



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord, her agent, tenant R.W. and tenant A.D. (the "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she served the tenants with her application for dispute resolution via registered mail on March 20, 2019. The tenants testified that they received the landlord's application on or around that time and had authority to speak on behalf of the other tenants. I find that the tenants were served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?

4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 15, 2015 and ended on March 3, 2019. Monthly rent in the amount of \$3,750.00 was payable on the first day of each month. A security deposit of \$2,500.00 was paid by the tenants to the landlord. The landlord retained the entire security deposit at the end of the tenancy. A written tenancy agreement was signed by both parties and a copy was submitted for this application. A move in condition inspection report was completed by the landlord or landlord's agent and a tenant who used to reside at the subject rental property with the tenants. The contents of the move in condition inspection report are not disputed.

Both parties agree that the landlord's agent and the tenants completed a move out condition inspection report on March 3, 2019. Both parties agree that after the tenants left the subject rental property, the landlord and or her agent added comments to the move out condition inspection report. It is not possible to determine what comments were made in the presence of the tenants. The move in and move out condition inspection reports were entered into evidence.

The landlord applied for dispute resolution on March 18, 2019, 15 days after the tenancy ended. Both parties agreed that the landlord received the tenants forwarding address via e-mail on March 3, 2019.

### Carpets

The landlord testified that the carpet at the subject rental property was stained when the tenants moved out and she hired a carpet cleaning company to clean the carpets on March 27, 2019. The landlord entered into evidence a quote in the amount of \$331.80 which she testified she paid. The landlord entered into evidence photographs of stains on carpet. The move out condition inspection report states that there is a bleach stain on the carpet in the "stairwell and hall" and that the carpet in the basement is dirty.

The tenants testified that they had the carpet professionally cleaned on March 2, 2019 and entered into evidence a receipt for carpet cleaning in the amount of \$172.45. The tenants testified that the carpet was clean after the aforementioned carpet cleaning.

### Cleaning

The landlord testified that the subject rental property was dirty after the tenants moved out. The landlord entered into evidence photographs of dirt behind appliances, dirty blinds and close up photographs of smudges and marks throughout the subject rental property. The move out condition inspection report states that the following areas were dirty: windows, behind appliances, dishwasher, walls and trim, vents, patio. The landlord entered into evidence an e-mail chain between herself and a professional cleaner which stated that the cleaner would charge \$50.00 per hour and that she estimated it would take her 5 hours to complete the work; however, she would not be able to be certain until she saw the property. The landlord testified that she hired a cleaner but did not enter into evidence a receipt for the work completed.

The tenants testified that the subject rental property was clean when they moved out and that they spent over \$1,000.00 on a professional cleaner. The tenants entered into evidence three professional cleaner receipts totaling \$1,122.98.

### Walls

The landlord testified that the tenants damaged the walls at the subject rental property by leaving holes in the walls. The landlord testified that the walls at the subject rental property required patching and painting. The landlord testified that the subject rental property was last painted in September of 2013. The landlord entered into evidence photographs showing holes in the walls of the subject rental property. The move out condition inspection report states that the walls in the subject rental property are damaged and dirty. The landlord testified that it cost her \$1,800.00 to repair the walls at the subject rental property and \$1,000.00 to paint the walls. No receipts or estimates were entered into evidence.

The tenants testified that the damage constituted reasonable wear and tear.

### Utilities

Both parties agreed that the tenants owe the landlord \$312.65 for outstanding gas bills and \$270.26 for outstanding hydro bills.

### Analysis

I find that the move out condition inspection report is not helpful in determining the condition of the subject rental property at the end of the tenancy because the landlord and or her agent altered the report after the tenants and the landlords agent completed it.

### Carpets

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the landlord's testimony, I find that the carpets were stained at the end of the tenancy. I accept the tenants' testimony that they had a professional carpet cleaner attend at the subject rental property; however, I find that the carpets were still dirty after the initial carpet cleaning. The landlord entered into evidence a carpet cleaning quote, which she testified she paid, in the amount of \$331.80. I find that the tenants are responsible for this carpet cleaning fee.

### Cleaning and Walls

Policy Guideline 16 states that 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.

I find that the e-mail chain between the landlord and the cleaner is not a firm quote as the cleaner states that she does not know how long it will take to clean the subject rental property, and thus she does not know how much it will cost the landlord. I find that the landlord has not proved the value of the damage or loss she suffered. I therefore dismiss the landlord's claim for the cost of cleaning.

The landlord did not enter into evidence a receipt, invoice or quote for the wall repairs and subsequent painting she testified was completed at the subject rental property. I therefore find that the landlord has not proved the value of the damage or loss she suffered. The landlord's claim for repair and painting of the walls is therefore dismissed.

Utilities

As both parties agree that the tenants owe the landlord \$312.65 for outstanding gas bills and \$270.26 for outstanding hydro bills, I find that the tenants are responsible for these outstanding charges.

Filing fee

As the landlord was successful in her application for dispute resolution, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$1,014.71 from the tenants' security deposit in satisfaction of her monetary claim against the tenants.

I Order the landlord to return the remainder of the tenants' security deposit, in the amount of \$1,485.29, to the tenants.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Security deposit	\$2,500.00
Less carpet cleaning	-\$331.80
Less gas bill	-\$312.65
Less hydro bill	-\$270.26
Less filing fee	-\$100.00
<b>TOTAL</b>	<b>\$1,485.29</b>

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: July 04, 2019

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Residential Tenancy Branch