



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDL-S FFL MNDCT

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlord was represented in the hearing by his agent, TB, while the tenants were represented by their agent, IT. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants’ application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants’ application. The tenants did not submit any written evidence for the hearing.

The landlord testified that he had served the tenants with his application for dispute resolution hearing package (“Application”) and evidence by way of registered mail. The landlord served the tenants with an amendment to their monetary claim, which was served by way of registered mail on March 23, 2018. The tenants confirmed in the hearing that they had received the original application, the evidence, as well as the amendment. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants were deemed served with the landlord’s Application, evidence, and amendment on March 28, 2018, five days after mailing.

**Issue(s) to be Decided**

Are the parties entitled to the monetary orders for which they have applied?

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 all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began in May of 2017. Monthly rent was set at \$1,200.00, payable on the 7th of every month. Both parties testified in the hearing that the tenants were assisted by an agency, which also paid the monthly rent to the landlords. The landlord collected a security deposit of \$600.00, and still holds that deposit. The tenants provided a forwarding address to the landlord upon move-out.

Both parties confirmed in the hearing that on February 13, 2018 a Mutual Agreement to End Tenancy was signed by both parties for the tenancy to end on March 7, 2018. The tenants moved out on that date. The tenants testified that the landlord had communicated to them that they wished to end the tenancy, and had served them with a 2 Month Notice to End Tenancy for Landlord's Use. The tenants testified that they could not recall the date of the 2 Month Notice, or when it was served to them. The tenants testified that the reason provided on the 2 Month Notice was that family members were moving in. The tenants testified that they had paid the full monthly rent until the end of this tenancy, and are seeking compensation in the amount of \$1,200.00 for the 1 Month's rent they feel they are entitled to for the 2 Month Notice. The landlord disputed this, stating that the tenants had signed the Mutual Agreement to End Tenancy, and moved out per the Mutual Agreement. No copies of either the Mutual Agreement, or the 2 Month Notice, were submitted for this hearing.

The tenants testified that neither a formal move-in or move-out inspection was done for this tenancy, nor they did not receive any inspection reports from the landlord. The landlord testified that although a move-in inspection was not done for this tenancy, a walk through was done at the end of the tenancy. The landlord submitted a handwritten note in their evidence with one initial, which the landlord testified was confirmation that a move-out inspection was completed.

The landlord is seeking a Monetary Order for damages as outlined in the table below and in the landlord's Application:

Item	Amount
Damaged Blinds (replaced)	\$350.00
Washroom Rod (replaced)	95.00
Refrigerator Door (replaced)	250.00
New Oven (replaced)	900.00
Cabinets (estimate)	1,850.00
New Carpet (carpet & labour)	1,727.00
<b>Total Monetary Order Requested</b>	<b>\$5,172.00</b>

The landlord's amended monetary claim indicated a claim amount of \$2,400.00, despite the \$5,172.00 claimed in the hearing. The landlord testified in the hearing that some of the figures were estimates, and the landlord was unable to provide a dollar figure for all items listed above. The landlord testified that the home was 13 years old, and that the tenants left the home in damaged condition. The landlord provided photographs in their evidence as well as some invoices in support of their claim.

The landlord testified that the blinds were damaged, as well as the rod in the washroom. The landlord testified that the rubber seal on the refrigerator was damaged as well. The landlord testified that the oven was replaced as the heating elements on the stove were damaged, as well as the rod inside the oven. The landlord testified that the cabinets were damaged, and provided an estimate in their evidence in the amount of 1,850.00. The landlord also obtained an estimate in the amount of \$1,532.00 for carpet replacement, and an additional \$195.00 for labour.

The tenants disputed the landlord's monetary claim for damages, stating that they had left the home in the same condition as the date of move-in, with the exception of wear and tear. The tenants admitted that the carpet was damaged during this tenancy by a hot pan. The tenants testified that despite this damage, the carpet was not in new condition when they had moved in.

### **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 or 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 landlord to prove, on a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates 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. The landlord testified that although a move-in inspection was not completed, a move-out inspection was done. The landlord testified that the handwritten notice provided in evidence was proof that a move-out inspection was done, which is disputed by the tenants. I find that the handwritten note submitted in evidence does not indicate the date of inspection, and only contains one initial: "KB". The document contains 7 listed items, and does not clearly indicate whether an inspection was or was not done, nor does it indicate what was agreed to or disagreed to by either party. I find that this handwritten note does not adequately satisfy me that a move-out inspection was done by the landlord. On this basis, I find that the landlord did not provide sufficient evidence to support that a move-out inspection was done by the landlord in accordance with the *Act*. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. In the absence of any move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this tenancy beyond what was agreed to by the tenant. On this basis, I dismiss the landlord's monetary claim for damages without leave to reapply, with the exception of the carpet.

The tenants admit that they had caused some damage to the carpet, which was at least 13 years old, and subjected to some wear and tear. Although the tenants admit to causing some damage to the carpet, it was undisputed that at the end of the tenancy the carpet was at least 13 years old. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of carpets is ten years. The carpet was at least 13 years old, and therefore at the end of the tenancy the carpet had exceeded its useful life of 10 years. Accordingly, I find that the landlord is not entitled to any compensation for losses associated with this damage as the carpet has exceeded its useful life. The landlord's monetary claim for damages to the carpet is also dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord

was not successful with his claim, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

The tenants made a monetary claim in the amount of \$1,200.00 for this tenancy, as they believed this tenancy ended on the basis of a 2 Month Notice for Landlord's Use.

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49 of the *Act* also states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the tenants testified that they were served a 2 Month Notice, the landlord testified that this tenancy ended on the basis of a Mutual Agreement to End Tenancy. The tenants applied for compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

#### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on

or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...

I find that the tenants moved out on March 7, 2018 as requested by the landlord and not on the basis of a 2 Month Notice pursuant to Section 49 of the *Act*. The tenants did not provide a copy of this 2 Month Notice, nor were they able to confirm the details necessary for me to determine whether the notice given to the tenants complies with section 52 of the *Act*. Furthermore, the tenants moved out without applying to dispute this notice. On this basis, I am not allowing the tenants' application for monetary compensation pursuant to section 51 of the *Act* as I find that the tenants agreed to vacate the rental unit, and had moved out as requested by the landlord, and not on the basis of a Notice given under section 49 of the *Act*.

### **Conclusion**

Both the landlord's and tenants' applications are dismissed without leave to reapply.

The tenants are provided with a Monetary Order in the amount of \$600.00 for the return of their security deposit, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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: June 1, 2018

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Residential Tenancy Branch