



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL

On May 31, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on September 13, 2019 and was subsequently adjourned to be heard on December 3, 2019 as there was not enough time to complete the hearing initially.

Both the Landlord and the Tenant attended the adjourned hearing. All parties provided a solemn affirmation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy started on July 1, 2017 and ended when the Tenants gave up vacant possession of the rental unit on April 30, 2019 based on an Order of Possession that was granted to the Landlord. Rent was established at \$2,500.00 per month, due on the first day of each month. A security deposit of \$2,000.00 and a pet damage deposit of \$500.00 were also paid. He submitted a copy of the tenancy agreement as documentary evidence. The Landlord was cautioned that Section 19 of the *Act* prohibits collection of a security deposit or pet damage deposit that exceeds more than one half of one month's rent.

All parties agreed that neither a move-in inspection nor a move-out inspection report was conducted.

The Landlord confirmed that he received the Tenants' forwarding address via email on May 16, 2019.

The Landlord advised that he is seeking compensation in the amount of **\$312.38** for the cost of cleaning the rental unit. He stated that the Tenants left the rental unit in a "decent state in general"; however, it still needed a deep clean as there was mold present in the bathtub and shower, and the bathroom and stove were left dirty. He submitted photos as documentary evidence to support the condition the rental unit was left in. He also included a copy of the cleaning invoice that outlined that seven and a half hours, at a cost of \$35.00 per hour, was spent to bring the rental unit back to a rentable condition. Included in this invoice was a travel charge of \$35.00.

The Tenant advised that as per point 8 of the Addendum in the tenancy agreement, the Landlord was to provide a deep clean housekeeping service once every three months. However, the Landlord never did provide this service. Furthermore, as the Landlord had an Order of Possession effective for April 30, 2019, they did not have time to pack, clean, or find a cleaning service.

The Landlord stated that this deep cleaning service was discussed at the beginning of the tenancy; however, the Landlord decided not to offer this service anymore and they verbally agreed that this service was not necessary. The Tenant had no further comment.

The Landlord submitted that he is seeking compensation in the amount of **\$2,690.00** for the cost of resurfacing the wooden stairs as there are claw marks and gouges in the stairs. He advised that as per point 11 of the Addendum in the tenancy agreement, the Tenants were required to keep their dog in the mud room; however, the Tenants did not comply, and their dog "destroyed" the finish on the stairs. He stated that the rental unit was newly constructed in 2004, that he lived in the rental unit from 2005, that he did not wear shoes in the rental unit, and that the stairs have never needed to be refinished. He submitted two pictures of the damage to the stairs and an estimate that noted that approximately 61 hours were required, at a cost of \$40.00 per hour, plus \$250.00 in supplies, to rectify this damage.

The Tenant argued that the appearance of the stairs was due to the wood being “distressed”. Furthermore, he stated that he has two special needs children that “drop things” and that his children “may have left the door open” allowing the pets entry into the rental unit. He further added that it is “possible that the dogs had access” to the rental unit.

The Landlord submitted that he is seeking compensation in the amount of **\$257.00** for the cost of replacing a broken cowling on his tractor. He advised that when he found the tractor, the cowling was destroyed and the Tenant did not bring this to his attention. He stated that as per point 3 of the Addendum in the tenancy agreement, the Tenant will be responsible for the maintenance and upkeep of the tractor. He advised that the tractor was brand new in 2007 and that he did not have any documentation of the condition of the tractor prior to the tenancy, but it was in good working order. He submitted a picture of the broken cowling and an invoice supporting the replacement cost of this item.

The Tenant advised that he had emails corroborating that the Landlord rented out part of the shop to other people for their business and that they had access to and had used the tractor. He stated that he asked one person from this other business if something had dropped on the cowling and broke it. The Tenant acknowledged that the cowling was cracked; however, one day the cowling simply disappeared.

The Landlord stated that these other people that he rented the shop to used the tractor occasionally, that they may have moved the tractor, and that they advised him that they have no idea who broke the cowling. He also stated that the Tenant primarily used the tractor.

The Landlord submitted that he is seeking compensation in the amount of **\$2,500.00** for the cost of a new couch because of the damage caused by the Tenants’ negligence. He stated that the Tenant asked him to leave the couch and the dining room furniture at the beginning of the tenancy and it appears as if the dogs have scratched and damaged the couch to the extent that it is distressed and not recoverable. He referred to pictures submitted of this damage. While he advised that the couch was purchased in 2006 for approximately \$5,000.00 and that it was “pretty old”, he stated that it was in perfect condition and still functional at the start of the tenancy. As well, he stated that he took care of the couch and did not have pets on the couch prior to the tenancy. He submitted a screenshot of a similar couch as evidence to support the replacement value of the couch.

The Tenant advised that the dogs were not allowed on the couch. He also stated that the Landlord’s wife contemplated purchasing a new couch because it was already damaged; however, she did not as it was being rented. As well, he stated that the arm on the couch was “crushed and destroyed”.

The Landlord stated that the right arm of the couch moved approximately an inch and that to the best of his knowledge, the couch was in good, functioning condition.

The Landlord submitted that he is seeking compensation in the amount of **\$210.00** for the cost to repair a burn to the floor in front of the fireplace. He submitted a photo of the burn mark and an estimate that noted that approximately 4 hours were required, at a cost of \$40.00 per hour, plus \$50.00 in supplies, to fix this damage. He is unsure if this has been fixed to date.

The Tenant acknowledged being responsible for this damage.

The Landlord submitted that he is seeking compensation in the amount of **\$100.00** for the cost of fixing broken cabinets. He stated that four to five drawers and cabinets were askew and off their hinges or broken. He advised that the current tenant spent three hours fixing this damage at a cost of \$20.00 per hour, and that the hardware cost \$100.00. While he does not have any receipts, he referenced a picture of this damage as documentary evidence.

The Tenant advised that he was only aware of one drawer being broken and he cannot remember if it was broken at the start of the tenancy.

The Landlord submitted that he is seeking compensation in the amount of **\$488.00** for the cost of hydro for the shop that was rented. He stated that he sublet the shop to a business and asked the Tenant to change the billing over to this business; however, the Tenant refused to do so and kept the hydro in his name. As such, over the year, this business paid the Tenant for their share of the hydro. Subsequently, an argument ensued between the parties and the Tenant stopped paying the hydro bill altogether, eventually causing the electricity to be shut off. The \$488.00 is the cost of the Tenants' share that the business paid to have the power restored.

The Tenant advised that this business started using the shop in January 2018 and he was told that this business would take over the hydro account, but this never happened. He stated that he stopped paying the hydro as it was his belief that this business would take over the account and pay the bill.

The Landlord stated that the business needed approval codes on the account in order to pay the arrears and the Tenant was unwilling to give up control of the account.

The Landlord submitted that he is seeking compensation in the amount of **\$608.00** for the cost of repair of the lawn tractor. He stated that he provided the Tenant with lawn service for a year extra and that this service would use the tractor; however, they could not complete the service as the tractor was broken. He referred to the tenancy agreement addendum which stated that the Tenant would be responsible for these maintenance costs. As well, he noted that a beer can was found inside the tractor.

The Tenant questioned why he would even consider using the tractor if lawn service was provided, and he stated that he did not drive it as he had no reason to. In addition, he advised that the tractor was stored in the shop which was being rented to this other business and he speculated that these people could have used the tractor.

Finally, the Landlord submitted that he is seeking compensation in the amount of **\$700.00** for the cost of replacement of the chainsaw that was provided to the Tenant at the start of the tenancy. He stated that he noticed it was missing and the Tenant told him that he took it to a repair shop; however, the Landlord did not know why it was taken there. As well, there was no documentation provided for this transaction.

The Tenant advised that he attempted to use the chainsaw to cut wood, but it was broken so he took it to the repair shop. He stated that the employee at this shop was notorious for not providing documentation about jobs he took. He acknowledged that the repair shop has no record of it being received there.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act* and *Regulations*. However, these Sections pertain to a Landlord's right to claim for damage, and as the Landlord also applied for hydro owing, which is not a damage claim, the Landlord still retains a right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, the Landlord confirmed that he had the Tenants' forwarding address in writing on May 16, 2019 and that he made an Application to keep the deposit on May 31, 2019. As such, I am satisfied that the Landlord filed within the 15-day timeframe to deal with the deposit pursuant to Section 38 of the *Act*. As the Landlord was still entitled to claims against the security deposit, I am satisfied that the Landlord complied with the requirements of Section 38 and the doubling provisions do not apply to the security deposit.

However, the pet damage deposit can only be claimed against if there is damage due to pets. As the Landlord claimed against this deposit but was not entitled to do so as he extinguished his right by not completing the inspection reports, the pet damage deposit should have been returned in full within 15 days of May 16, 2019. As the Landlord did not return the pet damage deposit in full within 15 days of May 16, 2019, the Landlord in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, under these provisions, I grant the Tenant a Monetary Order amounting to double the original pet damage deposit, or **\$1,000.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim of \$312.38 for the cost of cleaning the rental unit, the consistent and undisputed evidence is that the Tenants did not leave the rental unit in a suitable condition that was ready for re-rental. While it is the Tenant's position that the Landlord was required to provide cleaning service and as they were evicted by an Order of Possession they did not have time to clean the rental unit, I find it important to note that the Tenants are required to leave the rental unit in a state that is clean and re-rentable. As the Tenants did not do so, I am satisfied that the Landlord has established that he should be granted a monetary award in the amount of **\$312.38** to satisfy this claim.

Regarding the Landlord's claim of \$2,690.00 for the cost of resurfacing the wooden stairs, when reviewing the evidence before me, there are clearly scratches on the stairs that do not support the Tenant's suggestion that this is a "distressed" appearance. Furthermore, his elusive demeanour in providing a response to the Landlord's claim and his vague submissions about the "possibility" of the dogs being allowed into the rental unit cause me to doubt the reliability of his testimony. Moreover, his suggestion of attributing this damage to the negligence of his children causes me to question his character and consequently, the credibility and truthfulness of his submissions on the whole. As such, I find it more likely than not that the Tenants were responsible for this damage and that the Landlord has established grounds for this claim.

I find it important to note that Policy Guideline # 40 establishes the estimated useful life of similar flooring as approximately 20 years. Based on the evidence and testimony provided by the Landlord, he has already had use of the stairs for 15 years. Furthermore, the Landlord has only provided an estimate, and no evidence from a qualified repair person, that supports this estimate. Based on the limited evidence

provided by the Landlord, I am not satisfied that 61 hours of work is justified. From the age of the stairs and the evidence of the limited damage, I find that the Landlord should be granted a monetary award in the amount of **\$500.00** to cover the costs associated with repairing the damage to the stairs.

With respect to the Landlord's claim of \$257.00 for the cost of replacing a broken cowling on the tractor, while I am skeptical by the Tenant's demeanour and the elusive manner with which he answered questions, the consistent evidence is that the Landlord rented a part of the shop to other people. Furthermore, the Landlord has submitted insufficient evidence to corroborate that the Tenants were directly responsible for this damage. As such, I am not satisfied that the Landlord has substantiated this claim, and I dismiss it in its entirety.

Regarding the Landlord's claim of \$2,500.00 for the cost of a new couch, while the Tenant advised that the dogs were not allowed on the couch, I find it important to note that the dogs were not permitted to be anywhere in the house other than the mud room and wood room. This submission implies that the dogs were allowed in the living space, and this is contrary to his earlier testimony that it was only "possible" that the dogs were allowed into the living space on account of his children's negligence. I find that this further cements the Tenant's lack of credibility and truthfulness in his testimony. In addition, when reviewing the damage on the couch, I find that this is clearly consistent with pet damage, and I am highly doubtful that the couch would have been provided to the Tenants and accepted by them in that condition. Based on the age of the couch and the evidence of the damage, I find that the Landlord should be granted a monetary award in the amount of **\$800.00** to put towards the costs associated with replacing the damaged couch.

Regarding the Landlord's claim of \$210.00 for the cost to repair a burn to the floor in front of the fireplace, as the Tenant acknowledged being responsible for this damage, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$210.00** to rectify this claim.

With respect to the Landlord's claim of \$100.00 for the cost of fixing broken cabinets, based on the Landlord's evidence and in conjunction with the Tenant's lack of credibility overall, I find that I prefer the Landlord's evidence. I am satisfied that it is more likely than not that this damage is consistent with the ambivalent manner with which the Tenants occupied the rental unit. Consequently, I am satisfied that it is more probable that the Tenants damaged these items during the tenancy and that this claim is consistent and proportionate to repair the damage. As such, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$100.00** to fix these issues.

Regarding the Landlord's claim of \$488.00 for the cost of hydro, I find it important to note that the Tenant acknowledged that the hydro started being split in January 2018 and it was his belief that the business would take over the account but when they did

not, he simply stopped paying the hydro. As the hydro bills refer to utilities owed from November 2018 onwards, I am skeptical by the logic of the Tenant's testimony that he would have continued to pay this bill for so many months, instead of bringing up this issue, if this was truly his belief. Therefore, I find the Landlord's account of these events to be more probable. As such, and as there was no dispute over the amount, I am satisfied that the Landlord has established this claim. Consequently, I find that the Landlord should be granted a monetary award in the amount of **\$488.00** to satisfy this claim.

With respect to the Landlord's claim in the amount of \$608.00 for the cost of repair of the lawn tractor, while it is the Landlord's belief that the Tenants were responsible for the repair and maintenance of the tractor, I am not satisfied that the Tenants had sole use of this machinery. As the Landlord elected to rent the shop for use by other people as well, I find that the Landlord has provided insufficient evidence substantiating that the Tenants were solely responsible for the tractor being broken. As such, I dismiss this claim in its entirety.

Finally, with respect to the Landlord's claim of \$700.00 for the cost of replacement of the chainsaw, the consistent and undisputed evidence is that the Tenant took the Landlord's property to a repair shop but did not provide evidence of any follow-up of what he did next. I find it peculiar that he took the Landlord's property to get repaired without the consent of the Landlord, and left it there without demonstrating any responsibility or expectation to retrieve it. As such, I am satisfied that the Tenant should be responsible for not following up on or knowing the whereabouts of the Landlord's property. However, the Landlord has provided insufficient information with respect to the age or condition of the chainsaw. As such, I am satisfied that the Landlord has only established a monetary award in a nominal amount of **\$250.00** to cover the cost of a replacement.

As the Landlord was successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debts outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenants**

Cleaning	\$312.38
Repair of stairs	\$500.00
Damaged couch	\$800.00
Damaged flooring	\$210.00



Damaged cabinets	\$100.00
Hydro costs	\$488.00
Missing chainsaw	\$250.00
Less the security deposit	-\$2,000.00
Double the pet damage deposit	-\$1,000.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$239.62</b>

### Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$239.62** 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: January 3, 2020

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Residential Tenancy Branch