



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlords, the landlords agent (collectively "the landlord") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

A previous Decision was rendered on February 5, 2018 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. The Arbitrator found, based on the evidence presented, that the landlords' claim for a monetary award was premature at that time and therefore dismissed the landlords' monetary claim, with leave to reapply.

### Preliminary Issue – Amendment

At the outset of the hearing, the landlords requested to reduce the landlords' monetary claim. I find that a reduction of the landlords' monetary claim does not prejudice the

tenants and as a result, I amend the landlords' claim from \$21,435.37 to the reduced amount of \$12,122.45 pursuant to section 64(3) of the *Act*.

#### Preliminary Issue – Tenants' Application

At the conclusion of the hearing, the tenants testified that they had filed an application in response to the landlords' application and this matter was scheduled to be heard at a later date. The tenants requested that their application be heard with the landlords' application during this hearing. The landlords were not agreeable to the tenants request as they testified that they did not have an opportunity to adequately review the tenants' evidence and prepare. I declined the tenants request as it would unfairly prejudice the landlords. The file number for the tenants' application is reflected on the front page of this Decision.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords authorized to recover the filing fee for this application from the tenants?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began May 1, 2015 on a fixed term until April 30, 2016. Rent in the amount of \$1,500.00 was payable each month. The tenants remitted a security deposit in the amount of \$750.00 at the start of the tenancy, which the landlords still retain in trust.

The parties agreed that throughout their tenancy, specifically commencing July 29, 2017, the landlords conducted regular monthly inspections ("interim inspection reports") with the tenants. These interim inspection reports formed part of the landlords' documentary evidence.

The tenants vacated the rental unit on February 1, 2018 upon receipt of a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") dated December 28, 2017.

Written condition inspection reports were conducted on April 29, 2015 at move-in and on February 1, 2018, at move-out. The landlord submitted a copy of both reports, only the move-in report is signed by the landlords and tenants.

The landlords' reduced monetary order is as follows:

<b>Item</b>	<b>Amount</b>
Engineered Hardwood Floor	\$1,966.64
Carpet	\$150.00
Subfloor	\$123.71
Drywall	\$606.90
Kitchen Cabinets	\$775.24
Kitchen Counter	\$1,188.39
Bathroom Vanity	\$520.57
Baseboard Heat Register	\$94.50
Cleaning	\$346.50
Two Months' Rent	\$3,000.00
Aggravated Damages	\$4,000.00
Filing Fee	\$100.00
Security Deposit	(\$750.00)
<b>Total Monetary Claim</b>	<b>\$12,122.45</b>

The landlords provided documentary evidence in the form of photographs and invoices.

Engineered Hardwood Floor. The landlords testified that the dining room and kitchen floor sustained damage during the tenancy. Specifically, the landlords claim that by the end of the tenancy, the engineered floor had small chunks out of it. The landlords testified that the floor was 11 years old and because replacement boards could no longer be purchased, the entire floor had to be replaced at a cost of \$1,966.64. The tenants acknowledge that the floor sustained one sizeable chip but deny it is grounds to replace the entire floor.

Carpet. The landlords testified that although the carpet had some light staining at the start of the tenancy, by the end of the tenancy the carpet was heavily stained. The landlords testified that the carpet was 12 years old and despite professional cleaning it remained stained. The landlords contend that the carpet in their living unit is of the same quality and age yet they have no need to replace it. The landlords had the carpet

replaced at a cost of \$7,965.57 but only seek a nominal award in the amount of \$150.00 as the carpet had exceeded its 10 year useful life. In reply, the tenants' testified that because the unit was subject to three tenancies prior to them it is expected that the rental unit carpet would not be in the same condition as the landlords, who have been the sole occupants of their unit since purchase.

Subfloor. The landlords testified that a portion of the subfloor in bedroom #1 sustained urine damage and as a result the landlords had to have remedial work conducted on the subfloor at the cost of \$123.71. The tenants testified that they understood there was a water leak in the unit prior to their tenancy and further, that a cat lived in the unit prior to their tenancy. The tenants confirmed that they did not have pets and can provide no further explanation for the landlords' allegation of urine damage to the subfloor.

Drywall. The landlords testified that the unit had been entirely remodelled in 2004, so the drywall was 14 years old at the end of this tenancy. The landlords testified that the drywall sustained gouges, while baseboards and trim also sustained damage. The landlords had the drywall, baseboard, trim, doors and casing repaired at the cost of \$606.90. The tenants acknowledged that the drywall sustained some gauges; however they testified that they filled all small and sizable chips prior to vacating.

Kitchen Cabinets. The landlords testified that many of the kitchen cabinet doors and drawers were "peeled back in big chunks" at the end of tenancy and estimate it will cost \$775.24 to repair. The tenants testified that at move-in, it was noted that some cabinet doors had chips and despite the landlords' assurance they would fix them, they remained unrepaired. The tenants testified that throughout their tenancy they informed the landlords' that the cabinet doors and drawers were peeling. The tenants' assert that over time, heat and moisture lead to such peeling. The tenants contend it is unreasonable that they be held responsible for what they refer to as wear and tear.

Kitchen Counter. The landlords testified that the kitchen counter sustained deep scratches, a burn mark and had lost its sheen. The landlords had the 14 year old counter replaced at a cost of \$1,188.39. The tenants testified that through cleaning and use over time the counter did lose its sheen.

Bathroom Vanity. The landlords testified that due to an unreported water leak, the bathroom vanity became badly swollen and stained. The landlords contend that because the sink was built into the vanity, both sink and vanity had to be replaced at a cost of \$520.57. The tenants testified that the pea trap had never been cleaned and as a result of this, a leak occurred. The tenants deny responsibility for this leak and

subsequent damage. The tenants referred to the previous hearing in which a determination was made in regards to this leak.

Baseboard Heat Register. The landlords testified that the baseboard heat register in one of the bedrooms was damaged and repaired at the cost of \$94.50. The tenants did not provide documentary evidence or testimony to refute the landlords' allegation of a damaged baseboard heater.

Cleaning. The landlords testified that the unit was not left clean. Specifically, the covered balcony, windows, blinds, light fixtures, trim and base boards, bathroom floor, laundry floor, bathroom counter, oven door, range hood, kitchen cupboards and drawers required cleaning at a cost of \$346.50. The tenants testified that they cleaned the unit and left it reasonably clean. It is their position that the photographs submitted by the landlord depict a reasonably clean unit.

Two Months' Rent. The landlords testified that the tenants had agreed to a lease the unit until April 2018 and because the tenants ended the tenancy, left the unit damaged and subsequent repairs took two months to complete, they seek 2 months of lost rental income in the amount of \$3,000.00. The tenants deny that they agreed to lease until April 2018 or that they ended the tenancy, they contend they were evicted. The tenants reject the landlords' claim that they damaged the unit.

Aggravated Damages. The landlords' testified that they have experienced stress and anxiety in concern over the fire safety, potential pest problems and concern about damage to the rental unit. The landlords testified that the stress has had a particular impact on one landlord, who has a pre-existing medical condition. The landlords have provided a doctor's note and letter written to the tenants regarding the stress. The landlords seek \$4,000.00 for the distress and anxiety caused between July 2017 and April 2018. The tenants testified that the landlord has a pre-existing medical condition and therefore they should not be held liable for any compensation related to it.

Filing Fee. The landlords seek to recover the filing fee in the amount of \$100.00 from the tenants.

Security deposit. The landlords testified that at the end of the tenancy the condition inspection report was completed with the participation of the tenants; however the tenants refused to sign the report. The tenants dispute that a condition inspection was conducted with their participation at the end of tenancy. The tenants testified that although they were present, the landlords' conducted the inspection on their own and

did not ask them to sign the report. They did not receive the report at the time of inspection; rather they received it February 15, 2018. The tenants testified that they provided their forwarding address at the time of the inspection, on February 1, 2018.

### 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 this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the *Act*, establishes that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 “Landlord & Tenant – Responsibility for Residential Premises,” defines reasonable wear and tear as the natural deterioration that occurs due to aging and other natural forces, where the tenants have used the premises in a reasonable fashion.

Engineered Hardwood Floor. Although the landlords provided evidence in the form of photographs, condition inspection reports and interim inspection reports that the engineered hardwood floor sustained damage, I do not find that this damage exceeds reasonable wear and tear or warrants the replacement of the entire floor. Further I find that the landlords failed to mitigate their loss by at least attempting to repair the floor through touch ups. For these reasons, I dismiss the landlords’ claim for reimbursement for floor replacement, without leave to reapply.

Carpet. Upon review of the documentary evidence and testimony of the parties, I am satisfied that the carpets were damaged as a result of this tenancy. Residential Tenancy Policy Guideline 40 provides that carpeting has an average useful life of 10

years. Given the age of the carpet as 11 years at the end of the tenancy, I find the carpeting exceeded its useful life. However, in recognition that the carpets may have remained serviceable had it not been for the damage caused during the tenancy I find it appropriate to provide the landlords a nominal award in the amount of \$150.00 for carpet damage.

Subfloor. I am not persuaded by the landlords' documentary evidence or testimony, that the subfloor was damaged by urine. Although one interim inspection report dated July 29, 2017 and move-out inspection report dated February 1, 2018 make note of a strong odour of urine in bedroom #1, this does not adequately demonstrate that any subfloor damage to bedroom #1 is a direct result of urine or a direct result of this tenancy. As evidenced by the move-in condition inspection report dated April 29, 2015, bedroom #1 had a pre-existing carpet stain. It could be argued that this stain from a previous tenancy is what led to the subfloor damage. In the absence of clear photographs or condition inspection reports detailing the condition of the subfloor prior to this tenancy, I find the landlords' have not met their burden and dismiss this portion of their claim, without leave to reapply.

Drywall. As per Residential Tenancy Policy Guideline 1, tenants are responsible for all deliberate or negligent damage to the walls. I find the landlord has provided insufficient evidence to prove the tenants deliberately or negligently damaged the walls, baseboards, trim, doors and casing. Rather, I find any wall damage as described by the parties occurred as a result of the tenants using the premises in a reasonable fashion. Accordingly I attribute any chips or scratches to wear and tear and dismiss this portion of the landlords' claim, without leave to reapply.

Kitchen Cabinets. I find the landlords' failed to establish the cabinets were damaged by the tenants' misuse. The move-in condition inspection report is congruent with the tenants' testimony that the cabinets had pre-existing damage. Upon review of the submitted photographs it appears that the veneer is peeling off a number of drawer and cabinet edges. I find it more probable that peeling veneer is a result of a defective product than it is deliberate misuse or neglect by the tenants. Furthermore, the landlords have not had the repairs completed in accordance with the estimate. For these reasons, I dismiss this portion of the landlords' claim without leave to reapply.

Kitchen Counter. Based on the tenants' admission that the counter lost its sheen, the condition inspection reports and photographs before me, I find the landlord is entitled to compensation for replacement of the kitchen counter. I reject the tenants' claim that the damage is a result of wear and tear rather I find that significant scratch marks, a burn

and a lost sheen are not indicative of a counter being used in a reasonable fashion. According to Residential Tenancy Policy Guideline 40 the useful life of a counter is 25 years. The landlord testified that the counter was approximately 14 years at the time of replacement. I find the landlord is entitled to recover the depreciated value of 44 percent of the total cost of \$1,188.39. Therefore I find the landlord is entitled to compensation in the depreciated amount of \$522.89 for the kitchen counter.

Bathroom Vanity. In the February 5, 2018 decision, the Arbitrator found that the landlords failed to establish that the tenants were responsible for the repairs pertaining to the bathroom water leak. The tenants were issued a monetary award of \$80.30 for the landlords charge for the repair. The previous Arbitrator's finding of fact that the tenants were not responsible for the repair demonstrates that the tenants were not responsible for the water leak. Accordingly, I find that the tenants are not responsible for any subsequent water damage related to this water leak. Therefore, I dismiss this portion of the landlords' claim, without leave to reapply.

Baseboard Heat Register. Based on the undisputed testimony of the landlords, the condition inspection reports and invoice before me, I find the landlords are entitled to recover the baseboard heat register repair cost in the amount of \$94.50.

Cleaning. I find the tenants breached the *Act*, when they failed to clean the rental unit in its entirety. The move-out condition inspection report and photographs support the landlords' claim that the tenants left some portions of the rental unit dirty. Based on the submitted invoice I find the landlord is entitled to \$346.50 for cleaning.

Two Months' Rent. I find the landlords have provided insufficient evidence to establish that the tenancy was a fixed term until April 2018 and therefore do not award compensation on that basis. However, when premises are unrentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord must mitigate the loss by completing the repairs in a timely manner. I am satisfied that the tenants caused some damage that had to be repaired before the unit could be re-rented. I find the landlords did not complete the necessary repairs in a timely manner and find it reasonable to expect such repairs be complete within one month. For these reasons, I find the landlords are entitled to recover a loss of rent for one month in the amount of \$1,500.00.

Aggravated Damages. I find that the landlords have failed to establish they are entitled to what they refer to as non-pecuniary damages. The landlords provided inconclusive evidence to establish the landlord's stress was purely a result of this tenancy or of such



severity to warrant compensation. Further, the *Act* provides that where a tenant unreasonably disturbs the landlord of the residential property the landlord may evict the tenant under section 47 of the *Act*. Accordingly, in this case if the tenants disturbed the landlords, their remedy was to evict the tenants at the time of the disturbance. I dismiss the landlords' claim of aggravated damages, without leave to reapply.

Filing Fee. As the landlords were partially successful in their application I find the landlords are entitled to recover half the filing fee in the amount of \$50.00 from the tenants, for a total award of \$2,663.89.

Security Deposit. Under section 35 of the *Act*, the landlord is obligated to initiate scheduling the inspection and must provide the tenant at least two opportunities of dates. Based on the parties' testimony that all parties were present for the move-out inspection, I find the landlords have met their obligation in this regard.

Section 35 of the *Act* and 18 of the *Regulations* sets out the landlord's obligation to return the completed and signed move-out inspection report within fifteen days of the inspection and date the forwarding address was given. The inspection was conducted on February 1, 2018, the same date the forwarding address was given. During the hearing, the tenants acknowledged receipt of the completed inspection report on February 15, 2018, which is within the fifteen days allowable under the *Act*.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit. The landlords received the forwarding address on February 1, 2018. The landlords filed an arbitration application to retain the deposit on February 9, 2018, which is well within the fifteen days allowable under the *Act*. Therefore the tenants are not entitled to double the amount of the security deposit.

The landlords have established a damage claim therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$750.00 in partial satisfaction of the monetary award and grant an order for the balance due \$1,913.89.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,913.89 for the following items:

Item	Amount
Carpet	\$150.00
Kitchen Counter	\$522.89
Baseboard Heat Register	\$94.50
Cleaning	\$346.50
One Month Rent	\$1,500.00
Filing fee	\$50.00
Security deposit	(\$750.00)
<b>Total Monetary Order</b>	<b>\$1,913.89</b>

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: October 3, 2018

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Residential Tenancy Branch