



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD MNR FF

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearings were held, by teleconference, on March 29, 2019, and May 21, 2019. The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- a monetary order for unpaid rent; and,
- to recover the cost of the filing fee.

The Landlords were present at both hearings, as were the Tenants. The Tenants confirmed receipt of the Landlords' application and evidence. As discussed in the hearing, the Tenants did not serve their evidence to the Landlords, so it is not admissible in this proceeding.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Landlords entitled to compensation for money owed or damage or loss under the Act?
- Are the Landlords entitled to compensation for unpaid rent or utilities?

### Background and Evidence

Both parties agree that the tenancy ended at the end of September 2018. A move-out inspection was done on October 3, 2018. The Landlords hold a security deposit of \$450.00. Further, the parties also agree that monthly rent was \$900.00 and was due on the first of the month.

The Landlords provided a copy of the condition inspection report. Landlords also stated that due to the location of the rental unit, it took more of their time and resources to procure the necessary parts for all the repairs.

The Landlords provided a monetary order worksheet and provided statements during the hearing to explain the following items:

- 1) \$70.55 – Replacement locks on 3 doors
- 2) \$10.20 – mileage to drive to lock store
- 3) \$37.50 – installation of new locks

The Landlords stated that they had to replace the locks on the rental unit because the Tenants did not return the keys on time. The Landlords stated that it took them 1.5 hours to install the locks, which they did themselves. The Landlords are looking for the replacement cost of the locks, the mileage to drive to the store to get the locks, and \$25.00 per hour x 1.5 to install the locks, totalling \$118.25. The Landlords provided a receipt for this item. The Landlords stated that the Tenants did not return the keys for almost a month, so they had to go and replace the locks in order to secure the rental unit.

The Tenants acknowledged that they did not return the keys on time. The Tenants stated that they were not happy with having to move, and it took them some time to actually find the keys.

- 4) \$357.00 – carpet cleaning

The Landlords stated that the Tenants left stains on the carpets, and overall, they were too dirty. The Landlords provided a photo of one of the stains on the carpet. The Landlords stated that the carpets weren't cleaned at the start of the tenancy, but there were "clean".. The Landlords provided a receipt for the cleaning they did at the

end of the tenancy, as they had to hire a company to come in and clean all of the carpets.

The Tenants stated that they rented a carpet cleaner and cleaned the carpet before they left. The Tenants stated they have a receipt, but their evidence was not admissible, as laid out at the start of the hearing.

- 5) \$66.77 – Light Bulb Replacement
- 6) \$37.50 – 1.5 hours Labour to install new light bulbs

The Landlords stated that there were many light bulbs that were burned out, and they provided 5 photos to support this. The Landlords provided a receipt to show the cost of the replacement bulbs. The Landlords stated that it took him 1.5 hours to replace all the bulbs in the house, as they were in behind various fixtures, which took time to disassemble.

The Tenants acknowledged that some bulbs were burned out but stated they had other priorities. The Tenants stated that they are willing to pay for these bulbs.

- 7) \$959.97 – Shower Door Replacement
- 8) \$63.00 – Shower door delivery
- 9) \$150.00 – Shower door installation – 6 hours

The Landlords stated that the shower door was broken in several places and had to be replaced. The Landlord stated that the glass door was hard to find, and they provided a receipt showing the amount it cost to order a replacement. The Landlords provided a photo of the broken door. The Landlords stated that the shower door was about 15 years old. The Landlords stated that it cost them \$63.00 in gas to drive to Kamloops in order to pick up the replacement door, which they did themselves. The Landlords also stated that it took 6 hours labour for them to install the new door, and they are seeking \$25.00 per hour. In total, the Landlords are seeking \$1,172.97 for the shower door items above.

The Tenants acknowledge that their daughter fell and broke the shower door and are willing to pay for this item. However, the Tenants feel this amount is excessive.

- 10) \$520.00 – Molly Maid Cleaning costs (and #13 - \$112.50 – 4.5 hours work for Landlord to personally do a surface clean, a couple of weeks prior to professional cleaning)

The Landlords took over 20 photos of the state of the rental unit at the end of the tenancy to show that there were stains on the walls, dirty appliances dirty curtains, cabinets etc. The Landlords provided a receipt to show they paid Molly Maid to clean for 5 hours. The Landlord also stated that they spent 4.5 hours doing a “surface cleaning” so that they could have the house ready to show (for the realtor). This was done prior to hiring the professional cleaners.

The Tenants feel the Landlord is being too picky and is expecting perfection. The Tenants feel they left the rental unit in a reasonably clean state, and they don't feel they should be expected to obsessively clean to the Landlords' standards, which are not reasonable. The Tenants stated they went back to clean but the Landlord was not happy with what they did.

11) \$382.77 – Painting

12) \$78.73 – Painting

The Landlords stated that, at the time the Tenants moved out of the rental unit, the interior paint was 2 years old. The Landlords stated it was painted in the fall of 2016, and the tenancy ended in September of 2018. The Landlords stated that they hired a professional painter to come in and paint a significant number of walls, lots of trim, and doors inside the rental unit because there were so many holes in the walls, scuff marks, and gouges. The Landlords stated that the Tenants filled some of the holes in the walls, but left big patch marks which needed to be painted over. The Landlords provided 7 photos of the marks and damages to the walls. The Landlords provided two invoices from the painter.

The Tenants stated that they had their painter come a couple of times to fix some holes in the wall and do some touch ups. The Tenants acknowledge that they made some holes in the walls for TV's etc. The Tenants stated that since the walls had not been painted in a couple of years, they left some of the patches on the walls, unpainted because they thought the Landlord was going to repaint anyways.

14) \$62.50 – 2.5 hours labour to fix fence, dishwasher, and paint touch ups

The Landlord stated that they had to repair a broken fence in the driveway which the Tenants drove their car into (and broke a post). The Landlords stated that they also had to re-attach the dishwasher, as it had become separated from the counter, and

was loose. The Landlords also did some minor paint touch ups, prior to their real estate showing, and prior to the rental unit being painted by the professional painter. The Landlords stated that the dishwasher was 3 years old.

The Tenants stated that it was an old dishwasher, and it became loose with normal wear and tear, but it was not broken. The Tenants acknowledge breaking the fence and do not deny causing this damage.

15) \$120.00 – 2 hours labour for Landlord to clean up yard debris

The Landlords uploaded a photo of the debris pile left behind by the Tenants, which consisted on chopped up wood (from fireplace wood), and lawn clippings. The Landlord stated that it took 2 hours to complete this cleanup with the help of his tractor. The Landlord is seeking \$60.00 per hour for this work.

The Tenants acknowledge leaving some yard debris but stated that it was difficult to find a place to leave the lawn clipping because there was nowhere locally that this debris could be disposed of.

16) \$1,800.00 – Lost rent for October and November 2018

The Landlords stated that the Tenants should be responsible for rent for these two months because they left so much work to do. The Landlords stated it took them a long time to clean up and fix the issues left by the Tenants. The Landlords stated that the unit is still not re-rented (8 months later). The Landlords further stated that they found the whole process stressful and decided they may not want to re-rent the house to anyone else because of the damage and mess left behind. Very recently, the Landlords have decided to re-rent the unit but for a while they did not want to re-rent it.

The Tenants did not have anything new to add to this item, other than the general feeling that they should not be responsible for this amount.

### Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Condition inspection report: The Landlords provided a copy of the condition inspection report, which was only partly completed. There are significant portions of the condition inspection report which were left blank on the “move-in” section of the report, and were filled in on the “move-out” section. I find the condition report has not been sufficiently filled out, such that it would provide any reliable account for the state of the rental unit at the start or the end of the tenancy. I have placed little weight on this document.

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis.

- 1) \$70.55 – Replacement locks on 3 doors
- 2) \$10.20 – mileage to drive to lock store
- 3) \$37.50 – installation of new locks

Since the Tenants acknowledge not returning the keys in a timely manner (almost a month late), I find the Landlords are entitled to compensation for these items. I find the receipts and statements on these items are reasonable, and I award the Landlord \$118.25 for the costs associated with replacing the locks. The Tenants could have mitigated this issue by returning the keys in a timely manner

- 4) \$357.00 – carpet cleaning

I note the Tenants stated that they rented a carpet cleaner and cleaned the carpet before they left. However, they had no admissible documentary evidence to support that this was done. In contrast to this, the Landlords uploaded photos of the stains on the carpets. I also note the Landlords' condition inspection report is of limited

value in determining the state of the carpets at the start of the tenancy, as laid out above. I also note the Landlords stated the carpets were not cleaned at the start of the tenancy.

I find the Landlords' evidence does not sufficiently establish the condition of the carpets at the start of the tenancy, as their inspection report was incomplete, was inconsistently filled out, and is not reliable. As such, I find the Landlords are not entitled to the full amount of this item. However, I note an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward. "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I note the Landlords uploaded a photo of a stain, which the Tenants did not directly refute causing. As such, I find it more likely than not that this stain was caused (as per the photo uploaded by the Landlord) by the Tenants, and I award the Landlord a nominal amount of \$50.00, to remedy the stain in the photo, but I decline the full amount of the whole house carpet clean because of the lack of supporting evidence from the Landlord showing the condition at the start of the tenancy.

- 5) \$66.77 – Light Bulb Replacement
- 6) \$37.50 – 1.5 hours Labour to install new light bulbs

The Tenants acknowledged that some bulbs were burned out but stated they had other priorities. The Tenants stated that they are willing to pay for these bulbs. I award the Landlord with these two items. I find the Landlords time and cost amounts are reasonable. I award \$104.27 for these items.

- 7) \$959.97 – Shower Door Replacement
- 8) \$63.00 – Shower door delivery
- 9) \$150.00 – Shower door installation – 6 hours

The Tenants acknowledge that their daughter fell and broke the shower door and are willing to pay for this item but they feel this amount is excessive. I acknowledge that the cost to replace this glass door is higher than the Tenants would have

expected. However, I also note the shape and size of the door is unique and likely required very specific replacement parts. I note the Landlords have provided a receipt for the door, and I find the associated costs (travel/delivery costs, and installation costs) are reasonable.

I turn to Residential Tenancy Policy Guideline #40, which states:

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. Although shower doors are not directly listed in this policy guideline, I turn to the useful life expectancy of doors in general, which is 20 years. I consider this to be a reasonable estimate for the useful life of this shower door. Given the shower was around 15 years old, and was 75% of the way through its useful life expectancy, I award the Landlord 25% of the total amount for these items which is \$293.24

10) \$520.00 – Molly Maid Cleaning costs (**and #13** - \$112.50 – 4.5 hours work x \$25.00/hour for Landlord to personally do a surface clean, a couple of weeks prior to professional cleaning)

I have reviewed the photos taken by the Landlords at the end of the tenancy. I note there are numerous stains and marks, and cleaning would have been required to restore the rental unit to a presentable state. I find the Tenants should have cleaned the unit more thoroughly. I find the state of the rental unit was "borderline" in terms of whether or not it was compliant with "reasonable health, cleanliness and sanitary standards". I find the Tenants ought to have done more cleaning.

I award the Landlords the full amount for these items, as I find there are numerous photos showing different items that required cleaning. I award the Landlords the cost of the Molly Maid (\$520.00) as well as \$112.50 for the 4.5 hours they spent cleaning, totalling \$632.50.

11) \$382.77 – Painting

12) \$78.73 – Painting

The Landlords stated that, at the time the Tenants moved out of the rental unit, the interior paint was 2 years old. The Landlords stated it was painted in the fall of 2016,



and the tenancy ended in September of 2018. I acknowledge that the Tenants hired a painter who filled some of the holes in the walls, and did some minor repainting. However, I note the Tenants specifically stated they only patched some areas of the drywall (where they had created holes), and they did not repaint all of these areas. I also note there are several photos showing wall and paint damage and some of this goes beyond reasonable wear and tear. Given all of this, I find the Tenants are responsible for some of the costs to restore the painted walls. I note the Landlords have provided receipts for the above amounts. However, I also note the paint in the interior of the rental unit was 2 years old, which, as per policy guideline #40, is half way through the 4 year useful life expectancy of the paint. As such, I award the Landlord 50% of these items, which amounts to \$230.75.

13) See #10

14) \$62.50 – 2.5 hours labour to fix fence, dishwasher, and paint touch ups

I note the Tenants acknowledge that they drove into the fence and broke it. As such, I find they are responsible for the cost and labour to repair this item. The Landlord has also grouped together, with this item, the labour to fix the dishwasher, and do paint touch ups. I note the Landlords have provided no evidence as to the condition of the dishwasher, and no photos. The Tenants stated they did not break the dishwasher. The burden of proof rests on the Landlord. Further, they also must sufficiently break down these items so that the calculation and itemization can be understood. Ultimately, given that the Landlord has grouped together several issues on this item, it is difficult to determine what each item would have cost in terms of time and money. I find a nominal award is more appropriate in this case. I award the Landlord \$25.00, largely to compensate for the labour to fix the fence post.

15) \$120.00 – 2 hours labour for Landlord to clean up yard debris

I note the Tenants do not deny leaving this large pile of organic debris (firewood scraps and grass clippings). I note the Landlord stated that it took 2 hours to complete this cleanup with his tractor. The Landlord is seeking \$60.00 per hour for this work. However, I find this hourly rate is excessive and I find a more reasonable amount for this work is \$40.00, which is more than the general labour rate he normally charged (\$25.00). I award a slightly increased amount because heavy equipment was also utilized. I award \$80.00 for this item.

16) \$1,800.00 – Lost rent for October and November 2018

The Landlords stated that the Tenants should be responsible for rent for these two months because they left so much work to do. I note the Landlords had some repairs to complete, some of which were directly caused by the Tenants. However, I note the Landlords specifically stated in the hearing that they did not want to re-rent right away. The Landlords stated that the unit is still not re-rented approximately 8 months later.

I note the Landlord had to complete some repairs, which took time, but they are also required to mitigate their loss (complete repairs as quickly as possible, advertise unit, take steps to find new renters). I find the Landlords' testimony on their intentions to re-rent and the fact that they decided for a significant period of time they didn't want to re-rent the unit, likely contributed to their lost rent. I find there is insufficient evidence that the Landlords sufficiently mitigated their lost rent. I decline to award this item, as it has not been demonstrated they were even intending to re-rent the unit at the time.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. Further, I authorize the Landlord to retain the security deposit in the amount of \$450.00.

In summary, I award the Landlord a monetary order as follows:

<b>Claim</b>	<b>Amount</b>
Lock replacement	\$118.25
Carpet Cleaning	\$50.00
Light Bulbs/labour	\$104.27
Shower door	\$293.24
Cleaning costs	\$632.50
Painting	\$230.75
Fence repair – nominal	\$25.00
Yard Cleanup	\$80.00

Filing Fee	\$100.00
LESS: Security deposit	(\$450.00)
<b>TOTAL:</b>	<b>\$1,184.01</b>

### Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,184.01**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 22, 2019

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Residential Tenancy Branch