck and the labour to do yard clean up and mow the lawn. The landlord testified that the house had been "slightly cleaned but not properly" and that the landlord had to do "the real clean after the tenants left." The

tenant responds to this claim saying that they “filled the holes in the TV room with mud” and that they “cleaned as best we could”. The tenants acknowledged that they did not pull the fridge out and clean behind due to the fridge being too heavy. The tenants also acknowledged that the stains on the driveway were likely caused by the van of one of the tenants’ mothers. I have looked at the photos provided by both parties and find that the tenants did a reasonable job of cleaning the home but did leave the walls damaged due to excessive nail holes, scratches and dents and work was required to repair the driveway and clean up the yard. The photos also show the large oil stains on the driveway. **On balance, I find that the landlord has established half of this claim in the amount of \$1550.00.**

Wall repair and cleaning materials (\$922.04) – The landlord has claimed \$922.04 in materials costs for wall repair, repainting and cleaning. The tenants testified that they “don’t deny that some wall repair was needed” but that the receipts show a few other things in them like a king size Kit Kat bar that they do not feel they should pay for. I have reviewed the receipts submitted by the landlord and find that they all appear to be related to the house repair and cleaning except for the Kit Kat bar. **So I find that the landlord has established a claim of \$920.00.**

Freezer door replacement (\$709.75) – The landlord has submitted evidence showing that the cost of replacing the freezer door is \$709.75. The tenants do not deny that the door was damaged by their son’s skateboard but argue that they should not have to pay for the whole door to be replaced when the dents are only half an inch long. In this regard, I find that the landlord was entitled to replace the door of the fridge – it was damaged and the tenant must bear the cost of the door replacement. **I find that the landlord has established this claim.**

Retaining wall repair (\$393.75) – The landlord has submitted an estimate of \$393.75 to repair the damage to the retaining wall that runs along the side of the driveway. The tenants claim that they are “not sure what happened here” but believe their trailer must have hit it when it was pulling out one day. The tenants say it was just a mistake. I accept the tenant’s testimony that the damage to the retaining wall was unintentional but I find that it still constitutes damage. **As a result, I am satisfied that the landlord has established this claim.**

Front entrance light replacement (\$199.99) – The landlord has submitted a receipt showing that the front door entrance light was replaced at the cost of \$199.99. The tenants do not deny that they broke the light but argue that the landlord’s replacement light is too expensive. The tenants submitted web photos of a similar light which is available at Canadian Tire for only \$59.99. In response to this the landlord says that it

is not fair to compare online pricing with in store pricing. The landlord testified that he had to go and buy the light at the local store in Kitimat and that the price he is claiming is the price he paid. In this regard, I agree with the landlord. There are always better deals but the tenants had the opportunity to make these repairs themselves during the course of their tenancy but they did not. **As a result, I find that the landlord has established this claim**

Garage door key pad repair (84.99) – This claim is similar to the front light claim in that the tenants do not deny that they damaged the keypad but that the amount paid by the landlord to replace it was excessive. The tenants submitted online pricing of \$44.90 to replace the whole keypad and \$25.00 to replace just the cover. Again, there are always better deals but the tenants had the opportunity to make this repair themselves during the course of their tenancy but they did not. **As a result, I find that the landlord has established this claim**

Driveway sealant (\$300.00) – The landlord has claimed \$300 for the cost of driveway sealant needed following the cleaning of the stained driveway. The female tenant testified that these stains were likely from her mother's van that was dripping oil. Having reviewed the photos of the driveway submitted by the landlord I am satisfied that the oil stains constitute damage to the residential property rather than normal wear and tear and that **the landlord has established this claim for the cost of the sealant.**

Damage to the floors (\$6247.50) – The landlord's Monetary Order Worksheet refers to a claim for damage to the floors of the rental unit. However, at the hearing the landlord testified that he was only seeking a monetary claim in the amount of \$5375.48. This figure is also repeated in the landlord's Application for Dispute Resolution in the box in the upper right hand corner of the second page where the claimant must indicate the amount of the claim being made. I also note that the landlord did not give any testimony at the hearing about the damage to the floors. **As a result, I have not dealt with this portion of the landlord's Monetary Order Worksheet. It was clear to me at the hearing that this no longer formed part of the landlord's claim. If I am incorrect in this, I dismiss this portion of the landlord's claim with leave to reapply.**

**I also note that the landlord's claim adds up to \$5710.52 rather than \$5375.48 as indicated in the Application for Dispute Resolution. Because of this, any award made to the landlord cannot exceed the stated sum of \$5375.48.**

### ***Tenants' Claim***

The tenant has made a claim for return of double the security and pet damage deposits for a total claim of \$6000.00.

The tenant makes this claim pursuant to Section 38 of the Act which says, in part, as follows:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

However, in the present case, the landlord filed an application claiming against the deposits on May 10, 2016, ten days after the tenants vacated the home. **As a result, the tenants do not have the right to claim double the security and pet damage deposits.**

**I have already found above that the landlord has established a total monetary claim in the amount of \$4158.48 and will authorize the landlord herein to retain the tenants' deposits in partial satisfaction of the amount owing by the tenants to the landlord.**

Conclusion

The tenants' application is dismissed.

The landlord has established a monetary claim in the amount of \$4158.48 comprised of the amounts listed above.

I also find that the landlord is entitled to recover the \$100 filing fee for this application from the tenant for a total award of \$4258.48.

I order that the landlord retain the security and pet damage deposits and interest (\$0.00) of \$3000.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1258.48. This order may be filed in the Small Claims 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: December 13, 2016

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Residential Tenancy Branch