



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL, MNDCT, MNSD, FFT

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). In the landlord's application identifying the first tenant noted above (Tenant GHC or the tenant) as the Respondent, the landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The application from all five tenants identified above sought:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

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. Agent DY (the tenants' agent) testified that they were representing the interests of all five tenants at this hearing. Although the other person attending the hearing identified themselves as one of the tenants' daughter and, they were not listed as such on the tenants' application or the tenancy agreement for this tenancy. Landlord's Agent NLC (the landlord's agent), a representative of the property

management company looking after the property for this elderly landlord testified that he had been given authorization to represent the landlord's interests at this hearing.

As the landlord's agent testified that the landlord received a copy of the tenants' dispute resolution hearing package and written evidence package during the first week of May 2018, I find that the landlord was duly served with these packages in accordance with sections 88 and 89 of the *Act*. The tenants' agent also confirmed receipt of the landlord's dispute resolution hearing package and some evidence sent by the landlord's agent by registered mail on May 28, 2018, and additional written evidence later. As such, I find that the tenant(s) was duly served with copies of these documents in accordance with sections 88 and 89 of the *Act*.

At the commencement of this hearing, I confirmed that the landlord's agent had submitted an amended Monetary Order Worksheet, but that no formal amendment of the landlord's initial application to obtain a monetary award of \$1,550.00 had been submitted to the RTB or to the tenant. The landlord's agent said that the intent of the amended Monetary Order Worksheet was to reduce the requested monetary award from \$1,550.00 to \$1,272.57. I noted that the reduced figure on the amended Monetary Order Worksheet included retention of the \$1,550.00 security deposit in the landlord's calculations, whereas the original application had not included this in the calculation of the monetary award sought. In actuality, the landlord's amended Monetary Order Worksheet sought authorization to keep the \$1,550.00 security deposit for this tenancy plus an additional monetary award of \$1,272.57. Although it had no impact on my findings, I noted that since the landlord had not amended the original application for dispute resolution, the maximum monetary award I would consider granting to the landlord would be the \$1,550.00 (plus the recovery of the landlord's \$100.00 filing fee), the amount stated on the landlord's original application for dispute resolution.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Are the tenants entitled to a monetary award for damages arising out of this tenancy? Which of the parties are entitled to the security deposit for this tenancy? Are either of the parties entitled to recover their filing fees for their applications from the other party?

#### Background and Evidence

The parties signed a fixed term tenancy agreement (the Agreement) for this suite in the landlord's duplex on July 29, 2016. The landlord lives in another part of the house, but at all times these were two separate homes with locks preventing access between the two portions of the house. This tenancy was originally to run from August 2, 2016 until August 31, 2017. Once the initial term of this tenancy expired, the tenancy continued on a month-to-month basis. Monthly rent was set at \$3,100.00, payable in advance on the first of each month. The landlord was responsible for 20% of the hydro costs for this property and 10% of the gas costs for heating the property, although the parties agreed that the overall bills for these utilities would be directed to the tenants for payment. The landlord continues to hold the \$1,550.00 security deposit for this tenancy, paid on July 29, 2016.

The tenants' agent testified that the tenants vacated the premises on April 20, 2018, but could not arrange a joint move-out condition inspection with the landlord or her agents until May 7, 2018. The parties agreed that a joint move-in condition inspection occurred on July 31, 2016. The landlord maintained that a copy of the report of that joint move-in condition inspection was sent to one of the tenants, Tenant AC, by email to an email address the tenants provided to the landlord prior to this tenancy beginning. While the tenants' agent and the person identifying themselves as the daughter of one of the tenants at this hearing denied having received any joint move-in condition inspection report from the landlord's property management company when this tenancy began, they had no knowledge of whether AC received this report. I have accepted that the joint move-in condition inspection report was conveyed to one of the tenants as declared by the landlord's agent.

The tenants appointed an individual to represent them at the joint move-out condition inspection on May 7, 2018. Neither that representative nor the tenants were willing to sign the report the landlord's representative produced regarding that inspection. The tenant's agent maintained that the tenants were upset that the landlord and her representatives refused to provide them with a copy of their report of the joint move-out inspection until the tenants or their representative signed that document indicating that it was an accurate summary of the true condition of the rental unit at the end of this tenancy. The landlord's agent denied this allegation and noted that the time frame between the joint move-out inspection and the two applications currently before me was small and the landlord did provide a copy of the report to the tenants as required by the *Act*.

Both parties provided written and photographic evidence, including receipts, estimates and invoices from the landlord to support the landlord's claim for damage arising out of this tenancy.

The landlord's amended Monetary Order Worksheet contained the following items, for which the landlord was seeking compensation from the tenants and permission to retain their security deposit and the filing fee for their application:

<b>Item</b>	<b>Amount</b>
Lawn Mowing	\$60.00
House Cleaning	350.00
Professional Carpet Cleaning	283.30
Carpet Stretching	250.00
Professional Check of the Operating Condition of Appliances in the Rental Unit	157.50
Repair and Cleaning	1,837.50
Landlord's Portion of Hydro Bill Owed by Landlord to the Tenants	-27.89
Landlord's Portion of Gas Bill Owed by Landlord to the Tenants	-87.84
<b>Total of Above Items</b>	<b>\$2,822.57</b>

The tenants' application for a monetary award of \$2,025.21 plus the recovery of their filing fee included their estimate of \$345.94 for the landlord's unpaid portion of the hydro bill for this property and \$129.27 for the landlord's unpaid portion of the gas bill plus the return of their \$1,550.00 security deposit.

At the hearing, the agents for the tenant and landlord reviewed the amended hydro and gas bills and payments made by the landlord after the tenants vacated the rental unit. The tenants were unaware of these bills which arrived after the tenants vacated the rental unit. Both parties agreed with the landlord's figures, resulting in agreement that the landlord continued to owe the tenants \$27.89 for hydro and \$87.84 for gas for this property.

### 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 landlord to prove on the balance of probabilities that the tenant(s) caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

As I find that the landlord's rights to claim for a retention of the security deposit was not extinguished, I find that the landlord applied for authorization to retain the security deposit for this tenancy within the time frame established pursuant to section 38 of the *Act*.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report of July 31, 2016 entered into evidence by the landlord showed that the rental unit was in good condition at that time, with some specific notes regarding some of the items.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenants and their representative refused to sign the detailed inspection report prepared by the landlord's representative because they believed that it inaccurately described the condition of the rental unit at the end of this tenancy.

Based on a balance of probabilities and after comparing the joint move-in condition inspection report with the report prepared by the landlord's representative at the end of this tenancy, the photographic evidence provided by the parties and the sworn testimony at the hearing, I am satisfied that some cleaning and removal of garbage debris was required by the landlord at the end of this tenancy. However, I find that the tenant's agent raised legitimate questions as to the amount of cleaning required and for

some similar items included in the landlord's claim for Repair and Cleaning. I find that the invoice provided by the landlord for the House Cleaning is handwritten, lacks detail and only cites the amount paid. Although I accept the landlord's claim that the premises were not left reasonably clean and undamaged except for reasonable wear and tear, I find that the claim as submitted by the landlord is excessive. I allow the landlord's claim for general cleaning and removal of garbage and debris, but only to the extent that the landlord is entitled to a monetary award of 10 hours labour at a rate of \$20.00 per hour. For these reasons, I allow the landlord a monetary award of \$200.00 for House Cleaning.

As there was agreement at the hearing with respect to the amount of hydro and gas payments owed by the landlord to the tenants at the end of this tenancy, I issue a monetary award in the tenants' favour in the amounts of \$27.89 for hydro and \$87.84 for gas.

I have also given regard to Residential Tenancy Branch (RTB) Policy Guideline 40, which provides guidance to arbitrators as to the useful life of various elements and items in a residential tenancy. In that Guideline, the useful life of carpets in a residential tenancy is estimated to be ten years. At the hearing, the person identifying herself as the daughter of one of the tenants said that the carpets were not brand new and were likely six to ten years old when this tenancy began. While neither the tenant nor the tenants' agent knew how old the blinds in the rental unit were, they both testified that they were by no means new either. The landlord's agent had no information regarding when the carpets or the blinds in the rental unit were last replaced. The tenants' agent said that this house is 29 years old and extensive renovations to the portion of the house used by the tenants had not been done.

As I find that the carpets in this rental unit were likely due for replacement by the time this tenancy ended, I dismiss the landlord's claim for reimbursement of the costs of carpet stretching.

At the hearing, the landlord's agent explained that the landlord is elderly and did not know whether the tenants had damaged the appliances during their tenancy. Rather than turning on these appliances to see if they worked or asking the agents the landlord retained to do so, the landlord (or the landlord's agent) retained a company to inspect these appliances to determine if they were still working properly. While this may have been an expense that the landlord was willing to undertake if the landlord had questions as to whether the useful life of these appliances was over, I find that these are not expenses for which the landlord can obtain reimbursement from the tenants. I dismiss

the landlord's application for a monetary award for the cost of hiring an outside company to inspect the appliances in the rental unit.

I also dismiss the landlord's claim for the recovery of the cost of having someone mow the lawn on May 7, 2018. As the tenant's agent noted, there was a gap of two weeks between the time when the tenants vacated the rental unit and could not obtain a move out inspection from the landlord, when the move out inspection occurred and when the landlord hired someone to mow the lawn. At that time of year, the grass may very well have grown to the extent that it needed to be mowed again. At any rate, as the landlord lives in the other portion of this house and the rental unit was no longer occupied, I find that the landlord has not provided sufficient evidence to demonstrate entitlement to recovery of the expense of mowing the lawn on this shared property.

I have also taken into account the "Other Provisions" of section 18 of the Agreement the tenants signed when they entered into this Agreement in July 2016. In this section, the tenants committed "to professionally shampoo the carpet with receipt provided, clean and polish any wood floors and vinyl floor covering, as well as cleaning any window coverings, blinds and curtains."

At the hearing, the tenants' agent confirmed that the tenants cleaned the carpets themselves. Since the tenants did not abide by the terms of section 18 of their Agreement, I allow the landlord's requested monetary award of \$283.30 for professional carpet cleaning. I am also satisfied by the landlord's evidence that the tenants did not do an adequate job of cleaning the blinds, another item specifically noted in section 18 of their Agreement. I allow the landlord a monetary award of \$120.00 for this item plus 5% for GST, the amount claimed by the landlord. Even though the carpets and blinds may very well have passed their useful life as noted in RTB Policy Guideline 40, they were still be using at the end of this tenancy. I allow both of these claims because this was a specific provision in section 18 of their Agreement to professionally clean the carpets and to clean the blinds at the end of their tenancy.

I have also given careful consideration to the landlord's claims for damage and extra cleaning included in the landlord's claim for \$1,837.50 for Repair and Cleaning. Some of these repairs were for damage that the landlord claimed occurred to the cabinet under the kitchen sink, other portions of these repairs were for the repair of a wall and window. Much of this claim was for additional cleaning beyond what was apparently covered in the initial claim for cleaning. Both parties submitted photographic/video evidence to assist in considering these portions of the landlord's claim. Both sets of photographic evidence were taken at angles which make it difficult to definitively

determine the true extent of the damage, if any, that has arisen during the course of this tenancy. Although these items were identified as damaged in the landlord's move-out inspection report, I find that the landlord's photographic evidence is inconclusive and does not reveal damage to the extent that the landlord is entitled to a monetary award for these repair items or any additional cleaning beyond the awards issued above for house cleaning, for carpet cleaning and for the cleaning of the blinds in this rental unit. I do not find that the damage claimed would be beyond reasonable wear and tear for a rental suite in a 29-year old home. For these reasons, I do not find that the landlord has met the burden of proof required to demonstrate entitlement to a monetary award against the tenants for any of these additional items included in the landlord's \$1,837.50 claim for Repair and Cleaning.

As both parties have been partially successful in their applications, I make no order with respect to the recovery of filing fees for these applications.

### Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the landlord to recover losses for house cleaning, for professional carpet cleaning, and for the cleaning of blinds, but requires the landlord to make payments to the tenants for hydro and heat and for the return of the remaining portion of the security deposit for this tenancy:

Item	Amount
House Cleaning (12 hours @ \$20.00 per hour = \$240.00)	\$240.00
Professional Carpet Cleaning	283.30
Cleaning of Blinds (\$120.00 + GST 5% = \$120.00 + \$6.00 = \$126.00)	126.00
Landlord's Portion of Hydro Bill Owed by Landlord to the Tenants	-27.89
Landlord's Portion of Gas Bill Owed by Landlord to the Tenants	-87.84
Less Security Deposit	-1,550.00
<b>Total Monetary Order</b>	<b>\$1,016.43</b>

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 24, 2018

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Residential Tenancy Branch