



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNDL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 22, 2019 (the "Application"). The Landlord sought compensation for damage to the rental unit, compensation for monetary loss or other money owed, to keep the security and pet damage deposits and reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Tenant did not appear. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package and evidence were sent by registered mail on January 29, 2019 to the Tenant's address provided on the Condition Inspection Report on March 12, 2018. The Agent testified that this address was also used by the Tenant on his application for File Number 1. I have looked this up and confirmed that the Tenant's address on the application is the same address as used on this Application. I note that the Tenant filed his application October 04, 2018 and the hearing was held January 04, 2019.

The Landlord had submitted a photo of the package. It includes Tracking Number 1. I looked this up on the Canada Post website which shows notice cards were left January 29, 2019 and February 03, 2019. It shows the package was unclaimed and returned to the sender February 22, 2019.

I accept the undisputed testimony of the Agent regarding service and find it is supported by the photo submitted and Canada Post website information. Based on the Condition Inspection Report submitted, I accept that the address used was provided by the Tenant as his forwarding address on March 12, 2018. Based on the RTB records, I accept that the Tenant continued to use the address as of January 04, 2019, the date of the hearing on File Number 1. This was just 25 days prior to the package being sent. I am satisfied the address used continued to be the Tenant's address when the package was sent.

I find the Tenant was served in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). I also find the package was sent in sufficient time prior to the hearing. I acknowledge that the Tenant did not pick-up the package; however, parties are not permitted to avoid service by failing to pick-up registered mail sent to them.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security and pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlord sought the following compensation:

1	Carpet cleaning	\$89.25
2	Suite cleaning	\$157.50
3	Bathroom vanity door	\$315.00
4	Suite painting and repairs	\$10,342.50
5	Blinds	\$268.80

6	April rent	\$1,669.00
	<b>TOTAL</b>	<b>\$12,842.05</b>

A written tenancy agreement was submitted as evidence. The tenancy started March 01, 2015 and was for a fixed term ending February 29, 2016. It then became a month-to-month tenancy. Rent was \$1,660.00 per month due by the first day of each month. The Agent testified that rent was \$1,669.00 at the end of the tenancy. The Tenant paid a \$805.00 security deposit and \$805.00 pet damage deposit. The agreement was signed on behalf of both parties.

The Agent testified as follows.

The Tenant vacated the rental unit around March 12, 2018 but the tenancy ended March 31, 2018.

The Tenant provided his forwarding address in writing on the Condition Inspection Report on March 12, 2018.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did agree in writing at the end of the tenancy that the Landlord could keep both deposits. He did so on the Condition Inspection Report. The Tenant was provided a quote for \$8,700.00 for repairs with the Condition Inspection Report. The Tenant agreed to the Landlord keeping both deposits towards \$150.00 for cleaning and \$8,700.00 for repairs.

I asked the Agent about an attachment submitted stating the Tenant owes for outstanding utilities. The Agent submitted that the outstanding utilities charges were not deducted from the deposits because he could not find the amounts.

The Agent further testified as follows.

A move-in inspection was done February 27, 2017. The unit was empty. A Condition Inspection Report was completed and signed by both parties. A copy was given to the Tenant in person on the same day of the inspection.

A move-out inspection was done March 12, 2018. The unit was empty except for items the Tenant left behind. The Tenant participated for some of the inspection but not all of

the inspection. A Condition Inspection Report was completed and signed by both parties. A copy was given to the Tenant in person on the same day of the inspection.

A copy of the Condition Inspection Report was submitted as evidence.

The Tenant gave the keys to the rental unit back March 12, 2018 and the Landlord never dealt with him again.

The rental unit was brand new on move-in. This was the first tenancy for the rental unit.

***Carpet cleaning \$89.25***

The Tenant did not clean the carpet in the rental unit upon move-out. Stains in the carpet were cleaned.

The Agent relied on a photo of the carpet and an invoice submitted.

***Suite cleaning \$157.50***

The Tenant had not done any cleaning of the rental unit upon move-out. The rental unit is 700 square feet. The cost claimed is just for cleaning. The Landlord limits their expenses for cleaning by using the same company when necessary.

The Agent relied on photos and an invoice submitted.

***Bathroom vanity door \$315.00***

The bathroom vanity was custom made. It had to be replaced due to damage. The Landlord had to have someone attend to replace it. The cost was low because the repair person lives in the building. The door, hinge and handle on the vanity was replaced.

The Agent relied on photos submitted.

***Suite painting and repairs \$10,342.50***

Repairs were needed to the sink and tiles in the bathroom. The Tenant left holes in the walls which required drywall repairs.

The Agent referred to an invoice submitted. I went through the invoice with the Agent.

The Agent pointed to a photo of the living room floor showing damage. He said this had to be repaired at a cost of \$4,400.00 which is shown as vinyl flooring on the invoice.

The Agent further testified as follows.

The hallway door at a cost of \$200.00 related to the photo of the missing bathroom door.

The garburator had to be replaced at a cost of \$300.00.

The \$350.00 for replacement of the entry door jam and frame related to the front door damage shown in the photos.

The carpet in the bedroom was removed and re-installed because it was so destroyed.

The baseboards in the rental unit had to be re-done because of the floor having to be replaced.

***Blinds \$268.80***

The blinds in the living room and bedroom were damaged and could not be fixed so had to be replaced. The Landlord replaced the slats in the blind and not the whole blind.

***April rent \$1,669.00***

Given the state of the rental unit, it could not be re-rented for April. Further, the Landlord did not know the Tenant was moving until March 12, 2018.

## ***Evidence***

A written statement of the building manager was submitted as evidence outlining the history of the tenancy. In it, it states that an agent for the Landlord inspected the rental unit March 01, 2018 due to the Tenant having previously removed the fire alarm. It is my understanding that the photos submitted were taken on this date. The building manager states that the Tenant showed up for a move-out inspection March 12, 2018. The building manager states that they met outside because the building manager did not feel comfortable meeting the Tenant in the rental unit given his history of violence. The building manager states that there was no need for them to go into the rental unit because they had already inspected it a few times. The building manager states that they just needed the Tenant to sign the Condition Inspection Report. The building manager states that the estimate for repairs was attached to the Condition Inspection Report. The building manager states that repairs were completed March and April and that the rental unit was not ready to re-rent until May.

The decision on File Number 1 was submitted as evidence. Both parties had appeared for that hearing. The parties agreed rent was \$1,669.00 at the end of the tenancy. The decision states that the Landlord holds a \$805.00 security deposit, \$805.00 pet damage deposit and \$195.00 key fob deposit. In the decision, it is stated that the building manager did not dispute the Tenant's claim that they did not conduct a joint move-out condition inspection on March 12, 2018.

## **Analysis**

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Section 37(2) of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Based on the undisputed testimony of the Agent and statement of the building manager about the move-in and move-out inspections, I do not find this to be a situation where the Tenant was provided two opportunities to do the inspections but did not participate. Therefore, I find the Tenant did not extinguish his rights in relation to the security or pet damage deposit under sections 24 or 36 of the *Act*.

Based on the undisputed testimony of the Agent about the move-in inspection, I find the Landlord did not extinguish their rights in relation to the security or pet damage deposit under section 24 of the *Act*.

I do not accept the Agent’s testimony about the move-out inspection. I find it is contradicted both by the witness statement of the building manager and testimony provided at the prior hearing. I find the statement of the building manager more reliable than the testimony of the Agent as it is my understanding that the building manager was the one who dealt with the Tenant March 12, 2018.

I find the Landlord’s right to claim against the security and pet damage deposits for damage to the rental unit was extinguished under section 36(2)(a) as I am not satisfied a joint move-out inspection was done or that the Tenant was offered two opportunities to do a joint move-out inspection.

I acknowledge that the building manager mentions the violent history of the Tenant as a reason the parties did not meet in the rental unit March 12, 2018. I do not find this to be an excuse to fail to comply with the inspection requirements in the *Act*. I cannot accept that the Landlord could not have made appropriate arrangements such that they could both comply with the *Act* and ensure the safety of everyone involved.

I accept the undisputed testimony of the Agent that the Tenant gave the keys back March 12, 2018 and find this was the end of the tenancy for the purposes of section 38(1) of the *Act*. I also accept the undisputed testimony of the Agent that the Tenant provided his forwarding address in writing on the Condition Inspection Report on March 12, 2018. The Landlord had 15 days from March 12, 2018 to repay the deposits or claim against them pursuant to section 38(1) of the *Act*. The Landlord did not repay the deposits. The Landlord filed the Application January 22, 2019, well outside the 15-day time limit.

There are exceptions to section 38(1) outlined in sections 38(2) to 38(4) of the *Act*.

I have found that the Tenant's rights in relation to the deposits were not extinguished and therefore section 38(2) of the *Act* does not apply.

The Agent acknowledged that the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy and therefore section 38(3) of the *Act* does not apply.

Section 38(4) and 38(5) of the *Act* state as follows:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

...

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2)

[landlord failure to meet start of tenancy condition report requirements] or 36 (2)  
[landlord failure to meet end of tenancy condition report requirements].

Based on the undisputed testimony of the Agent, and Condition Inspection Report, I find the Tenant did agree in writing that the Landlord could keep the deposits towards \$150.00 for suite cleaning and \$8,700.00 for repairs to the rental unit.

However, the liability of the Tenant outlined on the Condition Inspection Report is in relation to damage and the Landlord's right to claim for damage against the security and pet damage deposit was extinguished under section 36(2) of the *Act*.

Therefore, section 38(4) of the *Act* does not apply.

I find that the Landlord did not comply with section 38(1) of the *Act* and that none of the exceptions outlined in section 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord must return double the deposits to the Tenant pursuant to section 38(6) of the *Act*. Therefore, the Landlord owes the Tenant \$3,220.00.

The Landlord is still entitled to claim for the items outlined above and I consider those claims now.

***Carpet cleaning \$89.25***

From the Condition Inspection Report, it appears there was only carpet in the bedroom of the rental unit. The photo submitted of stained carpet is in the bedroom. The repair invoice shows the bedroom carpet was replaced. The Condition Inspection Report was done no later than March 12, 2018 and notes that the bedroom carpet is stained and needs to be replaced. The carpet was then replaced. I note that the Landlord did not seek carpet cleaning costs from the Tenant on the Condition Inspection Report where as the suite cleaning and \$8,700.00 for repairs were sought. I am not satisfied that the carpet needed to be cleaned when the Landlord intended to replace it and did replace it. The Agent did not explain these discrepancies in the evidence at the hearing. I am not satisfied the Landlord minimized their loss by both cleaning and replacing the carpet when it was identified from the outset that it needed to be replaced. I decline to award the Landlord the compensation sought.

***Suite cleaning \$157.50***

Based on the Condition Inspection Report, I find the Tenant agreed to reimburse the Landlord \$150.00 for suite cleaning.

The Landlord has submitted an invoice showing the cleaning cost \$157.50 with GST. I am satisfied the Landlord is entitled to this amount. I accept from the photos that the Tenant failed to leave the rental unit reasonably clean. I find the Tenant breached section 37 of the *Act*. I accept the Landlord had to clean the rental unit. I accept based on the invoice that this cost \$157.50. I find this amount to be reasonable based on the photos showing the state of the rental unit. I also note the Tenant agreed to pay \$150.00.

The Landlord is awarded the \$157.50 sought.

***Bathroom vanity door \$315.00***

Based on the Condition Inspection Report and photos, I accept that a cabinet door was missing from the vanity at the end of the tenancy. From the photo, I accept that this damage was beyond reasonable wear and tear. I have also considered the Agent's undisputed testimony that the rental unit was brand new in March of 2015 and therefore the vanity was only three years old at the end of the tenancy. I find the Tenant breached section 37 of the *Act*. I am satisfied that the Landlord had to replace the door, hinge and handle. I accept based on the invoice that this cost \$315.00. The cost does seem high; however, I accept the undisputed testimony of the Agent that the vanity was custom made so the Landlord had to have a repair person come in and fix it. I also consider that the cost includes the repair person's time as well as the materials. The Tenant did not appear at the hearing to dispute the cost. I am satisfied the Landlord is entitled to the cost claimed.

**Suite painting and repairs \$10,342.50**

The repair invoice submitted includes the following items:

1	Replacing tile in washroom	\$250.00
2	Replacing two bifold tracks, one in laundry room and one in hallway closet	\$200.00
3	Replacing one bifold door in hallway	\$200.00
4	Replacing one bifold door in walk-in closet in bedroom	\$200.00
5	Replacing one door to bedroom	\$200.00
6	Replacing one entry door jam and frame	\$350.00
7	Replacing garburator	\$300.00
8	Removal and installation of bedroom carpet	\$700.00
9	Removal and installation of vinyl flooring	\$4,400.00
10	Drywall repairs	\$300.00
11	Painting	\$2,000.00
12	Cost of doors and bifold doors	\$350.00
13	Removal and installation of baseboard	\$400.00
	<b>SUBTOTAL</b>	<b>\$9,850.00</b>
	<b>GST</b>	<b>\$492.50</b>
	<b>TOTAL</b>	<b>\$10,342.50</b>

Based on the undisputed testimony of the Agent, Condition Inspection Report and photos submitted, I accept that the Tenant damaged the rental unit as outlined in the invoice. Based on the evidence mentioned, I accept that the damage was beyond reasonable wear and tear and find the Tenant breached section 37 of the Act. I accept that the Landlord had to make the repairs noted in the invoice and accept that this cost \$10,342.50. I accept that the Landlord is entitled to reimbursement for this cost; however, I find the amount should be reduced to account for the useful life of the items.

Based on Policy Guideline 40, I find the useful life of tile, the garburator and carpet is 10 years. I find the useful life of doors, vinyl flooring, drywall and baseboards is 20 years. I find the useful life of indoor paint is four years.

Considering the useful life of the items repaired, I would have awarded the Landlord less than the \$8,700.00 noted on the Condition Inspection Report. However, the Tenant agreed on the Condition Inspection Report to the amount of \$8,700.00 for repairs. Therefore, I find the Landlord is entitled to the \$8,700.00 agreed to by the Tenant.

**Blinds \$268.80**

Based on the undisputed testimony of the Agent, Condition Inspection Report and photos submitted, I accept that blinds in the rental unit were damaged beyond reasonable wear and tear at the end of the tenancy. I find the Tenant breached section 37 of the *Act*. I accept the Landlord had to replace the broken slats. I accept based on the invoice that this cost \$268.00. I find the Landlord minimized their loss by only replacing the slats as necessary. I find the cost to be reasonable. I award the Landlord the amount sought.

**April rent \$1,669.00**

Based on the undisputed testimony of the Agent, Condition Inspection Report, statement of the building manager and photos submitted, I accept that the rental unit was left in such a state that it had to be repaired. I accept that the rental unit was not ready to re-rent until May based on the damages shown in the evidence. I find the Tenant breached section 37 of the *Act* by damaging the rental unit beyond reasonable wear and tear. I accept that the Landlord lost April rent because of the damage done to the rental unit and the required repairs. The Landlord is entitled to compensation for April rent.

In summary, the Tenant owes the Landlord the following:

1	Carpet cleaning	-
2	Suite cleaning	\$157.50
3	Bathroom vanity door	\$315.00
4	Suite painting and repairs	\$8,700.00
5	Blinds	\$268.80
6	April rent	\$1,669.00
	<b>TOTAL</b>	<b>\$11,110.30</b>

Given the Landlord was successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

The Tenant owes the Landlord \$11,210.30. However, the Landlord owes the Tenant \$3,220.00. Therefore, the Tenant only owes the Landlord \$7,990.30. The Landlord can keep the deposits pursuant to section 72(2) of the *Act*. The Landlord is issued a monetary order for the remaining \$6,380.30 owed.

Conclusion

The Tenant owes the Landlord \$11,210.30. However, the Landlord owes the Tenant \$3,220.00. Therefore, the Tenant only owes the Landlord \$7,990.30. The Landlord can keep the deposits. The Landlord is issued a monetary order for the remaining \$6,380.30 owed. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: May 14, 2019

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Residential Tenancy Branch