



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDL-S, FFL

### Introduction

This hearing dealt with a landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for damage to the unit, site or property, for authorization to retain the tenants' security deposit, and to recover the cost of the filing fee.

Landlord EL ("landlord") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on both tenants ML and YC by separate registered mail packages, each addressed to one tenant on September 7, 2018. The landlord confirmed that the address of the tenants was provided by the tenants on the outgoing Condition Inspection Report, which was submitted in evidence.

Two registered mail tracking numbers have been included on the cover page of this decision for ease of reference marked as 1 and 2. According to the online Canada Post registered mail tracking website information the two registered mail package were marked as "unclaimed" and were returned to the sender. Based on the above, and I find both tenants are deemed served with the Notice of Hearing, application and documentary evidence five days after the registered mail was sent in accordance with section 90 of the *Act*. Therefore, I find the tenants are deemed served as of September 12, 2018. In addition, as I find the tenants were sufficiently served and did not attend the hearing, I consider the landlords' application to be undisputed. The hearing continued without the tenants present.

### Preliminary and Procedural Matters

The landlord confirmed the email addresses of both parties at the outset of the hearing. The landlord also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the landlords for service on the tenants.

#### Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 15, 2017. Monthly rent of \$1,950.00 was due on the first of each month during the tenancy. According to the landlord, the tenants vacated the rental unit early with the landlord's permission on May 26, 2018. The landlord testified that the tenants' surrendered their full \$975.00 security deposit in writing on the outgoing Condition Inspection Report, which I find is supported by that document.

The landlords' claim of \$2,061.45 is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repair and painting wall	\$2,073.75
2. Cleaning service	\$375.00
3. Roller blinds cleaning	\$551.95
4. Light bulbs x 4	\$35.75
<b>Subtotal</b>	<b>\$3,036.45</b>
<i>Less tenants' security deposit surrendered in writing</i>	<i>-(975.00)</i>
<b>TOTAL</b>	<b>\$2,061.45</b>

Regarding item 1, the landlords have claimed \$2,073.75 for the cost to repair and repaint the rental unit walls and ceiling. The landlord testified that the tenants smoked cigarettes in the rental, in breach of the tenancy agreement addendum which states:

4. The Tenant and members of the Tenant's household will not smoke anywhere in the Property nor permit any guests or visitors to smoke in the Property.

The landlord affirmed that the rental unit ceilings had to be painted as a result of the heavy smoke smell inside the rental unit. The landlord testified that the rental unit had just been painted at the start of the tenancy so was in new condition. The landlords also submitted a painting estimate for the total cost of \$2,073.75 as claimed.

Regarding item 2, the landlords have claimed \$375.00 for the cost to hire a cleaning company to clean the rental unit which the landlord stated was left dirty and which is supported by the outgoing Condition Inspection Report. The landlords also submitted a receipt in the amount of \$375.00 in support of this item and referred to several colour photos which the landlord stated supports that the rental unit was not left in a reasonably condition.

Regarding item 3, the landlords have claimed \$551.95 for the cost to clean the dirty roller blinds which were clean at the start of the tenancy, and which also smelled like smoke at the end of the tenancy. The landlord referred to a supporting receipt in the amount of \$551.95 from a blind cleaning company and the outgoing Condition Inspection Report which indicates the roller blinds were dirty.

Regarding item 4, the landlords have claimed \$35.75 to replace four burned out light bulbs. In addition to a receipt in the amount of \$35.75, the landlord also referred to the outgoing Condition Inspection Report which supports the burned out light bulbs at the end of the tenancy.

The landlords are also seeking the recovery of the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

**Item 1** - The landlords have claimed \$2,073.75 for the cost to repair and repaint the rental unit walls and ceiling. I accept the landlord's testimony that the rental unit was freshly painted at the start of the tenancy and I find the tenants breached the tenancy agreement no smoking clause #4 on the tenancy agreement addendum. Therefore, due to the tenant's breach, I will not apply the Residential Tenancy Branch ("RTB") Policy Guideline 40, Useful Life of Building Elements for interior paint as I find the tenants breached clause #4 of the tenancy agreement addendum by smoking in the rental unit. Consequently, I find the landlords have provided sufficient evidence to support this portion of their claim and I grant the landlords **\$2,073.75**, as claimed for this item.

**I caution** the tenants not to breach a no-smoking clause in the future.

**Item 2** - The landlords have claimed \$375.00 for the cost to hire a cleaning company which I find is supported by the colour photos, the Condition Inspection Report and the receipt before me. I find the tenants breached section 37 of the *Act*, which requires that the tenants leave the rental unit in a reasonably clean condition. I find the tenants failed to leave the rental unit in a reasonably clean condition and that the landlord is owed **\$375.00** as claimed as a result.

**I caution** the tenants not to breach section 37 of the *Act* in the future.

**Item 3** - The landlords have claimed \$551.95 for the cost to clean the dirty roller blinds which were clean at the start of the tenancy, and which also smelled like smoke at the end of the tenancy. I find the photos and the receipt, and the landlord's testimony supports this portion of the landlords' claim and I grant the landlord **\$551.95** as I find it is reasonable based on the photos and the fact that I accept the tenants smoked in the rental unit contrary to the tenancy agreement addendum clause #4, that the tenants breached section 37 of the *Act* and must pay for the blind cleaning as a result.

**Item 4** - The landlords have claimed \$35.75 to replace four burned out light bulbs. In addition to a receipt in the amount of \$35.75, the landlord also referred to the outgoing Condition Inspection Report which supports the burned out light bulbs at the end of the tenancy. RTB Policy Guideline 1 indicates that tenants are responsible for replacing all burned out light bulbs at the end of the tenancy. I find the tenants failed to do that and as a result, I grant the landlords **\$35.75** as claimed for this item.

As the landlords have succeeded with their application, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00**. I will also offset the security deposit of \$975.00, which the landlord stated and I accept was surrendered by the tenants in writing and is listed on the outgoing Condition Inspection Report.

**Monetary Order** – I find that the landlords are entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit which has accrued no interest as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Repair and painting wall	\$2,073.75
2. Cleaning service	\$375.00
3. Roller blinds cleaning	\$551.95
4. Light bulbs x 4	\$35.75
5. Filing fee	\$100.00
<b>Subtotal</b>	<b>\$3,136.45</b>
<i>Less tenants' security deposit surrendered in writing</i>	<i>-(975.00)</i>
<b>TOTAL</b>	<b>\$2,161.45</b>

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlords to retain the tenants' full security deposit \$975.00 which has accrued no interest from the **\$3,136.45** amount owing by the tenants to the landlords. Therefore, I grant the landlords a monetary order for the balance owing by the tenants to the landlords in the amount of **\$2,161.45**.

#### Conclusion

The landlords' application is fully successful.

The landlords have established a total monetary claim of \$3,136.45 as indicated above. The landlords have been authorized to retain the tenants' full security deposit including interest which totals \$975.00 in partial satisfaction of the landlords' monetary claim.

The landlords are granted a monetary order under section 67 for the balance owing by the tenants to the landlords in the amount of \$2,161.45. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties as indicate above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 6, 2019

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Residential Tenancy Branch