



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing I determined that the case management system of the Residential Tenancy Branch contains reference to a move-in and move-out condition inspection report, and it appeared as though the landlord had attempted to upload the report. The report was not visible to me at the time of the hearing and I gave the landlord the opportunity to re-submit it into the case management system after the hearing had concluded, and I ordered the landlord to provide a copy of the same document to the tenants. I now have that document and no response from the tenants with respect to it.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on February 15, 2015 and expired on August 15, 2015 thereafter reverting to a month-to-month tenancy which ultimately ended on January 15, 2018. Rent in the amount of \$3,200.00 per month was originally payable under the tenancy agreement, was increased from time-to-time, and

was set at \$3,441.32 in 2017, payable on the 15th day of each month. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,600.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a condominium apartment in a condominium complex. A copy of the tenancy agreement has not been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy. The move-out condition inspection report was completed on January 3, 2018, and the landlord received the tenants' forwarding address at that time which was written onto the move-out condition inspection report.

The landlord claims \$550.00 for upholstery cleaning for 2 couches, 2 chairs and a bed mattress. The rental unit was rented furnished, and the furniture was clean at the beginning of the tenancy. The version of the move-in condition inspection report provided by the Residential Tenancy Branch does not contain a place for the condition of furnishings.

The landlord also claims \$450.00 for polishing granite on the fireplace. It appears as though the tenants had placed a plant or something on the granite, which is costly to polish, and the landlord has not yet had the polishing completed, but received that estimate.

The landlord also claims \$2,000.00 for carpet replacement. The carpet is 10 years old probably, and the actual cost was \$7,589.00, for which the landlord claims a portion. The move-in condition inspection report shows that carpets in the majority of the rooms are "Good," which is the highest ranking in the legend, however other rooms show a ranking of "Fair."

The landlord also claims \$321.30 for cleaning the rental unit after the end of the tenancy and has provided a receipt for that service. Photographs have also been provided as evidence for this hearing which the landlord testified were taken over a period of 15 or 20 days after the move-out condition inspection.

The rental unit was re-rented for March 1, 2018. The landlord's application claims \$4,000.00 as against the tenants, less the security deposit, however the landlord testified that the claim amounts to \$3,321.30.

**The first tenant** (TM) testified that the carpets were mentioned at the beginning of the tenancy; they were old and stained. Photographs have been provided. The tenants had the carpets professionally cleaned, and the cleaner said that it was really old and

that the black colour could be from mold. Invoices have been provided as evidence for this hearing; one from cleaning during the tenancy and another at the end of the tenancy.

The tenant further testified that none of the furniture had been moved during the move-in condition inspection. The beds were never moved at that time or during the tenancy. The beds sit on the floor and are not movable. The tenants also hired cleaners who were not able to lift them. The cleaners were there for 7 hours and had the checklist provided by the landlord at the beginning of the tenancy. Everything that was accessible was cleaned.

The tenant also testified that the covers for the furniture were cleaned before departing, and none of them were new at the beginning of the tenancy. The tenants did everything they could to ensure the rental unit was left in good condition at the end of the tenancy.

**The second tenant** (FR) testified that the move-out condition inspection report was done about 10 days before the tenants vacated the rental unit, and at that time the landlord pointed out a few things, such as spots on walls, which the tenants then cleaned. During the move-out condition inspection, the landlord decided to move furniture and found somethings which the tenant also cleaned up. The tenants took care of all things mentioned by the landlord.

The carpet was worn out, and the tenant had asked why they had to have the carpets professionally cleaned. It was stained at the beginning of the tenancy and got bigger and darker during the tenancy. The tenant pointed it out to the landlord in 2016 due to fear of mold in the rental unit. The same applied to walls; they needed to be painted, which the landlord completed after the tenants moved out.

No furniture was moved when the move-in condition inspection report was completed. Also, there was no screen on the fireplace, which was mentioned during the move-in condition inspection, but the granite was not inspected at that time.

### Analysis

Where a party makes a monetary claim as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and

4. what efforts the claiming party made to mitigate the damage or loss suffered.

A tenant is required to leave a rental unit at the end of a tenancy in a condition that is reasonably clean and undamaged except for normal wear and tear. Also, the *Act* and regulations specify that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out.

I accept the undisputed testimony of both tenants who testified that none of the furniture had been moved during the move-in condition inspection. The photographs provided by the landlord show furniture pulled away from walls and cleaning required. I find that the landlord has failed to establish that the cleaning required was a result of the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss the landlord's claim for cleaning.

The same applies to the granite on the fireplace. One of the tenants testified that the only discussion during the move-in condition inspection was about a fireplace screen, and the granite was not inspected. The landlord did not dispute that testimony, and I find that the landlord could have added such an item onto the move-in/out condition inspection report. In the absence of that evidence, I cannot be satisfied that the landlord has established element 2 in the test for damages.

With respect to carpet replacement, I accept that the landlord is claiming a fraction of the cost to replace them, however I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of carpet at 10 years. The landlord testified that the carpet is probably 10 years old, and both tenants testified that the carpets were old. Therefore, I find that the carpet had outlived its usefulness and to provide the landlord with a monetary order as against the tenants would put the landlord in a better position financially than the landlord would be had there been no damage.

With respect to upholstery cleaning, the landlord testified that there was no area on the reports to make mention of furniture. However, considering that the reports are evidence of the condition at the beginning and end of the tenancy, the landlord ought to have inspected and made a separate page if necessary to itemize the furniture. The tenant testified that the covers were cleaned. In the absence of any evidence to support the landlord's claim, I cannot be satisfied that the landlord has established anything beyond normal wear and tear. A tenant is not required to leave a rental unit in a pristine condition that a landlord would prefer in order to hand over to a new tenant; that is a landlord's responsibility. To go over a rental unit and take photographs 15 to 20 days after the report is completed does not suffice, and I find that the landlord has failed to establish elements 1 and 2 in the test for damages.

A landlord is required to return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must repay the tenants double the amount. The tenancy ended on January 15, 2018 and the landlord filed the application for dispute resolution on January 23, 2018, which is within the 15 day period as required. However, having dismissed the landlord's application, **I order the landlord to return the security deposit to the tenants within 15 days of today's date. If the landlord fails to do so, the tenants will be at liberty to apply for double the amount.**

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 28, 2018

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Residential Tenancy Branch