



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Montague Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms its email address as set out in the Landlord’s application.

### Preliminary Matter

The Tenant states that a previous Decision dated April 17, 2019 (the “Decision”), dealing with the return of the security deposit, also dealt with the state of the unit at move-out. The Tenant states that they are confused as to why the Landlord is still able to make this claim. I note that the Decision sets out that “The landlords may still file their own Application for compensation for the alleged damages caused by the tenants . . .”

Section 77(3) of the Act provides that a decision or an order of the director under this Part is final and binding on the parties. As the previous Decision sets out that the Landlord was still able to make a claim for damages to the unit and as this Decision is

final and binding, I find that the Landlord is not stopped from seeking damages to the unit with this current application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on March 1, 2008 and ended on September 30, 2018. No move-in or move-out reports were completed for the tenancy.

The Landlord states that the Tenants left the unit with damages to a door and window sill and failed to clean the deck of items. The Landlord states that their renovation plans, which included painting of the walls of the unit, did not include replacement of the door or window sill. The Landlord states that the window sill had 1" gouges and their contractor informed them that it would be more economical to replace the sill than to repair the damage. The Landlord provides an emailed quote of \$1,077.88 for replacement of the door and window sill and to remove items from the deck. The Landlord also provides an invoice setting out the total of the renovation costs, without detail, and the Landlord states that this invoice includes the quoted amount given by the same contractor.

The Landlord states that it became the agent about 4 years ago and does not have knowledge of any prior tenancies. The Landlord states that the owner purchased the unit when the building was new in 2000. The Landlord provided photos of the door, window sill and deck. The Landlord states that the door and window sill are both the same age as the unit. The Landlord states that the unit was painted before the start of the tenancy and not during the tenancy. The Landlord claims the amount of \$1,077.88

The Tenant states that in 1999 a different unit in the same building was occupied by the Tenant as a child and that the unit is at least that old. The Tenant states that the Landlord's photo of the deck was taken during the tenancy and that the Tenants did not leave any items on the deck at move-out. The Tenant states that it is possible that they caused the damage to the door and that the damage was not present at move-in. The Tenant states that the window sill only had paint cracks as the paint was aged. The Tenant states that the window sill was in bad condition at the start of the tenancy.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the evidence that the photo of the deck was taken during the tenancy, the lack of a move-out report detailing the state of the deck at move-out and the Tenant's evidence that no items were left on the deck, I find that the Landlord has not sufficiently substantiated that the Tenant left the deck damaged and I dismiss the claim for damages to the deck.

Policy Guideline #40 sets the useful life of a door at 20 years. Given the lack of supporting evidence from the Landlord of the age of the unit and considering the Tenant's persuasive evidence of the age of the unit, I find on a balance of probabilities that the damaged door was at least 20 years old at the end of the tenancy and therefore without any useful life remaining. For this reason, I find that the damage was only wear and tear and dismiss the claim for costs to replace the door.

The photo of the window sill, that is not a close capture, does not provide evidence of gouges. It does show significant cracking on what appears to be fairly aged paint. Given the Tenant's denial of the gouges and the lack of a move-out report, I find on a balance of probabilities that the Landlord has not substantiated gouge damage to the

sill. Further, Policy Guideline #40 provides that the useful life of paint is 4 years. Given the Landlord's evidence of not having painted the unit, including the sill, during the over 10-year tenancy, I find that the paint damage to the sill is only wear and tear. For these reasons I find that the Landlord has not substantiated that the Tenant left the window sill with damages and I dismiss the claim for costs to replace it.

As none of the Landlord's claims have been successful, I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

### Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 15, 2020

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Residential Tenancy Branch