# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** **FFL MNDCL-S MNDL-S / FFT MNSD**

**Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's:

- authorization to retain all or a portion of the tenants' security deposit of $1,250 and pet damage deposit of $500 (collectively, the "**Deposits**") in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $8,700 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' for:

- authorization to obtain the return of the Deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant AC attended the hearing on behalf of both tenants. The landlord was represented by an agent ("**JG**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both attendees testified that they had received the opposing party's the notice of dispute resolution form and supporting evidence package. I find that all parties have been served with the required documents in accordance with the Act.

**Preliminary Issue – Alleged misconduct by the landlord**

As set out in their application for dispute resolution, the tenants have applied for the return of the Deposits. They have not applied for any other relief.

In the tenants' documentary evidence submitted in support of their application, and during their testimony, the tenants referred incidents relating to what they understood to be breaches of the tenancy agreement, or the Act, by the landlord, as well as complaints about the landlord's conduct throughout the tenancy.

This evidence does not relate to either of the parties' applications. The tenants have not sought any relief in connection to the alleged misconduct and breaches. As such, I will not recount the evidence here, and make no findings as to the permissibility of any of the landlord's alleged conduct. If the tenants want to obtain relief in relation to the landlord's conduct throughout the term of the tenancy, they must make a separate application, and set out the alleged breaches of the landlord, and the compensation they seek in connection with those breaches.

As such, the balance of this decision will only relate to issue of the return of the Deposits, and whether the landlord is entitled to compensation from the tenants as claimed.

## Issues to be Decided

Are the tenants entitled to:

1) the return of the Deposits; and
2) recover their filing fee?

Is the landlord entitled to:

1) a monetary order of $8,700;
2) retain the Deposits in partial satisfaction of any monetary order made; and
3) recover her filing fee?

## Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement on August 1, 2017. The rental unit is a single-detached home with a front and back yard. Monthly rent was $2,600. The tenant paid the Deposits to the landlord at the start of the tenancy. The landlord retains the Deposits.

The tenancy agreement includes an addendum which states:

- Tenants shall be responsible to maintain the yard to include:
    - Mowing the lawns; and
    - Weeds in the gardens to be pulled and removed

The tenancy ended on August 31, 2019. The tenants provided their forwarding address to the landlord on September 7, 2019. To date the landlord has not returned the Deposit. The landlord filed her application against the Deposit on September 17, 2019.

No move-in condition inspection report was made at the start of the tenancy. JG testified that the parties did a walkthrough of the rental unit on August 30, 2019, but that the landlord did not prepare a move-out condition inspect report.

JG testified that the condition the rental unit was left in by the tenants at the end of the tenancy was poor. She testified that the landlord was claiming for compensation for damage to four separate areas of damage for the following amounts:

| | |
|---|---|
| Cleaning | $305.00 |
| Drywall Repair | $876.75 |
| Backyard Remediation | $2,900.00 |
| Carpets Replacement | $5,040.00 |
| **Total** | **$9,121.75** |

I note that this amount differs from the amount specified on the landlord application for dispute resolution of $8,700.

I also note that JG provided details of other damage to the rental unit allegedly caused by the tenants, for which the landlord was not seeking compensation. As these alleged damages do not form part of the landlord's claim, I will not address them in this decision.

I will address each of these instances of alleged damage the landlord claims compensation for in turn.

1. <u>Cleaning</u>

The parties agree that the rental unit required significant cleaning prior to the tenants vacating the rental unit. The parties also agree that the tenants hired a cleaner to do extensive cleaning. The landlord submitted a letter from the cleaner into evidence dated September 24, 2019. It stated:

> As per your request you have received photos of the [rental unit]. Unfortunately, the photos are not a clear indication of the amount of filth and grime in this home. The condition was poor at best. Friday, August 30, 2019 my employee and I spent 9 hours cleaning and I came back on August 31 for an additional 6 hours to attempt to finish. The residence would take 2.5 days of two people cleaning @$35/person/hour. I was paid for a total of 22 hours being 9 hrs with both of us and 4 of the 6 hours the following day by [the tenant]. The rest of the cost was paid by [the landlord].
>
> The build up of dust on the baseboards with dust crawling up the walls and along the rest of the carpets which were in horrid condition. The amount of grease above the stove on the backsplash and on the sides which were also covered in old food and greased and behind the stove was not cleaned I've never seen anything like it. I feel the appliances in the home hadn't been cleaned in all the years of their occupancy.

From this letter, I understand that the cleaner and her employee spent nine hours each (18 hours total) cleaning the unit on August 30, 2019, and the cleaner spent an additional six hour the following day cleaning the rental unit. I understand that, in total, the cleaner spent 24 hours cleaning the rental unit, at an hourly rate of $35. I understand that the tenant paid the cleaner for 22 of these hours, and the landlord paid the cleaner for the other two.

JG testified that the landlord paid the cleaner for seven hours of work and submitted a copy of a receipt dated September 19, 2019 showing the payment of $245 to the cleaner for seven hours of cleaning. I am not certain what accounts for this discrepancy between the cleaner's letter and the invoice submitted by the landlord. However, I am prepared to accept that the cleaner may have erred in recounting how much time she spent cleaning the rental unit. JG testified that the landlord then hired a different cleaner to do additional cleaning (who was less expense than the first cleaner selected by the tenants), and that this second cleaner charged the landlord $60. The landlord entered a copy of a receipt from the second cleaner for $60 into evidence.

AC did not deny that the rental unit required extensive cleaning at the end of the tenancy. Indeed, he testified that is why he hired the cleaner, and paid for 22 hours of cleaning ($770). He argued that any photos submitted into evidence of the condition of the interior of the rental unit where taken before any cleaning was done and did not accurately reflect the condition of the rental unit at the end of the tenancy.

2. Drywall

The parties agree that the tenant repaired an area of drywall in the basement. The tenant testified that he made this repair on August 29, 2019. JG did not dispute this evidence. Upon inspecting the rental unit on August 30, 2019, the landlord found the repair job to be inadequate, and that it “crumbled” away. The tenant did not disagree.

JG testified that the cause of the damage to drywall was likely a leaking or burst exterior water pipe. She testified that a plumber attended the rental unit to examine and repair the leak. JG argued that when the tenant discovered the damage to the drywall, he should have notified the landlord of it, so that it could be remediated. AC did not dispute the cause of the damage. However, he argued that he did not cause the exterior water pipe to burst, and that the tenants, therefore, should not be responsible for any damage to the rental unit caused by the burst pipe.

The landlord submitted two estimates for the repair of the drywall the lower of the two (which the JG states the landlord accepts as the amount compensable) is for $876.75.

The landlord did not enter any evidence regarding the cause of the burst pipe, or regarding whether the tenant’s actions (that is, patching it himself and not notifying the landlord of the damage as soon as he discovered the damage) contributed to the extent of the damage caused by the leak.

3. Backyard

JG testified that the backyard grass was completely dead at the end of the tenancy. The landlord entered photos into evidence showing that a completely brown lawn. JG testified that she attended the rental unit at the end of the tenancy and confirmed that the photographs accurately depict the condition of the backyard at the end of the tenancy.

AC testified that the photographs do not accurately depict the backyard at the time of the tenancy. He testified that the grass in the backyard was “brown and green” at the

end of the tenancy. He did not provide any photographic evidence as to the condition of the backyard at the end of the tenancy.

AC testified that the backyard was “hard to maintain”. He testified that, despite the addendum, starting three to four months after the start of the tenancy, the landlord sent a landscaping company to the rental unit to “spray” the backyard to kill the weeds. He testified that this “spraying” killed the backyard lawn.

JG testified that the backyard was sprayed but denied that the backyard lawn killed the back lawn.

No documentary evidence relating to the “spraying” was entered into evidence. I am uncertain as to what was sprayed on the backyard lawn, how often it was sprayed, or what effect the contents of the spray would have on grass.

Additionally, I note that the tenants submitted a photograph of the back lawn taken in May 2019 in which the lawn appears to be completely green. When asked about this, AC testified that every time the backyard lawn was sprayed, the grass would die, and that he would then “bring it back”. He did not testify how he did this. Again, JG denied that the lawn needed “brining back” after it was sprayed.

AC testified that the landlord represented to the tenants in an advertisement listing the rental unit for rent that the backyard lawn had a built-in sprinkler system. He testified that this was not the case. The tenants did not enter a copy of this advertisement into evidence.

JG denied that the landlord ever represented to the tenants that the backyard had a built-in sprinkler system. She testified that the landlord did provide the tenants with a sprinkler for the backyard, but that the tenants broke it at some point during the tenancy.

AC also argued that the lawn died due to water restrictions in the summer 2019 which prevented him from watering it. He provided no evidence that such restrictions were in place, or that if they were, the extent of the restrictions (that is, how often he would have been permitted to water the lawn). In any event, the tenant did not give any evidence that he watered the lawn at all during the summer of 2019.

The landlord entered two estimates for landscaping working to repair the backyard into evidence. The first for $4,240 and the second for $2,900. JG testified that the landlord seeks compensation in the amount of the lower of the two estimates.

4. Carpets

JG testified that the carpets were 7 to 9 years old at the end of the tenancy. She testified that, at the end of the tenancy, the condition of the carpets was “atrocious”. She testified that they were stained, and that the landlord was advised by contractors that the carpets were covered by animal urine and feces.

The landlord entered into evidence a letter from contractor dated November 28, 2019 which states:

> We have been providing yearly services to [the rental unit] since 2016 and on every occasion (4 times) that I entered the household I observed and reported to the [landlord] a small dog in the house and animal feces and urine on the kitchen floor and noted a urine smell in the basement.

AC denied that the carpets had urine or feces on them. He admitted that the he did not have the carpets cleaned at the end of the tenancy, as, during the move out, the landlord told him not to bother because she was going to have the carpets replaced. AC conceded that the carpets did require cleaning but argued that he would have done so if the landlord did not tell him not to.

JG testified that no amount of cleaning would have returned the carpets to their original condition.

JG testified that the landlord had the carpets removed and replaced with laminate flooring. The landlord submitted an invoice dated September 13, 2019 for $3,040 for the installation of the laminate flooring. At the top of this invoice is a handwritten annotation which states “Labour only. Flooring was an additional $1,900 to $2,000.” The landlord did not enter a copy of any invoice supporting this amount into evidence.

## Analysis

### Tenants’ Claim

JG testified that the landlord completed neither a move-in nor move-out condition inspection report. She testified that the landlord did conduct a walkthrough inspection with the tenant at the end of the tenancy.

The completion of condition inspection reports at the start and end of the tenancy are required by sections 23(4) and 35(3) of the Act, which state:

> **Condition inspection: start of tenancy or new pet**
>
> 23(4) The landlord must complete a condition inspection report in accordance with the regulations.
>
> **Condition inspection: end of tenancy**
>
> 35(3) The landlord must complete a condition inspection report in accordance with the regulations.

Consequences for the failure to complete such reports are set out at sections 24(2) and 36(2) of the Act:

> **Consequences for tenant and landlord if report requirements not met**
>
> 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
>
> **Consequences for tenant and landlord if report requirements not met**
>
> 36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with sections 24(2)(c) and 36(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report at both the start and at the end of the tenancy.

Residential Tenancy Policy Guideline 17 states:

> C3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit

[…]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[…]

- whether or not the landlord may have a valid monetary claim.

The tenant has not specifically waived the doubling of the Deposits. Accordingly, I find that as the landlord's right to claim against the Deposits is extinguished. Therefore, the tenant is entitled to receive double the amount of the Deposits from the landlord.

Accordingly, I order that the landlord pay the tenant $3,500, representing double the amount of the Deposits.

This does not mean that the landlord's claim for damages is dismissed, however. She may still be entitled to compensation for damage caused by the tenants.

**Landlord's Claim**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I will apply this test to each of the four types of damage the landlord seeks compensation for.

1. Cleaning

Based on the testimony of the parties and the documentary evidence submitted by the landlord, I find that the rental unit required significant cleaning at the end of the tenancy. I find that the tenants hired a cleaner and paid her for 22 hours of cleaning. However, I accept the JG's testimony, which is partially corroborated by the letter dated September 24, 2019 of the cleaner that additional cleaning was required.

I find that, even after the first cleaner completed her cleaning of the rental unit, further cleaning was required, given that she wrote that she worked "for an additional 6 hours to attempt to finish [cleaning]" [emphasis added].

I find that after the first cleaner stopped cleaning, the landlord hired a second cleaner to do further cleaning. I find that, in total, the landlord incurred $305 in cleaning fees at the end of the tenancy.

Section 37 of the Act states:

> **Leaving the rental unit at the end of a tenancy**
>
> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

I accept that the cleaning costs incurred by the landlord were necessary to bring the rental unit to the level of "reasonably clean".

As such, I find that the tenants breached the Act by failing to leave the rental unit reasonably clean. I find, based on the invoices submitted by the landlord, that she incurred $305 in cleaning costs. I find the landlord minimized her loss by switching to a lower cost cleaner.

Accordingly, I order that the tenants pay the landlord $305.

2. Drywall

The landlord has provided no evidence which suggests that the tenants caused the leak which caused the damage to the drywall, or that by failing to notify the landlord immediately upon discovering the damaged drywall that the tenants exacerbated the damage to it.

As such, I find that the tenants have not breached the Act and are not liable to compensate the landlord for the drywall repair.

3. Backyard

I find that the tenants were required to maintain the backyard, as per the addendum to the tenancy agreement. I find that this includes watering the lawn. I do not accept AC's evidence that the backyard lawn was brown and green at the end of the tenancy. Instead, I prefer JG's evidence that it was totally brown, as shown in the photographs submitted into evidence by the landlord.

I have no evidence before me to support AC's position that the damage to the backyard lawn was caused by contractors hired by the landlord to "spray" for weeds. I find, based on AC's testimony, that the weed "spraying" started three or four months after the start of the tenancy. I also find, based on the photo of the backyard dated May 2019 entered into evidence by the tenants, that the lawn was healthy in May 2019. This suggests that the "spraying" did not cause the lawn to be in the condition it was at the end of the tenancy, as, if it were, the lawn would not have been healthy in May 2019. AC provided no evidence as to how he was able to rehabilitate the backyard lawn following it being sprayed, or why he was unable to do so before the end of the tenancy.

I find it more likely that the grass died as the result of the failure of the tenants to adequate maintain it, in particular, by failing to adequately water it. AC gave no evidence as to what maintenance the tenants performed on the lawn during the summer of 2019. AC testified that there were water restrictions in place during that summer. The tenants provided no evidence that this was the case, or that, if it were the case, as to whether any watering of lawns was permitted. As such, I do not accept that AC's uncorroborated evidence that water restrictions during the summer of 2019 caused the backyard lawn to be in the condition it was at the end of the tenancy.

I find that the tenants breached the tenancy agreement by failing to adequately maintain the backyard. I find that, as a result of this failure, the grass died and needs to be replaced.

AC did not dispute the necessity of the scope of work set out in the estimate the landlord provided for the repairs to the back lawn. As such, I find that the scope of work set out is necessary to repair the damage to the backyard.

I find that by obtaining two estimates to repair the damage to the backyard, and accepting the lower of the two, the landlord minimized her losses.

Accordingly, I order that tenants pay the landlord $2,900.

4. Carpets

I have no documentary evidence (such as move-in condition inspection report) of the condition of the carpets at the start of the tenancy. As such, I have nothing to which to compare JG's testimony of the condition of the carpets at the end of the tenancy. Additionally, I am uncertain if the carpets could have been returned a reasonable condition following their cleaning. The tenants were not given a chance to do this, as the landlord instructed them not to (due to her wanting to replace them).

As such, I am uncertain if the tenants breached the Act.

Additionally, even if I determined that the carpets were damaged to the point where they could not be cleaned, I have no evidence as to what the replacement cost of the carpets would be. Rather than replace the carpets, the landlord chose to install laminate flooring. I find that this amounts to an upgrade of the flooring, and as such, would not be fully compensable. The landlord would only be entitled to recover the replacement cost of the carpets.

Furthermore, I note that Policy Guideline 40 sets out the useful life of carpets as 10 years. JG testified that the carpets are between seven and nine years old. As such, even if I had an accurate estimate of the replacement cost of the carpets (which I do not), I would reduce that amount by 80% (the midpoint of JG's estimate), resulting in a minimal monetary order.

For the preceding reasons, I decline to order that the tenants pay the landlord any amount in connection to damage to the carpets.

As both sides of this dispute were at least partially successful in their applications, I decline to order that either side reimburse the other their filing fee.

## Conclusion

Pursuant to section 67 of the Act, I order the landlord to pay the tenants $295, representing the following:

| | |
|---|---|
| Double the Deposits | $3,500 |
| Yard Remediation | -$2,900 |
| Cleaning Costs | -$305 |
| **Total** | **$295** |

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 16, 2020

Residential Tenancy Branch