



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL MNDCL-S MNDL-S**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised except regarding the landlord's photographs which will not be considered in this decision. The hearing process was explained.

### Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The parties agreed the tenancy began in February 2018 and ended when the tenants vacated on September 1, 2019. No condition inspection was conducted on moving out. Rent was \$1,325.00 payable on the first of the month. A security deposit of \$487.50 was

paid by the tenants which the landlord holds. The parties agreed the Addendum to the agreement, a copy of which was submitted, required that the tenants not smoke in the unit. The tenants provided their forwarding address at the end of the tenancy.

The parties agreed that the landlord spent \$2,609.02 for costs of cleaning (\$175.00) and for costs of painting the unit after the tenants vacated. The tenants stated they are not responsible for any of this cost except for \$175.00 for a cleaner.

The landlord testified that she smelled smoke in the unit during the tenancy and warned the tenants several times not to smoke in the unit. The landlord stated that she intended to occupy the unit when the tenants vacated but the smell of cigarette smoke was so strong that she changed her mind, saying she "couldn't live in it".

The landlord submitted a supporting statement from the cleaner saying [after the tenants vacated], "I could smell cigarette smoke as if the tenant had just finished one.... There was definitely recent smoke in the air as I was standing inside."

The landlord stated was uncertain when the unit had been painted and surmised that it was in 2016 when she bought the building. She testified that one of the bedrooms had been painted one month before the tenants moved in. She testified that she was informed by a painting company to use a special product on the walls to remove/conceal the smoke odor.

The tenants stated that the entire unit needed painting when they moved out because of repairs to the drywall and extensive mudding; also, they stated that red paint, a previous color, was bleeding onto the wall surface in one of the bedrooms.

The parties agreed the tenants were not responsible for the damage to the drywall, the repair work, or the previous red paint.

The tenants acknowledged that they kept their butts in an open container in the unit. they stated they always, without exception, smoked outside. They said their clothing smelled of smoke.

The landlord claimed a monetary award of \$2,609.02, reimbursement of the filing fee, and authorization to apply the security deposit of \$487.50 to the award.

The tenants agreed to reimburse the landlord for \$175.00 for cleaning but denied all other responsibility for claimed compensation.

### Analysis

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

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The only issues with respect to the landlord's claim is whether the tenants damaged the unit by smoking which required the landlord to repaint with a special substance to cover the odor and whether they are responsible for reimbursement of the cost.

Section 32(4) and *Guideline # 1* state that a tenant is not required to make repairs for reasonable wear and tear.

*Guideline 1. Landlord & Tenant – Responsibility for Residential Premises* states in part as follows (emphasis added):

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. **An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.***

The *Guideline #40 - the useful Life of Building Elements* states that “landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item”. The landlord testified the unit had been painted before the tenant moved in, four years ago.

The Guideline states that paint has a useful life of 4 years. The landlord testified the unit was painted in 2016 but she provided no evidence in this regard. Without any evidence, I find the paint may well be four years old or more. Applying the Guideline, I therefore find that the paint had no remaining useful life, except for the one bedroom. However, the parties acknowledged that the bedroom had previously been painted another color which was “bleeding” through.

I accept the landlord’s testimony as supported by documentary evidence that the unit smelled of cigarettes when the tenants vacated for which I find the tenants are responsible. I accept that the landlord received professional painting advice to use a special painting substance to conceal the odour.

I find the landlord has met the burden of proof on a balance of probabilities that the landlord has incurred expenses in painting the bedroom for which the tenants are responsible. However, the landlord has not provided proof of her claim with respect to this one room only. The landlord has not provided information on the proportion of costs related to this one room.

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:  
*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

I find the tenants caused the smoke smell in the bedroom and the landlord incurred painting expenses. I find this is an appropriate situation for the award of a nominal amount.

Considering the testimony, the evidence and this Policy Guideline, I therefore award the landlord a nominal amount for the painting expense for the bedroom in the amount of \$212.50.

As agreed by the parties, I grant the landlord a monetary award of \$175.00 for cleaning.

As the landlord has been successful in her application, I grant her an award for reimbursement of the filing fee.

I authorize the landlord to apply the security deposit to the monetary award as follows:

ITEM	AMOUNT
Cleaning – agreed by tenants - award	\$175.00
Nominal damages for painting - award	\$212.50
Reimbursement of portion of filing fee - award	\$100.00
(Security deposit)	(\$487.50)
<b>TOTAL Monetary Order</b>	<b>\$0.00</b>

### Conclusion

The landlord may retain the security deposit in satisfaction of the monetary award as outlined above of \$487.50.

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 10, 2020

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Residential Tenancy Branch