



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL –S; FFL

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit and authorization to make deductions from the tenants' security deposit and/or pet damage deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the parties had exchanged their respective hearing documents and evidence upon each other. I admitted the evidence and have considered it in making this decision.

During the hearing, it was brought to my attention that the tenants had also filed an Application for Dispute Resolution to seek return of the single amount of their deposits (file number referred to on the cover page of this decision). I determined the matter was set for hearing on November 5, 2019. I informed the parties that I would be making a decision with respect to making deductions from and/or refunding the deposits under the landlord's application. As such, the tenants requested that their application be withdrawn and the hearing set for November 5, 2019 be cancelled. I confirmed that I would close the tenant's file and cancel the hearing for November 5, 2019. Accordingly, the parties shall not attend the hearing that was scheduled for November 5, 2019.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover compensation from the tenants for damage to the rental unit?
2. Is the landlord authorized to retain or make deductions from the tenants' deposits? If so, how much may be deducted?

### Background and Evidence

The parties executed a tenancy agreement for a tenancy set to commence on March 15, 2018. The parties executed a subsequent tenancy agreement for a tenancy set to commence on March 1, 2019 on a month to month basis. The tenants paid a security deposit of \$700.00 and a pet damage deposit of \$700.00. The tenancy ended on April 30, 2019.

The landlord prepared a move-in inspection report with the tenants. The parties met at the property to do a move-out inspection on April 29, 2019; however, the landlord did not prepare the move-out inspection report.

It was undisputed that at the end of the tenancy there were several areas of the walls where the tenants had “touched up” the holes and marks on the walls with paint and the touch ups were obvious.

By way of this application the landlord seeks to recover the cost to repaint the walls in the rental unit in the amount of \$1,050.00. The landlord provided evidence to demonstrate she had the walls repainted on May 9, 2019 at a cost of \$1,050.00.

The landlord also provided several photographs of the walls to demonstrate the visible touch ups. The landlord testified that her photographs were taken on April 29, 2019 and April 30, 2019. The landlord also provided a layout of the rental unit and indicated how many touch ups there were visible on each wall.

The landlord testified that the rental unit had last been painted in 2017.

The landlord pointed to term 14 of the tenancy agreement that provides, in part:

“Hooks, nails, tapes, or other devices for hang pictures or plants, or for affixing anything to the rental unit or residential property will be of a type approved by the landlord and used only with the landlord’s prior written consent.”

The landlord submitted that the tenants did not seek written consent to hang items from the walls. In addition, the tenants had created an excessive number of holes or marks on the walls as evidenced by the numerous touch ups that were visible at the end of the tenancy.

In the days leading up to the end of the tenancy, the landlord had asked the tenants to patch the holes created from hanging artwork, via text message. The tenants requested the landlord provide them with the name and number of the paint that had been applied to the walls. The landlord provided the tenants with the name and number of the paint that may have been used to paint the unit in 2017 but also indicated she was uncertain it was the correct information. In response, the tenants indicated they would try to colour match the paint colour.

The landlord's representative argued that the landlord's request for the tenants to "touch up" the walls could be interpreted to mean they paint the entire wall.

The landlord also submitted that she had tried to negotiate with the tenants in an attempt to resolve this matter but that the tenants were not agreeable. Rather, the tenants offered to have their family members come to repaint the rental unit after the tenancy ended; however, the landlord found the tenant's family member to be rude and aggressive when they spoke on the telephone and was not comfortable with that person coming into her house after the tenancy ended.

The tenants acknowledge that there are several visible patches on the walls because they could not get the paint to match exactly despite trying to find the correct match. The tenants obtained a sample of the paint based on the name and number provided to them by the landlord but it proved to be the wrong colour. The tenants attempted to use a colour match app and obtained various paint samples. The tenants selected the best match but when the paint dried it was obvious it was not a match.

The tenants are of the position they are not responsible for paying to repaint the rental unit because what they did during the tenancy amounted to wear and tear; the tenants complied with the landlord's request to touch up the walls; and, the landlord did not do enough to mitigate her losses by allowing their family members to repaint the unit after the tenancy ended.

The tenants also provided several photographs of the property that were taken on April 29, 2019. The tenants testified that they used a combination of nails and stick-on hooks that were supposed to come off without damaging the walls but that in removing the stick-on hooks the walls were left marked.

The tenants submitted that the landlord had been in their rental unit a number of times during their tenancy and the landlord did not mention anything about the items hanging on the walls. The tenants stated that they recalled speaking to the landlord about

hanging things on the walls; however, they could not recall what the landlord said to them during the hearing.

The tenants also tried to negotiate a settlement with the landlord prior to this proceeding but then decided to withdraw their offer of settlement. Nevertheless, the tenants remain of the position they are not obligated to compensate the landlord based on the reasons already stated above.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

In this case, term 14 of the tenancy agreement requires the tenants to obtain the landlord's written consent to use devices to hang items on the walls and to use the type of device approved by the landlord. The tenants did not have the landlord's written consent to apply devices to the walls; however, I also heard that the landlord was in the unit and did not provide the tenants with the type of device they should use. As such, I find there is a question as to whether the landlord had waived enforcement of this term. Therefore, I turn to the Act and Residential Tenancy Policy Guidelines in determining whether the landlord has established an entitlement to compensation for damage to the walls.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is also important to note that awards for compensation are intended to be restorative. Where a building element is damaged as a result of the tenant's actions or neglect and the item requires replacement, it is generally appropriate to reduce the cost to replace the item by the depreciation of the original item.

In this case, the condition inspection report indicates the walls were in "good" condition at the start of the tenancy as denoted by the check mark on the move-in inspection

report that was signed by both parties. The landlord testified that the interior paint had been last applied in 2017 and I accept that evidence as reasonably accurate since the walls were still in “good” condition when the tenancy started in 2018.

I find the landlord’s evidence, including the photographs, painter’s estimate and invoice, and communication between the landlord and tenants after the tenancy ended, satisfied me that she had the unit repainted again shortly after the tenancy ended, in May 2019, at a cost of \$1,050.00.

Residential Tenancy Branch Policy Guideline<sup>1</sup> provides policy statements and information with respect to a landlord’s and a tenant’s obligation to repair and maintain a residential property. With respect to walls and painting, the policy guideline provides:

**PAINTING**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

**Nail Holes:**

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

As provided in Policy Guideline 1, it is expected that landlords will repaint a rental unit at reasonable intervals. Residential Tenancy Branch Policy Guideline 40 provides that interior paint has an average useful life of four years. As such, I find it reasonable for a landlord to expect to have to repaint a rental unit every four years or so and I find that the interior paint applied in 2017 had already depreciated approximately one-half of its expected useful life due to aging and wear and tear when this tenancy ended. Further, I find there is insufficient evidence to demonstrate the tenants damaged the walls deliberately or negligently. Rather, it is apparent to me that they were attempting to bring the walls back to a good condition by touching up the walls. Therefore, I find It is unreasonable to further consider the landlord’s request for recovery of 100% of the painting cost.

The landlord indicated during the hearing that she is willing to accept a lesser amount of compensation and the tenants took the position that they are not liable for any of the cost. However, from the parties' photographs, it is apparent there are numerous patches on the walls that necessitated the repainting of the walls and I find the tenants' position to be unreasonable as well. Therefore, I proceed to consider a reasonable approximation of the parties' contribution to the wall damage.

It is clear from the pictures taken by both parties and the undisputed testimony of both parties that there were several areas of mismatching paint applied to the walls by the tenants at the end of the tenancy. I accept that the tenants were attempting to cover areas where they had hung items on the walls but it also appears to me that the tenants either: had an excessive amount of artwork or they had painted over other marks and scuffs. I find it more likely that they were also painting over scuffs and other marks because the paint touch ups were also in the closets and it is not customary for people to hang artwork in the closets. Other touch ups were on low sections of the wall, off to one side, and it is unusual to see artwork hung in those areas.

I note that the landlord had only instructed the tenants to touch up the areas of the wall where they had hung artwork and I find it likely the tenants went beyond that instruction on their own initiative but in doing they made the situation worse. Once a scuff or mark has been painted over it cannot be cleaned and the mismatched paint made the touch ups even more obvious than a scuff or mark may have been.

As for the tenants' offer to have family members paint the unit after the tenancy ended, a tenant has until the end of the tenancy to rectify any damage they may have caused, as provided in section 37 of the Act, and a landlord is not obligated to give access to the rental unit to the tenants or their family members after the tenancy has ended.

Upon careful consideration of all of the above, I find a reasonable approximation of the tenants' liability for wall damage is 50% of the cost to repaint the unit. While the landlord instructed the tenants to patch the areas where they hung artwork and the landlord was unable to provide the exact paint to use, the tenants made considerable efforts to try to match the paint but it was not the correct match and they proceeded to note only paint over the areas where they hung artwork but other areas that the landlord had not asked them to paint over. Therefore, I award the landlord compensation of \$525.00 [calculated as \$1,050.00 x 50%].

I note the award that I have provided to the landlord above is the same that was proposed to the tenants in the landlord's attempt to resolve this dispute. I am of the

view that this dispute may have been avoided; therefore, I further award the landlord recovery of the \$100.00 filing fee she paid for this application.

In light of my findings and awards described above, I authorize the landlord to retain \$625.00 [\$525.00 + \$100.00] of the tenants' security deposit and I order the landlord to return the balance of the deposits to the tenants, in the sum of \$775.00, without delay. In keeping with Residential Tenancy Branch Policy Guideline 17, I provide the tenants with a Monetary Order in the amount of \$775.00 to ensure payment is made.

### Conclusion

The landlord is authorized to deduct \$625.00 from the tenants' security deposit. The landlord is ordered to refund the balance of the deposits, in the amount of \$775.00, to the tenants without delay. The tenants are provided a Monetary Order in the amount of \$775.00 to ensure payment is made.

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: August 21, 2019

---

Residential Tenancy Branch