



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- \$1,276.08 compensation for damage caused by the Tenant, their pets or guests to the unit, site or property – holding the pet or security deposit for the claim;
- Work required to re-rent the rental unit in the amount of \$600.00;
- Recovery of unpaid rent in the amount of \$1,375.00; and
- Recovery of the \$100.00 Application filing fee.

The Landlord's total claim is for \$3,351.08.

The Landlord, A.E., appeared at the teleconference hearing and gave affirmed testimony, but no one appeared on behalf of the Tenants. The teleconference phone line remained open for over 40 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

The Landlord said that he served the Tenants with the Application for Dispute Resolution and the documentary evidence he had uploaded to the Residential Tenancy Branch via Canada Post registered mail on March 3, 2019. The Landlord provided a Canada Post tracking number to support this evidence. The Landlord said he followed up the registered mail service by emailing the Tenants with the Application and documentary evidence two weeks prior to the hearing. I find that the Tenants were deemed served with the Application and documentary evidence on March 8, 2019.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions. During the hearing the Landlord was given the opportunity to provide his evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules

of Procedure; however, only the evidence relevant to the issues and findings in this Decision are described in this decision.

### Preliminary and Procedural Matters

The Landlord provided his email address in the hearing and the Tenants' email addresses in the Application. The Landlord confirmed his understanding that the decision would be emailed to the Parties and any order emailed to the appropriate Party.

The Landlord referred to a 14-page document that he said details the damage to the rental unit and his claims, but I went through all the evidence uploaded with him on the line and did not find such a document. I have relied on his testimony and the other documentary evidence he submitted to the RTB.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement, and in the hearing he confirmed that the fixed term tenancy began on July 15, 2018, running to July 14, 2019, with a monthly rent of \$2,750.00, due on the fifteenth day of each month. The Landlord said the Tenants paid a security deposit of \$1,375.00, and no pet damage deposit.

The Landlord said that the Tenants moved out on February 15, 2019, breaking the fixed term lease. The Landlord said that he discovered damage to the rental unit and that he applied for dispute resolution at the RT B on February 27, 2019. He said the rental unit and was eight years old at the end of the tenancy.

The Landlord said that the Tenants broke the one year tenancy agreement. He said: "I'm lucky it was rented two weeks later. It was empty for two weeks. I held the deposit back for breaking the agreement." The Landlord said he tried to minimize his costs by working with the Tenants to find a new tenant. He also said that the Tenants did some cleaning, but the rental unit was not fully cleaned when they left. He also said there were some repairs to be completed after the new tenants moved in.

The Landlord said the new tenants moved in on March 1, 2019, and are paying \$2,830.00 per month – \$80.00 more than the previous Tenants - because there are more tenants and a dog living there now.

The Landlord submitted a copy of the condition inspection report (“CIR”), which indicates the condition of the rental unit at the start and at the end of the tenancy. The move-in portion of the CIR was signed by the Tenants, but the move-out portion was not. The CIR at the start of the tenancy indicates that everything in the rental unit was in good condition.

The CIR indicates that the following items were damaged at the end of the tenancy:

1. The light/fan switch in the main bathroom;
2. The towel holder in the main bathroom;
3. A smell of cigarette smoke in the garage;
4. The paint was not returned to the original colour in three rooms;
5. The floor in the living room had candle wax damage;
6. The building entrance keys were not returned; and
7. The door/exterior.

In the hearing, the Landlord said the following about these items:

1. The light/fan switch did not work, so he had to have it fixed;
2. One side of the towel holder in the main washroom on the third floor was broken off the wall. The Landlord said he showed it to Tenant, J.M.;
3. The Tenants were not supposed to smoke in or around the residential property pursuant to the tenancy agreement. He did not say how this matter was addressed in his claim.
4. The Tenants had asked if they could paint three rooms pink; the Landlord said he approved this request based on their promise to pay in advance the cost of returning it to the original colour; however, he said they did not pay him anything and he had to pay to have it returned to the original colour.
5. Regarding the wood floor, the Landlord said the Tenants had been told that they were not to light any fires in the rental unit. He said he knows that they used candles on several occasions and that the wax spilled onto the floor. He submitted pictures of floor that show a stain. He said that candle wax was impossible to clean up without damaging the wood.
6. The Landlord said the Tenant, J.M. said she was not giving back the second set of keys without getting the security deposit back. The Landlord said the Tenants

returned the remote for the garage door, though. He submitted a receipt and invoice for the lock replacement.

7. The Landlord said the Tenants removed the sliding door on the second floor to move a sofa in, but they didn't put it back properly. He said they damaged the door closing mechanism and the means by which it slides back and forth.

The Landlord said in the hearing that the labour charge was \$35.00 per hour.

The Landlord submitted a chart setting out the damage to the unit resulting from the tenancy, along with the labour and material cost estimates, as follows:

1	Damage to the bathroom fan switch.	Labour \$80.00 + Materials \$33.98
2	Damage to the towel hanger.	Labour + Materials \$80.00
3	Damage to the balcony door closing mechanism.	Labour + Materials \$80.00
4	Smoke smell in the garage from smoking.	n/a
5	Paint three rooms original colour.	Labour + Materials \$400.00
6	Damage to the wood floor.	Labour + Materials \$400.00
7	Re missing keys to the rental unit.	Labour \$150.00 + Materials \$132.10

This chart totals: **\$1356.08**. This amount is \$80.00 higher than the amount the Landlord claimed for this work on the Application. Further, the amount noted below on the invoice the Landlord submitted for the work done on the rental unit is \$589.93 higher than the estimate. However, the Landlord's Estimate and Application were both submitted prior to the work being done, so I find the discrepancies are not fatal to the Application.

The Landlord also submitted an invoice billed to him, dated April 3, 2019, for the work done on the rental unit, as follows:

\$ 38.06 Bathroom fan switch replacement  
 Towel hanger wall repair – Labour/Material  
 Balcony door repair – Labour/Material  
 Paint room – Labour/Material  
 Repair to wood floor 2<sup>nd</sup> floor – Labour/Material

\$ 147.95	Re-key the house with new locks – (4)
<u>\$1,760.00</u>	Labour/Material
<b><u>\$1,946.01</u></b>	Total

In the hearing, the Landlord said that he obtained an estimate for the work from someone who did work for him in the past, and that the Landlord found the quote was reasonable: “It was not a huge amount for the work involved.”

### Analysis

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

### **Damages to the Rental Unit**

Early in the hearing, I advised the Landlord of how I would be analyzing the evidence presented to me. I said the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four part test that an applicant must prove in establishing a monetary claim.

In this case, the Landlord must provide sufficient evidence to establish:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

[the “Test”]

Another factor to consider is the age of the rental unit. Policy Guideline #40 (“PG #40”) is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement. After analyzing each item claimed, I set out their useful life remaining in a chart below.

### **1. Bathroom Fan Switch**

The Landlord did not specify what was wrong with the switch or how the Tenant caused this damage. I find that the Landlord did not establish on a balance of probabilities that the damage was the responsibility of the Tenants and not an electrical problem of some kind; therefore, I find that the Landlord has not provided sufficient evidence to prove step two of the Test for this claim. I dismiss this item, without leave to reapply.

### **2. Towel holder**

The Landlord's evidence is that one side of the towel holder was disconnected from the wall, as opposed to the holder, itself, being damaged. The Landlord submitted photographs showing one side of the towel holder screw pulled out of the drywall, and he has claimed \$80.00 for material and labour for this item. The drywall would have to be repaired and the towel holder reinstalled. Without any evidence to the contrary, I find it more likely than not that the Tenants are responsible for this damage, which required the Landlord to reinstall one side of the towel holder. I find that the Landlord has provided sufficient evidence for this claim and I award the Landlord \$80.00 for this item, subject to the useful life analysis below.

### **3. Second floor balcony door mechanism**

The Landlord said in the hearing that the Tenants damaged the sliding door on the second floor in that the closing mechanism and the wheels on which the sliding door on the second floor moves did not work properly at the end of the tenancy. He said the Tenants removed the door to move a sofa in, but that they did not put the door back properly. The Landlord claimed \$80.00 for the labour and material needed to repair this item. At \$35.00 per hour for labour, it would have taken a little over two hours to repair, if there were no materials involved. I find on a balance of probabilities that the Landlord has provided sufficient evidence for this claim.

### **4. Smell of smoke in the Garage**

The Landlord said that there was a smell of smoke in the garage, but that the tenancy agreement does not allow smoking anywhere on the residential property. The Landlord listed this as an item in his claim, but he did not set out what was involved in remedying this matter or any costs he incurred therein. Therefore, I dismiss this item without leave to reapply.

### **5. Paint rooms back to Original Colour**

The Landlord said that three rooms in the rental unit had to be repainted, because the Tenants wanted to paint three rooms pink. The Landlord said he approved this request, based on the Tenants' promise that they would pay in advance the cost of painting the

walls back to the original colour. However, the Landlord said that the Tenants did not pay him anything, nor did they repaint the walls the original colour. Without evidence to the contrary, I find that the Tenants violated an agreement they had with the Landlord in this regard, that the Landlord suffered a loss because of the violation, and that the Landlord established a value for the loss. The Landlord has claimed \$400.00 for the cost of the paint and the labour to repaint the walls. I find this is a reasonable amount in the circumstances, and I find on a balance of probabilities that the Landlord has provided sufficient evidence for this claim. My monetary award of \$400.00 is subject to the useful life analysis below.

#### **6. Wood floor damage**

The Landlord said that the Tenants were not allowed to light any fires in the rental unit. However, he said in the hearing: "I know that they used candles on several occasions; they spilled wax on the floor." He referred to pictures he submitted showing a stain, which he said was from wax having dripped onto it. The Landlord said: "It had to be replaced. This was one of the main issues; I told them no candles of any kind. You can't get candle wax off the floor. It is impossible to clean it up without damaging the wood." The Landlord claimed \$400.00 for labour and materials required to repair the flooring.

Given the Landlord's documentary evidence and testimony, I find that the Landlord suffered a loss, as a result of the Tenants' action in this regard. I find the Landlord's claim to be reasonable in the circumstances, I find on a balance of probabilities that the Landlord has provided sufficient evidence for this claim, and my monetary award is subject to the useful life analysis below.

#### **7. Missing Keys**

The Landlord said that the Tenant, J.M., told him that she was not returning the second set of keys until the Landlord returned their security deposit. The Landlord said that the Tenants gave back the remote control for the garage, but not all the keys. He said he was, therefore, required to rekey the rental unit. The Landlord submitted an invoice covering labour and materials, which included an amount for rekeying the locks of \$147.95.

Section 25(1) of the Act states that "at the request of new tenants at the start of a tenancy," a landlord must rekey or otherwise alter the locks and pay all costs associated with the changes. However, there is no evidence before me that the new tenants requested the rekeying of the locks. Regardless, the Landlord would have needed the keys back to give to the new tenants, so the vacating Tenants forced the Landlord into

this expenditure. Therefore, I award the Landlord recovery of this cost in the amount of \$147.95.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets.

Section 37 of the Act requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear. I find on a balance of probabilities that the damage I have accepted did not result from reasonable wear and tear.

The Landlord said that the rental unit was eight years old, including the items damaged during the tenancy. The CIR indicates that rental unit was in good condition at the start of the tenancy, but the Landlord's evidence is that at the end of the tenancy the following items were damaged. The following chart sets out the damaged items, the cost to repair them, the useful life left in the items according to PG #40, and the amount that the Tenants are responsible for, given the percentage of life left in the items.

	<b>DAMAGED ITEMS</b>	<b>LABOUR = L MATERIALS = M</b>	<b>USEFUL LIFE</b>	<b>% LIFE LEFT</b>	<b>TENANTS RESPONSIBLE</b>
1	Bathroom fan switch.	L \$80.00 + M \$33.98 = \$113.98	Dismissed	n/a	\$0.00
2	Towel holder	L + M = \$80.00	20	60%	\$48.00
3	Balcony door closing mechanism	L + M = \$80.00	15	n/a	\$80.00 (repair not replace)
4	Smoking in the garage	Not claimed	Dismissed	n/a	\$0.00
5	Paint walls	L + M = \$400.00	4	0%	\$0.00
6	Wood flooring	L + M = \$400.00	20	60%	\$240.00
7	Missing keys	Rekey with 4 new locks	n/a	n/a	\$292.10
				<b>TOTAL</b>	<b>\$660.10</b>



Based on the evidence before me overall, I grant the Landlord recovery of **\$660.10** for his claim for compensation for damage to the rental unit.

**Cost to Re-Rent the Unit**

In his Application, the Landlord claimed \$600.00 for the cost of re-renting the rental unit, within two weeks of the Tenants moving out; however, he did not provide any evidence in this regard. Rather, the Landlord submitted a document entitled "Damage re-rent" but it contained the same chart as he submitted to set out the estimate of the damages to the rental unit. As a result, I dismiss this claim without leave to reapply.

**Unpaid Rent for Two Weeks**

Pursuant to section 45 of the Act, a tenant in a fixed term tenancy agreement must not end the tenancy earlier than on the date specified in the tenancy agreement as the end of the tenancy. In this case, the Tenants ended the tenancy five months prior to the date on which they had agreed to end the tenancy pursuant to the tenancy agreement. As a result of this violation of the tenancy agreement, the Landlord lost two weeks' of rental income. I find that the Landlord was able to mitigate this loss by finding other tenants rather quickly; therefore, I award the Landlord the value of the loss, which is **\$1,375.00** or two weeks' of the monthly rent under the agreement.

Further, given that the Landlord has been predominantly successful in his claim, I award him with recovery of the \$100.00 Application filing fee for a total award of \$2,135.10. This is set off against the Tenants' security deposit of \$1,375.00. I award the Landlord a monetary order of **\$760.10**.

**Conclusion**

The Landlord's claim for damage to the rental unit is successful in the amount of \$615.95; the Landlord's claim for compensation for the cost of re-renting the rental unit is dismissed without leave to reapply, given a lack of evidence to support this claim; the Landlord's claim for the loss of two weeks' rent from the broken fixed term tenancy is successful in the amount of \$1,375.00. The Landlord is awarded recovery of the \$100.00 filing fee for this Application from the Tenant.

The total compensation granted of \$2,135.10, is set off against the \$1,375.00 security deposit, which the Landlord is authorized to keep. I award the Landlord a monetary order of **\$760.10**.

This order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: July 16, 2019

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Residential Tenancy Branch