



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VALLEY REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL MNDL-S

### **Introduction**

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord was represented in the hearing by their agent, JL ("landlord"). 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.

The tenants confirmed receipt of the landlord's application, which was served to the tenants by Registered Mail on August 24, 2018. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on August 29, 2018, 5 days after mailing. All parties confirmed receipt of each other's evidentiary materials.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on June 1, 2017, and ended on July 31, 2018. Monthly rent was set at \$3,800.00, payable on the first of every month. The landlord collected a security deposit of \$1,900.00, and still holds that deposit. The tenants provided a forwarding address on August 5, 2018, and the landlord filed an application for dispute resolution on August 16, 2018.

Both parties confirmed in the hearing that both a move-in and move-out inspection was completed for this tenancy, and reports were provided to the tenants. The tenants did not sign off on the move-out inspection report as the owner wanted to conduct a second inspection at a later time.

Although the landlord had originally applied for a monetary claim in the amount of \$2,250.00, they amended their claim to increase it to \$3,624.68 as set out in the table below:

<b>Item</b>	<b>Amount</b>
Drywall damage	\$189.00
Carpet Cleaning	170.00
Cleaning	441.00
Repairs & Landscaping	2,824.68
<b>Total Monetary Order Requested</b>	<b>\$3,624.68</b>

The landlord testified that the home was brand new when the tenants moved in. The landlords testified that the owner of the home did a secondary inspection after the move-out and discovered several issues with the home as indicated on the move-out inspection report. The landlord provided documentary evidence in support of their claim, including a copy of the reports as well as photographs and invoices. The landlord testified that the tenant caused damage to the fireplace, but is not making a monetary claim for that damage.

The landlord testified that the tenants left holes in the drywall, which were not repaired at the end of the tenancy. The landlord also testified that the tenants failed to properly clean the home, including the oven. The landlord testified that the carpets required

cleaning, and the landscaping was not maintained during the tenancy and contained weeds.

The landlord provided an invoice from their contractor for various repairs throughout the home for other damage left by the tenant, including the removal of the smoke alarm, and paint touch-ups.

The tenants testified that they had cleaners come on a regular basis, and submitted cheques in support of the payments made for regular cleaning. The tenants testify that any damage left was due to wear and tear, and that due to the watering ban imposed by the municipal government, the grass had died. The tenants testify that some of the vents still contained drywall dust from the original construction of the home, which they could not reach due to the height of the ceiling. The tenants admit to removing the smoke alarm as they felt it was their only option to turn off the alarm that went off at 2:00 a.m.

### **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 or 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 a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. Both parties confirmed that both move-in and move-out inspections were completed. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*. Although the landlord did comply with the *Act* by completing and providing the tenants with both move-in and move-out reports, the tenants dispute the accuracy of the move-out inspection report as the landlord did a secondary inspection in

the tenants' absence. I must note that section 35 of the *Act* requires that both parties attend the inspection together.

I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties

Although the tenants made valid arguments towards the fact that some areas of the home still contained construction dust from the period prior to their tenancy, and although the tenants provided credible evidence to support that they had hired professional cleaners, I find the landlord has provided sufficient evidence to support that the home was not left in reasonably clean condition as required by the *Act*. The photos provided by the landlord of the brand new home support that stove in particular was not cleaned at the end of the tenancy, which contradicts the claims made by the tenants that the home was cleaned. On this basis, I allow the landlord's monetary claim of \$441.00 for cleaning. I dismiss the landlord's monetary claim for carpet cleaning as I am not satisfied that the evidence supports that the carpet was left in damaged or unclean condition.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the drywall in the home. I find that the evidence of the landlord supports that the tenants left holes in the drywall, which were not repaired before the vacated the home. As per this policy, the useful life of the drywall is 20 years. The home was brand new at the beginning of the tenancy, and therefore at the end of the tenancy had approximately 19 years of useful life left. The approximate prorated value of the remainder of the useful life of the drywall is \$179.55. ( $\$189.00/240 \times 228$ ). Accordingly, I find the landlord is entitled to \$179.55 for the drywall repairs.

I find that the landlord provided undisputed evidence to support the removal of the smoke alarm by the tenants. On this basis, I allow the landlord's monetary claim of \$46.17 for the missing smoke alarm.

The invoice provided by the landlord includes the purchase, painting, and installation of new doors for the home, and associated costs. I am not satisfied that the landlord had provided sufficient evidence to support why the doors required complete replacement rather than repairs. As the landlord has not met the burden of proof to support his loss, and that they had mitigated the tenants' exposure to these losses, this portion of the landlord's monetary claim is dismissed without leave to reapply.

The landlord also made a monetary claim for the replacement of missing flashings on the exterior deck. I am not satisfied that the landlord has met the burden of proof to demonstrate that this damage was due to the tenants' actions. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply. Similarly, the invoice submitted by the landlord includes the cost of replacing the shower head and hose in its entirety. I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had damaged the shower head to the extent that this replacement was required. On this basis, I dismiss the landlord's monetary claim for the shower head and its installation.

The landlord also made a further claim for landscaping. Although Clause #18 of the addendum to the tenancy agreement does require that the tenants mow the lawn, prune hedges, and maintain the tidy look of the property, I find that the tenants had provided sufficient explanations to support why they could not maintain the tidy look of the landscaping. The imposed water ban in addition to the aggressive nature of weed growth are acceptable explanations for why the landscaping required attention at the end of the tenancy in July of 2018, and on this basis, I dismiss the landlord's monetary claim for landscaping without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$1,900.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim.

### **Conclusion**

I find that the landlord is entitled to recover \$716.72 as set out in the table below.

<b>Item</b>	<b>Amount</b>
Drywall damage	\$179.55
Cleaning	441.00
Smoke Alarm	46.17
Half of Filing Fee	50.00
<b>Total Monetary Claim Granted</b>	<b>\$716.72</b>

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$716.72 of the tenants' security deposit in satisfaction of the monetary claim. The tenants are provided with a Monetary Order in the amount of \$1,183.28 for the return of the remaining portion of their security deposit, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord(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.

The remaining portion of the landlord's 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: January 16, 2019

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Residential Tenancy Branch