



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes                      MNDL-S, MNRL-S, FFL

## Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent and for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:55 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Agent T.C. (the landlord) indicated that she would be the primary speaker for the landlord

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

**Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that the Application for Dispute Resolution (Application) and evidentiary packages were sent to each tenant individually by Canada Post Registered Mail on January 05, 2018. Canada Post tracking numbers were provided to confirm these registered mailings. In accordance with sections 88, 89 & 90 of the *Act*, I find the tenants are deemed served with the Application and evidence on January 10, 2018, five days after their mailing.

During the course of the hearing the landlord requested to reduce the amount of the Monetary Order requested from \$7,676.33 to \$5,838.12. As the tenants are not prejudiced by a reduced monetary claim, I have amended the landlord's application pursuant to section 64 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent and for damage or loss under the Act, Regulations or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on May 01, 2015, with a monthly rent of \$850.00, due on the first day of each month with a security deposit in the amount of \$10.00 that the landlord currently retains. The landlord submitted that the official end to the tenancy was May 31, 2017.

The landlord also provided in evidence:

- A copy of a tenant ledger showing the rent owing and paid by the tenants during the relevant portion of the tenancy;
- A copy of a move-in condition inspection report dated April 29, 2015, signed by the landlord and Tenant A.O. which indicate that the rental unit was painted before the tenancy, the flooring as being in excellent condition, new blinds in the kitchen and the bedrooms and all other items as either acceptable or excellent condition. The report also indicates that there are 429 pictures taken of the condition of the unit at the beginning of the tenancy;
- A copy of a letter from the landlord to the tenants dated April 27, 2017, indicating that the tenancy agreement will not be renewed and scheduling a move-out inspection with the tenants for May 31, 2017;
- A copy of a Notice of Final Opportunity to Schedule a Condition Inspection with a proposed date of June 05, 2017, for the tenants to conduct the condition inspection with the landlord;
- A copy of a move-out condition inspection report dated June 05, 2017, only signed by the landlord, indicating urine on the carpet throughout the rental unit, blinds needing to be replaced, locks needing replaced and painting required throughout the rental unit. In the comments section the landlord has stated that they will attempt to clean the carpets but that they may need replacing;
- A copy of a receipt from a carpet care company for the cleaning of the carpets in the rental unit in the amount of \$220.50;
- A copy of a receipt from a carpet care company for the attempted removal of urine stains in the carpets in the amount of \$109.15;
- A copy of a receipt for the purchase of two blinds in the amount of \$96.26;

- A copy of a receipt for the replacement of the carpets in the rental unit in the amount of \$5,278.35;
- A copy of a receipt for the replacement of a broken entry door to the rental unit in the amount of \$518.70;
- A copy of a receipt in the amount of \$157.70 for the repair of the lock for the damaged entry door;
- A copy of a receipt for the painting of the rental unit in the amount of \$2,131.50;
- Various pictures taken from within the rental at the beginning of the tenancy showing the condition of the carpets before and after the tenancy as well as a picture of the damaged door and urine stains on and under the carpet; and
- A copy of a Monetary Order Worksheet detailing the landlord's monetary claim.

The landlord gave undisputed testimony that the tenants had an altercation during the tenancy which necessitated the replacement of damaged locks and a damaged door to the residential property.

The landlord submitted that there were urine stains from the tenants' pet in the carpet which they attempted to have cleaned without success and that the entire carpet had to be replaced due to these stains. The landlord stated that they did not know exactly when the carpets were last replaced in the rental unit but that they initially based their calculation based on a five year life expectancy. During the course of the hearing the landlord reduced their claim to 25% of the cost to replace the carpet based on a 10 year life expectancy.

The landlord noted that the kitchen blinds were new at the beginning of the tenancy and were damaged at the end of the tenancy which required them to be replaced.

The landlord stated that the rental unit was freshly painted at the beginning of the tenancy and that it needed to be re-painted due to damage exceeding normal wear and tear. The landlord testified that they used the useful life of building elements provided by another branch of the government of British Columbia which shows the useful life of interior paint as five years (or 60 months).

The landlord's amended Monetary Order is for the following items:

Item	Amount
Initial Carpet Cleaning of the Rental Unit	\$220.50
Attempted Removal of Pet Urine	109.15
Replacement of Kitchen Blinds	48.13
Replacement of Carpet – 25% of total cost of \$5,278.35	1,319.59
Painting of Rental Unit - 35 months occupancy based on 60 month life expectancy for interior paint ( $\$2,131.50/60 \text{ months} = 35.52$ ) X 35 months	1,243.20

Receipt for Replacement of Entry Door	518.70
Replacement of Locks during tenancy	78.85
Outstanding Rent owing for March 2017 - \$600.00, April 2017 - \$850.00 and May 2017 - \$850.00	2,300.00
<b>Total =</b>	<b>\$5,838.12</b>

### Analysis

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results

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 and that the landlord tried to mitigate the loss.

The landlord has made an amended application to recover a monetary award of \$5,838.12 in damages to the unit, for unpaid rent and to retain the security deposit from the tenants. In this case, the onus is on the landlord to prove entitlement to their claim for the monetary award.

*Residential Tenancy Policy Guideline #40* provides general direction on determining the general useful life of building elements. This guideline notes that, "Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances."

Using *Policy Guideline #40* to determine exactly how much money the landlord should be compensated for their loss, I will examine the useful life of the objects in relation to the time at which they were replaced.

During the hearing the landlord gave undisputed testimony and provided written evidence that an entry door and a lock for an entry door were replaced due to the negligent actions of the tenants that were beyond normal wear and tear. The landlord was not able to provide information as to the age of the door or the locks; however, the picture provided by the landlord shows a metallic door and it is not unreasonable to conclude that, if not for the actions of the tenants, it is possible that the landlords could have used the door and lock for multiple years into the future.

For the above reasons I allow the landlord to recover the entire amount of \$518.70 for the door and \$78.85 for the replacement of the lock.

As per *Residential Tenancy Policy Guideline #40*, the useful life of interior paint is 4 years (or 48 months). During the hearing the landlord stated that the walls were painted at the beginning of the tenancy prior to May 01, 2015. In their calculations the landlord referred to the tenancy as being 35 months; however, the tenancy was only for 25 months based on the testimony and evidence provided. The landlord also used a life expectancy of 60 months for the paint in the rental unit.

Based on the residential tenancy guideline's expected life of 48 months for the painting of the rental unit and based on a 25 month tenancy, I allow the landlord to recover \$1,110.25 for the painting of the rental unit.  $((\$2,131.50/48) \times 25 \text{ months})$

According to the *Residential Tenancy Policy Guideline #40*, the useful life of blinds is 10 years (or 120 months). During the hearing the landlord gave undisputed testimony and provided written evidence that the kitchen blinds were new at the beginning of the tenancy just prior to May 01, 2015 and damaged beyond wear and tear at the end of the tenancy. Using May 2015 as a benchmark, the blinds would be 25 months into their useful life when the tenant vacated the rental property.

Therefore, I find the landlord is entitled to a monetary award of 80% of the costs to replace the blinds in the amount of \$38.50 for kitchen blind replacement.

The landlord has also applied for a Monetary Order associated with the cleaning of the carpets and the attempted cleaning of the urine from the carpet in addition to the regular carpet cleaning following the tenants' departure from the suite and prior to the carpet replacement.

*Residential Tenancy Policy Guideline #1* states that generally, the tenant will be held responsible to steam clean or shampoo the carpets at the end of a tenancy of one year and if they had pets which were not caged. Based on the evidence, undisputed testimony and the above, I find that the initial carpet cleaning and the attempt to remove the urine stains were both necessary and justified. I further find that the landlord tried to minimize the total loss associated with carpet damage in their attempt to clean the urine stains out.

Therefore I allow the landlord to recover the entire amount of \$329.65 for cleaning expenses related to the carpet.

The *Residential Tenancy Policy Guideline #40* establishes the useful life of carpets as 10 years (or 120 months). The landlord testified that the carpets were in excellent shape but that they did not know exactly when the carpets had been replaced in the rental unit. I find that the pictures taken at the beginning of the tenancy show the carpets to be in good condition and I accept the move-in condition inspection report signed by the landlord and the tenants which notes the

carpets as in excellent condition. I find that the landlord's claim for 25% of the replacement costs is reasonable based on the condition of the carpets as shown in the pictures and as noted on the move-in report.

For the above reason I allow the landlord to recover the full amount requested of \$1,319.59 for carpet replacement

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the undisputed written evidence and affirmed testimony of the landlord, I find there is no evidence before me that the tenants had any right, under the *Act*, to withhold any rental payments and the landlord is entitled to a monetary award of \$2,300.00, for unpaid rent owing for this tenancy from March 2017 to May 2017.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they may recover the filing fee related to this application.

### Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to recover costs associated with damage to the rental unit, to retain the tenants' security deposit and to recover the filing fee for this Application:

Item	Amount
Initial Carpet Cleaning of the Rental Unit	\$220.50
Attempted Removal of Pet Urine	109.15
Replacement of Kitchen Blinds	38.50
Replacement of Carpet	1,319.59
Painting of Rental Unit	1,110.25
Replacement of Entry Door and lock	597.55
Outstanding Rent owing for March 2017 - \$600.00, April 2017 - \$850.00 and May 2017 - \$850.00	2,300.00
Less Security Deposit	-10.00

Filing Fee for this Application	100.00
<b>Total =</b>	<b>\$5,785.54</b>

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(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: August 10, 2018

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Residential Tenancy Branch