



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MND MNR MNSD OPN

### Introduction

*Residential Tenancy Act* (the “Act”) for Orders as follows:

- a Monetary Order pursuant to section 67 of the *Act*;
- to retain the security deposit for damage or loss under the *Act*; and
- a return of the Filing Fee pursuant section 72 of the *Act*.

Both the landlords and the tenants appeared at the hearing. The tenants confirmed receipt of the landlords’ application for dispute resolution and evidentiary package. I find that the tenants were duly served with the landlords’ application and evidentiary package in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for damage or loss suffered as a result of the tenancy?

Can the landlords retain the tenants’ security deposit?

Are the landlords entitled to a return of the filing fee?

### Background and Evidence

Both the landlords and the tenants provided testimony that this tenancy began on August 1, 2016 and ended on July 31, 2017. Rent was \$2,350.00 per month and a security deposit of \$1,175.00 continues to be held by the landlords.

The parties explained that the tenants inadvertently paid a security deposit of \$4,700.00 at the outset of the tenancy. Upon learning of their over-payment, the parties agreed that the landlord could put \$2,350.00 of the overpayment towards their final month of rent, and the landlords returned \$1,075.00 to the tenants on August 13, 2017.

The landlords explained that they were seeking a Monetary Order of \$4,900.00. The landlords explained that this figure represented the cost of repairs that were required in the apartment following the end of the tenancy, along with the cost of replacing several items which were allegedly damaged during the tenancy, and half a month's rent.

Specifically, the landlords sought the following amounts:

<b>Items</b>	<b>Amount</b>
Replacement of Mattress	\$1,674.00
Faucet repair and labour	857.92
Faucet Inspection	94.50
Replacement of Latch	212.79
Cleaning	300.00
Unpaid Hydro	82.26
Appliance Services	166.95
½ month's rent	1,175.00
<b>Total =</b>	<b>\$4,563.42</b>

The landlords explained that the tenants took possession of the rental unit "as new" when the tenants moved in. The landlords have applied for a monetary award due to a mattress which they alleged was soiled during the tenancy, for the cost of repairs and labour related to a leaking faucet, for a balcony latch that was broken during the tenancy, and for unpaid hydro bills. The landlords said that hydro for the unit was included to a point, but that the tenants went above the allotted amount per the terms of their tenancy agreement. In addition to replacement of the mattress, the above noted repairs and the unpaid hydro, the landlords alleged that the unit was left dirty and required cleaning following the tenants' move out. Furthermore, the landlords argued that because of repairs to the faucet, they could not re-rent the unit until it had been adequately repaired.

The tenants disputed all aspects of the landlords' application for a monetary award. They explained that a condition inspection was performed with the landlords at the outset of the tenancy, and that during this inspection that the mattress was covered by the bedding, making it impossible to comment on the state of the mattress during the

initial inspection. The tenants denied soiling the mattress and said that no actions on their part would have led to it being stained.

The tenants acknowledged that the balcony latch and faucet had both broken during the course of their tenancy, but they attributed this breakage to normal wear and tear. The tenants agreed that they would pay \$150.00 for cleaning, not the \$300.00 requested by the landlords, and they said they agreed to pay \$50.00 for the broken balcony latch. The tenants said that they did not know that the faucet was leaking until “a couple of days before their move out” and that immediately upon discovering the leak, they informed the landlords. Finally, the tenants agreed that an issue had developed with the fridge line, and again attributed this to normal wear and tear.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

The landlords seek a monetary award related to various items in the rental unit which were purportedly damaged during the tenancy. The largest item for which the landlords are seeking compensation is the mattress which they argued was soiled during the tenancy. The tenants disputed this and argued that no condition inspection of the mattress was carried out at the beginning of the tenancy. After reviewing the condition inspection report submitted, along with the other evidentiary materials, I find that the landlords have failed to demonstrate that any part of the condition inspection related to the mattress was marked at the outset of the tenancy as this was not included in the condition inspection report carried out by the parties. I therefore dismiss this portion of the landlords' application, and will next consider the items related to the purported damage to the faucet, broken latch and fridge, and then focus on the landlords' application for a monetary award related to unpaid hydro bills, cleaning, appliance services and ½ a month's rent.

When questions of normal wear and tear are raised by a party, as they were by the tenants in this case, *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. This *Guideline* must be read in conjunction with *Guideline #1*, which states, “An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear, or due to deliberate damage or neglect by the tenant.” I find based on the testimony provided to the hearing by the parties, that the tenants did not purposely or negligently damage the rental unit. I find that all related damage arose from normal wear and tear and little evidence was presented that the tenants deliberately set out to damage any part of the rental unit. I therefore find that the landlords must bear the costs associated with the labour and parts to replace the faucet and balcony latch, and in having the fridge maintained.

The final portion of the landlords’ application concerns a monetary award for unpaid hydro, cleaning and ½ month’s rent.

After reviewing the evidence of both sides, along with the tenants’ agreement to pay \$150.00 towards cleaning, I find it difficult to award the landlords the entire amount sought in their application of \$300.00. Section 37(2) of the *Act* states that, “when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” I find little evidence that the rental unit was not left *reasonably* clean, and I find that the differences of opinion are the result of contrasting versions of what each party considers “clean.” Nevertheless, I find that the landlords have suffered some loss related to cleaning and will allow them to collect the \$150.00 which the tenants originally offered.

The landlords argued that they were entitled to ½ month’s rent because of repairs to the rental unit which prevented them from being able to re-rent the suite. As discussed above, I find that these repairs were the result of normal wear and tear and not the result of any negligent or purposeful actions on behalf of the tenants. Awarding the landlords any monetary order related to missed rent for the month following the tenants move out would unfairly prejudice the tenants and would be inequitable. For these reasons, I dismiss this portion of the landlords’ application.

At the hearing, the tenants confirmed they would pay the outstanding hydro bill.

As the landlords were partially successful in their application, they may recover the \$100.00 filing fee from the tenants. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlords to retain a portion of the tenants’ security deposit in

relief of the monetary award. The landlords are directed to return the outstanding amount of \$842.74 to the tenants.

### Conclusion

I issue a Monetary Award of \$332.26 as follows:

Item	Amount
Cleaning	150.00
Unpaid Hydro	82.26
Return of Filing Fee	100.00
<b>Total =</b>	<b>\$332.26</b>

The landlords are directed withhold this amount from the tenants security deposit, and to return the remaining \$842.74 of the security deposit to the tenants.

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: March 19, 2018

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Residential Tenancy Branch