



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Affordable Housing Charitable  
Association and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL -S; FFL

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage and cleaning costs; and, authorization to retain the security deposit. The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenants.

Since the tenants did not appear, I explored service of hearing documents and evidence upon the tenants. The landlord submitted registered mail receipts, including tracking numbers, to demonstrate the hearing documents were sent to the tenants on July 19, 2019. The mailing address used was the forwarding address the tenants provided during the move-out inspection. The registered mail was returned to the landlord as it was unclaimed. The landlord then sent a Monetary Order worksheet dated September 23, 2019 and evidence to the tenants via registered mail on September 25, 2019. The landlord provided the registered mail receipts, a copy of the registered mail envelopes returned to the landlord and a copy of the move-out inspection report to prove service.

I accepted that the landlord served the tenants in a manner that complies with section 89 of the Act and I deemed the tenants to be served five days after mailing pursuant to section 90 of the Act.

### Preliminary and Procedural Matters

I noted that the amount claimed by the landlord in filing the application was \$1,111.43 but that I did not see a detailed calculation for that amount. The landlord's agent acknowledged that a Monetary Order worksheet or other detailed calculation did not accompany the Application for Dispute Resolution. The landlord prepared a Monetary Order worksheet dated September 23, 2019 indicating the landlord was seeking compensation \$1,354.49; however, the landlord did not serve an Amendment to an Application for Dispute Resolution with it. I also noted that the amount sought by the

landlord on the move-out inspection report was also different, at: \$1,170.25. The landlord's agent explained that the amounts appearing on the move-out inspection report and the Application for Dispute Resolution reflected estimates and the Monetary Order worksheet dated September 23, 2019 reflected actual costs.

Section 59 of the Act requires that an applicant provide the full particulars of the dispute and Rules 2.5 and 3.1 of the Rules of Procedure require the applicant to provide a detailed calculation of a monetary claim. These requirements are in keeping with the principles of natural justice and gives the respondent the opportunity to understand the claims being made against them so that they may provide a response or defence. While a claim may be made based on estimates, if the applicant seeks to change the claim the applicant is required to serve an Amendment to an Application for Dispute Resolution and provide the updated calculation.

The landlord did not comply with the requirement to submit/serve a detailed calculation with the Application for Dispute Resolution and did not submit/serve an Amendment. However, I confirmed that the landlord had provided the tenants with a detailed calculation on the move-out inspection report, totalling \$1,170.25, that the tenants signed the report and the tenants were given a copy of the report. I noted that the landlord only added one additional claim (bed bug treatment costs) in completing the Monetary Order worksheet and I was not prepared to amend the claim to add an additional item in the absence of an Amendment or the tenant's attendance at the hearing. The other items described on the Monetary Order worksheet also appeared on the condition inspection report although there were slight differences between the estimated amounts appearing on the move-out inspection report and the actual costs appearing on the Monetary Order worksheet. Therefore, I proceeded to hear those claims but limited the landlord's award for cleaning and damage but limited the claim to the amount set out on the condition inspection report: \$1,170.25.

#### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for cleaning and damage, as amended?
2. Is the landlord authorized to retain the tenants' security deposit?

#### Background and Evidence

The tenancy started on October 1, 2018 on a month to month basis. The tenants paid a security deposit of \$460.00. The tenants were required to pay subsidized rent of \$868.00 on the first day of every month. The tenancy ended on June 30, 2019.

A move-in inspection report was prepared on September 28, 2018 and the tenants signed the report indicating they agreed with the landlord's assessment of the property.

A move-out inspection report was prepared on July 1, 2019 and the tenants signed the report indicating they did not agree with the landlord's assessment of the property and the tenants did not authorize the landlord to retain or make any deductions from the security deposit. The tenants provided their forwarding address on the move-out inspection report and the landlord filed this Application for Dispute Resolution on July 9, 2019.

The landlord seeks to recover damages for the following:

Description	Amount estimated on inspection report	Actual cost on Monetary Order worksheet
Kitchen drapery damaged by paint or stain that could not be washed out	\$ 110.00	\$114.24
Carpet cleaning – carpets left very soiled	110.25	99.75
Carpet repair – hole in carpet that had to be patched	500.00	445.20
Repair walls and repaint – medicine cabinet removed and placed elsewhere and walls stained with hair dye	150.00	157.50
Bathroom door – door broken/ kicked in	120.00	126.55
Cleaning – unit not left clean	180.00	180.00
Bed bug treatment	0.00	131.25
Sub-total	\$1,170.25	\$1,254.49
Filing fee	0.00	100.00
Totals	\$1,170.25	\$1,354.49

The landlord testified that the rental unit had been completely renovated just prior to the start of the tenancy.

The landlord provided copies of the tenancy agreement; condition inspection reports; invoices and receipts; and, photographs in support of the landlord's claims.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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

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.

Section 37 of the Act also requires a tenant to leave a rental unit reasonably clean at the end of the tenancy.

Upon consideration of all of the unopposed evidence before me, I accept that the tenants left the rental unit damaged and unclean at the end of the tenancy. I also accept that the unit had been recently renovated and the items that had to be replaced were relatively new. The landlord provided the receipts/invoices to demonstrate the actual costs involved in rectifying the damage and to clean the unit. Therefore, I find the landlord has demonstrated an entitlement to recover the losses from the tenants.

For the reasons provided in the Preliminary and Procedural Matters section of this decision, I limit the landlord's award to the sum appearing on the move-out inspection report since the landlord did not serve the tenants with an Amendment. Accordingly, I award the landlord \$1,170.25.

I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord.

In keeping with all of the above, I provide the landlord with a Monetary Order in the net amount calculated as follows:

Award for damage and cleaning	\$1,170.25
Recovery of filing fee	+ 100.00
Less: security deposit	<u>- 460.00</u>
Monetary Order for landlord	\$ 810.25

### Conclusion

The landlord is authorized to retain the tenants' security deposit and the landlord is provided a Monetary Order for the balance owing of \$810.25 to serve and enforce upon the tenants.

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: October 30, 2019

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Residential Tenancy Branch