



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord:    MND MNDC FF  
Tenant:                MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on May 10, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants’ Application was made on May 17, 2018 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by K.B., an agent. Both Tenants attended the hearing. All parties giving oral testimony provided a solemn affirmation.

On behalf of the Landlord, K.B. testified the Landlord’s Application package was served on the Tenants by registered mail on May 16, 2018, and that the Tenants signed for it on May 17, 2018. The Tenants acknowledged receipt on that date. I find the Tenants received the Landlord’s Application package on May 17, 2018.

When asked, the Tenants stated they were unaware the Tenants' Application had been made. Further, the Tenants testified that the Tenants' Application package was not served on the Landlord, which K.B. confirmed. Accordingly, I find that the Tenants' Application is dismissed. In light of my findings below, the Tenants are not granted leave to reapply.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site, or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted into evidence. It confirmed the tenancy began on June 1, 2016. The parties agreed the tenancy ended when the Tenants vacated the rental unit on April 30, 2018. During the tenancy, rent was due in the amount of \$1,400.00 per month. The Tenants paid a security deposit of \$700.00, which the Landlord holds.

The Landlord's monetary claim was set out in a Monetary Order Worksheet, dated May 8, 2018. First, the Landlord claimed \$630.00 to repair and repaint walls. Specifically, K.B. testified that holes in a bedroom wall had been patched by the Tenants but were not repainted. She suggested the damage may have been caused by the Tenants son when he kicked the wall, which was not denied by the Tenants. K.B. also referred to a number of smaller holes that had been patched by the Tenants. In support, the Landlord submitted photographic images of the interior of the rental unit, which depicted the walls. K.B. testified the claim is based on one bedroom where the damaged was caused and repaired by the Tenants, even though there was wall damage in other parts of the rental unit. The Landlord submitted a copy of a receipt dated May 2, 2018, which K.B. confirmed was paid.

In reply, the Tenants disagreed with this aspect of the Landlord's claim. They testified to their belief that the walls had not been painted for some time, and that it was the Landlord's responsibility to repaint the walls, pursuant to the Policy Guidelines. In addition, the Tenants testified that the walls were in "fair" condition at the beginning of the tenancy, although only "scuffs" were noted during the move-in condition inspection.

Second, the Landlord claimed \$300.00 for cleaning costs. K.B. testified the rental unit needed to be cleaned throughout. In support, the Landlord submitted photographic images depicting dirty window sills and tracks, a sticker on a door, dirty blinds, dirty baseboards and walls, dirty vent covers, and tape on a stainless steel appliance. In support, the Landlord submitted an invoice for cleaning.

In reply, the Tenants disagreed with this aspect of the claim. The Tenants testified that the rental unit was cleaned, and that K.B. told them there would be no issues regarding cleaning but that there may be a claim for the painting costs. K.B. denied she advised there would be no cleaning charges.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

In addition, section 37(2) of the *Act* confirms a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

With respect to the Landlord's claim for painting, I find the damage that gave rise to the need to paint some of the walls in the rental unit was caused by the Tenants. Further, I find it was not reasonable wear and tear. The Tenants' assertion it was the Landlord's responsibility to repaint the walls is rejected. First, the photographic images submitted by the Landlord confirm the nature of the damage. Second, Policy Guideline #40, which *may* be applied by an arbitrator, confirms the useful life of interior paint is 4 years. However, I find the Tenants provided insufficient evidence to confirm the age of paint, or why the Landlord should be responsible to repair and paint damage caused by the Tenants. Finally, I find the Landlord's claim is reasonable as it only seeks compensation relating to some of the wall damage in the rental unit. Accordingly, I find the Landlord has demonstrated an entitlement to a monetary award of \$630.00.

With respect to the Landlord's claim for \$300.00 for cleaning, I find the photographic images confirm the condition of the rental unit at the end of the tenancy, and that it does not reflect reasonable wear and tear. As noted above, areas that appeared not to have been cleaned included window sills and tracks, blinds, walls, and vent covers. I find the Landlord has demonstrated an entitlement to a monetary award of \$300.00 for cleaning required at the end of the tenancy.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Landlord's Application. Further, I find it is appropriate in the circumstances to permit the Landlord to retain the security deposit held in partial satisfaction of the claims.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$330.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount allowed</b>
Paint:	\$630.00
Cleaning:	\$300.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$700.00)
<b>TOTAL:</b>	<b>\$330.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of \$330.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

In light of my conclusions above, I find the Tenants' Application is dismissed, 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: July 27, 2018

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Residential Tenancy Branch