



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding NEUFIELD - ROYAL LEPAGE SOUTH COUNTRY - PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes MNDL-S

#### Introduction

On June 28, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for cleaning, painting, repairs to damage, and refuse removal pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*.

N.N. attended the hearing as the Landlord’s agent on behalf of the Landlord and the Tenants attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord advised that she served the Tenants a Notice of Hearing package and her evidence by registered mail on June 29, 2018 and the Tenants acknowledged that they received this. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing package and evidence.

The Tenants advised that they served their evidence to the Landlord by hand on September 24, 2018 and the Landlord confirmed that she received this evidence. I am satisfied that this evidence was served in compliance with Rule 3.15 of the Rules of Procedure, and as such, I have accepted this evidence and will consider it when rendering this decision.

The Landlord advised that she was away from the office and did not receive the Tenants’ evidence until September 25, 2018 though. In response, she sent additional evidence to the Tenants by registered mail on September 27, 2018 and also emailed it to them on this date. The Tenants advised that they received this evidence, that they have read it, but they did not have adequate time to respond to it. This evidence did not appear to be new and relevant evidence that was not available at the time the Landlord served their original evidence package. As this does not comply with Rule 3.17 of the Rules of Procedure, I excluded this evidence; however, the Landlord was allowed to provide testimony with respect to this evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for cleaning, painting, repairs to damage, and refuse removal?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?

Background and Evidence

All parties agreed that the tenancy started on August 1, 2016; however, the most current tenancy agreement was signed on October 30, 2017. The Tenants vacated the rental unit on May 31, 2018. Rent was established at \$1,066.00 per month, due on the first day of each month. A security deposit of \$512.50 and a pet damage deposit of \$512.50 were also paid.

The Landlord advised that a move-in inspection report was conducted with the Tenants and a copy of this report was submitted as evidence. On the report, the condition of the premises was documented, and Tenant J.B. signed the report agreeing that the report fairly represents the condition of the rental unit. However, upon review, the Tenants submitted that the move-in inspection was five minutes in duration and "There is no way when you are not provided a proper detailed walk thru with that you are able to really take into consideration what may be and was wrong with the property upon moving in."

The Landlord advised that a move-out inspection report was conducted with the Tenants and a copy of this report was submitted as evidence. On the report, the condition of the premises was documented, and Tenant J.B. signed the report disagreeing that the report fairly represents the condition of the rental unit. The Tenants did agree in writing that the Landlord could withhold \$387.64 from the security deposit for outstanding water bills.

Both parties agreed that the Tenants were given additional time to vacate the premises so that they could clean and that the move-out inspection was delayed for later in the day to accommodate the Tenants. The Landlord advised that J.B. told her that he would be late, that he would only need 20 minutes to clean and mow, and that she arrived at approximately 7 PM to discover a "huge mess". She stated that J.B. arrived shortly after and was so angry and aggressive that she could not complete the inspection. As well she called the police to attend to de-escalate the situation. She stated that she left the property after 8 PM to allow J.B. to complete the cleaning; however, when she returned later that night, he had already left.

J.B. advised that the move-out process was difficult, he acknowledged that he was late, and he confirmed that he was supposed to vacate the premises by 6 PM. He stated that he called the Landlord to request that he be allowed to complete the cleaning of the rental unit. He submitted that when he showed up to the rental unit to finish cleaning, the Landlord kept hindering his efforts by asking to do the inspection. He refutes that he was aggressive but admits that he was frustrated, and he stated that the Landlord's husband's presence and demeanour exacerbated the emotions of the situation.

The Landlord submitted that the Tenants were aware of the charges for cleaning and that an adequate job of cleaning of the rental unit was not done. She advised that her costs for cleaning were the bare minimum and she is not seeking compensation for the true cost of cleaning that would accurately reflect the condition the rental unit was left in. She stated that the next tenants cleaned the rental unit extensively

and read from an email from them confirming the extent of the required cleaning and carpet shampooing. She testified that the **\$545.00** that she is seeking is to reimburse the next tenants for their efforts. She referenced a document submitted into evidence titled "Move out procedures" that outlines her estimate for cleaning of specific items, and that this is consistent with the move-out inspection report. She also submitted pictures of the rental unit demonstrating the state of uncleanliness that the Tenants left the rental unit in.

The Tenants advised that much cleaning had been done already, that the carpets were cleaned, and that they "left the place as clean as they could"; however, the rental unit was run down at the beginning of the tenancy. They stated that they respected the rental unit, they referenced pictures submitted into evidence demonstrating how they took care of the rental unit, and they submitted that after living there for two years, the rental unit just needed some care and maintenance. The Tenants advised that the Landlord conducted inspections every four months where they were complimented with respect to the condition of the rental unit and there were no complaints from the prospective tenants when the rental unit was shown. They stated that the condition of the rental unit at move-in was not reflective of the actual condition, despite them signing the move-in inspection report. The Tenants provided a written submission stating that they "take great pride in the upkeep, presentation and cleanliness of our home" and they provided pictures demonstrating how they lived in the rental unit, refuting the Landlord's claims of the state of uncleanliness.

The Landlord submitted that the walls were dirty and marked up and that the Tenants left damage and holes in the walls that appear to have occurred from being punched. She stated that the walls needed to be repaired and repainted to make the rental unit livable again and she referenced pictures sent in as evidence to demonstrate the damage done. She also read from the email of the next tenants that confirmed that there was substantial damage to the walls, which also delayed their ability to take possession of the rental unit. The Landlord submitted an invoice outlining the cost to repair and repaint the premises and is seeking compensation in the amount of \$3500.00 plus GST, totalling **\$3,675.00**. She stated that the rental unit was painted three years before the Tenants took possession.

The Tenants submitted that they were the third set of tenants living in the rental unit and this was the reason the walls required repainting. They stated that the walls were grungy when they moved in, that the holes in the wall were "accidental", and that the state of the walls at the end of tenancy were normal wear and tear. The Tenants advised that the pictures they submitted were a more accurate portrayal of the actual condition of the walls. They stated that they repainted the baby's room and that they made efforts to fill holes in the walls at the end of tenancy; however, they would have completed this had the Landlord not interrupted them during the move-out inspection. J.B. stated that it was his intention to sand the walls and clean the drywall dust before the move-out inspection.

The Landlord submitted that she incurred a cost of \$200.00 plus GST to dispose of refuse that the Tenants left behind. She provided an invoice of the cost to dispose of two truckloads of garbage and she attached pictures as well. She is seeking a total cost of **\$210.00** to cover her expenses.

The Tenants stated that there was "false communication" with respect to the garbage as they were not given the time to remove the garbage on May 31, 2018. They stated that they received a Facebook message from an unknown person advising them that they were responsible for the garbage. They also received a picture of the garbage that appeared to have been moved to another location. They stated that they did not recognize all of the items in the garbage piles, but they acknowledged that there was some of

their property in the garbage. They stated that they “did what they could do to address the issues” that the Landlord referred to in her claims.

The Landlord advised that the pictures she submitted of the rental unit were accurate; however, the Tenants allege that the pictures were manipulated using a filter to make the condition of the rental unit look worse.

Both parties agreed that a forwarding address was provided via text on June 15, 2018. The Landlord advised that \$387.64 was retained out of the security deposit as per the Tenants’ written consent and that she made her Application to hold the remainder of the security deposit and pet damage deposit to be applied towards the debts incurred.

### Analysis

With respect to the Landlord’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s claim for cleaning of the rental unit and carpet cleaning, the consistent evidence is that the Tenants were granted extra time to clean and vacate the rental unit because the Tenants stated that they needed a “few more hours to complete such things”. However, I find this contradictory to their submissions that they would only need 20 minutes to clean and mow or that J.B. needed time to fill holes in drywall and sand and vacuum. In addition, the Tenants stated in the hearing that the rental unit had been cleaned. These inconsistent statements cause me to doubt the reliability of their submissions with respect to the truthfulness of the state that the Tenants suggested they left the rental unit in.

Furthermore, the Tenants also made submissions that they “cleaned to the best level that they could” and stated that part of the reason items were not cleaned were because things in the home “where[sic] old and extremely used”. In conjunction with the undisputed evidence that the Tenants required more time to clean the rental unit, I do not find these statements to support the Tenants’ portrayal of the condition they left the rental unit. Moreover, the Tenants provided pictures to corroborate the “pride in upkeep, presentation, and cleanliness of [their] home”; however, I find that the pictures they submitted contradict their written submissions as the stove does not appear to be “old and extremely used” nor do the pictures portray a condition of the rental unit that is so “deteriorated” as they claim. As such, I do not find the Tenants’ evidence to be compelling.

With respect to the condition of the carpet, the Tenants stated that the condition of the carpet at the beginning of tenancy was “disgusting” with large, dark circles, “so damaged and dirty”, and “where[sic] in a deteriorated and stained state upon moving in.” However, I find it curious that the Tenants did not submit a picture of the carpet into evidence corroborating these statements. Furthermore, the Tenants stated that the alleged condition of the carpet at the beginning of the tenancy “does not justify why we did not” steam clean the carpets at the end of the tenancy, as per the tenancy agreement. Consequently, I

am satisfied of this acknowledgement that the Tenants were negligent in not cleaning the carpet at the end of tenancy.

Based on the Tenants' contradictory evidence, I find that the Tenants' evidence is not credible and carries less weight than that of the Landlord. As such, I am satisfied on a balance of probabilities that the Landlord has substantiated a claim in the amount of **\$545.00** as compensation for the cost to clean the rental unit and the carpet due to the Tenants' negligence.

Regarding the Landlord's claim for painting and repair of damages to the walls, the consistent evidence is that there were holes left in the walls and that the Tenants acknowledged that they were responsible for these "accidental" holes. Furthermore, the Tenants advised that they made efforts to fill holes in the walls at the end of tenancy; however, they were unable to complete these repairs. While there was some dispute over the condition of the walls and paint, the Landlord advised that the walls were last painted three years before the Tenants moved into the rental unit in 2016. According to policy guideline #40, the approximate useful life of interior paint is four years. Based on the condition of the walls on the move-in inspection report and the last time the walls were painted, I find it more likely than not that the useful life of the interior paint was expired or close to it. However, based on the evidence, I also do find that the Tenants were negligent for the "accidental" holes and that this is beyond normal wear and tear of a rental unit. As such, I find that the Tenants should bear a partial cost of rectifying this issue. Consequently, I am satisfied that the Landlord has established a nominal award in the amount of **\$600.00** as compensation for the cost to clean, repair, and repaint the walls of the rental unit due to the Tenants' actions.

With respect to the Landlord's claim for refuse removal and disposal, the Tenants acknowledged that they left garbage in the rental unit and that they recognized their property amongst the refuse. Based on the evidence before me, and on a balance of probabilities, I find it more likely than not that this refuse belonged to the Tenants. As such, I am satisfied that the Landlord has established a monetary award in the amount of **\$210.00** as compensation for the cost to dispose of the Tenants' items.

Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the remainder of the security deposit and pet damage deposit in partial satisfaction of the debts outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Cleaning and carpet cleaning	\$545.00
Repainting and repairs to walls	\$600.00
Refuse removal and disposal	\$210.00
Remaining security deposit	-\$124.86
Pet damage deposit	-\$512.50
<b>TOTAL MONETARY AWARD</b>	<b>\$717.64</b>

#### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$717.64** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: October 17, 2018

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Residential Tenancy Branch