



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL MNDL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and was represented by Legal Counsel. The tenant was represented by an agent. The landlord and the tenant's agent each gave affirmed testimony and the landlord called 1 witness, the landlord's son, who also gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on March 5, 2019 and ended at the end of April, 2019. Rent in the amount of \$3,700.00 per month was payable on the 1<sup>st</sup> day of each month. The rental unit is the upper level of a house, and a basement suite was vacant. A copy of the tenancy agreement has been provided as evidence for this hearing. No move-in or move-out condition inspection reports were completed.

The tenant paid for 3 months rent by cheque for March, April and May, and the landlord returned the cheque for May to the tenant. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$3,700.00 and at Arbitration on September 6, 2019 the landlord was ordered to return double the amount to the tenant.

The tenant is a company and 4 people were to reside in the rental unit but sometimes 5 or more lived there and there were new people all the time. During the tenancy the tenants smoked in the rental unit, and when the landlord showed prospective tenants at the end of the tenancy, they refused to take it because it was too smoky. The landlord could also smell it when he went inside, as well as garbage on the floors. During the tenancy the landlord was at the rental property every 2 or 3 days while renovating the lower unit, but didn't go inside the rental unit unless invited. Whenever the landlord went there during the tenancy he picked up garbage, and the tenants never put out the garbage bins on garbage day. Photographs have been provided for this hearing, which are dated in someone's handwriting. The landlord testified that a neighbour complained, and the landlord cleaned it up.

The landlord also testified that at the end of the tenancy the occupants left a light hanging inside the rental unit, and removed a smoke alarm that had been attached. Mud and dark marks were left on the tile and flower boxes were used as ashtrays, garbage food was left on the grass and on the sidewalk as well as bags of garbage. There were 3 cans to put trash in but the occupants never did use them.

To get the cigarette smell out of the house the landlord left the door open for a few days and had the carpet cleaned, but it still smelled. The landlord painted the bedrooms where the smoke smell was worse, but still could not re-rent, despite attempting to re-rent as soon as the tenants moved out. An Invoice for carpet cleaning has been provided for this hearing by the landlord dated May 13, 2019 which contains a note: "steam;

clean carpets – heavy cigarette smoke...” Another has been provided by the tenant, which pre-dates the landlord’s Invoice, on May 3, 2019.

The landlord testified that if there hadn’t been so much cleaning to do and no smoke smell, the landlord would have been able to re-rent, but 3 or 4 people turned it down due to the smell. The landlord paid **\$157.50** for carpet cleaning as well as **\$1,548.75** for painting and garbage removal, and lost **\$3,700.00** rent, all which the landlord claims as against the tenant. The rental unit was last painted 4 or 5 years ago. The Invoice for the painting and cleaning has also been provided for this hearing which includes all materials and equipment for patching, sanding, priming, paint job, power wash and garbage removal.

When asked why the landlord didn’t notify the tenant’s agent about picking up garbage or smelling smoke, the landlord testified that he phoned the tenant’s agent but no one answered.

The landlord’s son advertised to re-rent on Craigslist as soon as the tenant gave notice to vacate.

**The landlord’s witness** is the landlord’s son who testified that prior to this tenancy the rental unit was professionally cleaned including the carpet. After the tenancy the witness showed the rental unit to prospective tenants a couple of times but they said it was too smoky. During the tenancy there were 4 or up to 8 people residing in the rental unit, and new people all the time.

The witness helped to write the contract, and at the beginning of the tenancy the rental unit was very clean – 10 out of 10, but after the tenants vacated there was a heavy smoke smell, garbage left outside, chicken bones, cans and boxes mostly on the floor and grass. The witness took time off work to assist his father for 2 days.

The witness also advertised the rental unit and received some emails. It couldn’t be re-rented due to its condition, and it needed a fresh smell. To charge that amount of rent, people expect it to be clean.

The witness does not recall if any garbage was left by previous tenants and was never at the rental unit during this tenancy.

**The tenant’s agent** testified that the tenancy was on a month-to-month basis and he gave notice to the landlord to end tenancy by text message on March 26, 2019 effective April 30, 2019. The landlord was okay with that and the parties spoke on the phone,

during which the landlord asked for permission to enter the rental unit and show it to prospective tenants.

During the tenancy the landlord was sending workers who worked on the balcony and used parking required by the tenant's employees. Then the landlord said there were too many people there and that he had photographs. The tenant's agent testified that he asked why the occupants were being spied on and told the landlord to stop attending and sending workers who were photographing the tenant's employees. Then the tenant's agent ended the tenancy.

The tenant company needed a house for workers, and this one wasn't clean at the beginning of the tenancy but they didn't care much. The previous tenants moved out at the end of February.

The tenant's agent sent a cleaning company to clean at the end of the tenancy but the landlord still wasn't happy and still refused to return the security deposit. There was no damage at all; the tenants did not remove smoke detectors and didn't damage the drywall.

The chairs in photographs are from previous renters who didn't move their belongings out and the landlord promised to remove it within a week. Some was taken but most of it was left there. Once the tenant's agent realized the landlord was spying, he asked the landlord to remove the garbage. Copies of text messages have been provided for this hearing. Most of the garbage in the landlord's photographs was not due to the tenants, and the landlord was arriving almost every 3 days. All was good until the end of the tenancy. The tenancy agreement did not prohibit smoking, but the tenants only smoked on the balcony.

The carpet cleaning Invoice provided by the tenant is dated May 3, 2019 and the tenant's agent testified that he told the cleaners to clean and deal with smoke smell.

#### **Submissions of the landlord's Legal Counsel:**

The house was vandalized by removing the light fixture and smoke alarm. It was also left in a state of unfitness due to the smoke smell, causing the landlord to have to use extraordinary means to make it rentable, and did so as soon as possible.

#### **Submissions of the tenant's agent:**

The tenant company paid an extra amount for rent in order to have no hassles or utilities to deal with. The parties never talked about smoking and tenants never smoked

inside. The tenant's agent sent professional cleaners and the landlord still wasn't happy and tried to keep the security deposit.

### Analysis

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, there were no reports completed.

With respect to the landlord's claim for painting, I refer to Residential Tenancy Branch Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of interior paint at 4 years. The landlord in this case testified that it has been 4 or 5 years since the rental unit was last painted. Any monetary award for damages is meant to put the landlord in the same position as the landlord would be had no damage or loss occurred. In other words, to provide the landlord with the cost to re-paint after 4 or 5 years would provide the landlord with a newly painted suite when it wasn't newly painted at the beginning of this tenancy. Therefore, the landlord's claim for re-painting cannot succeed.

With respect to the landlord's claim for carpet cleaning, the tenant clearly hired a professional carpet cleaner. I have reviewed all of the evidence, and note that the Invoice provided by the tenant for cleaning also includes cleaning for odor removal, but also states there is no guarantee on stain and odor removal. The Invoice provided by the landlord contains a notation about smoke smell as well. However, this tenancy lasted less than 2 months. I am not satisfied that the landlord has established that any requirement to have it cleaned a second time resulted from the tenant's failure to comply with the *Act* or the tenancy agreement, or that having carpets cleaned a second time made any difference.

The tenant's agent testified that the company needed a house for workers, and this one wasn't clean at the beginning of the tenancy, but they didn't care. He also testified that the chairs in the landlord's photographs are from previous renters who didn't move their

belongings out and the tenant reminded the landlord about his promise to remove it within a week, and only some was removed. There were also contractors working on the rental property daily.

The photographs provided by the landlord are dated April 16, 21 and 23, but the tenancy ended on April 30, 2019. Two of the photographs taken outside in the yard are dated May 3, 2019. The tenant's photographs are dated May 5, 2019. Therefore, I accept the testimony of the tenant's agent that a professional cleaner was hired by the tenant and the landlord still wasn't happy and refused to return the security deposit.

I am not satisfied that the landlord has established that the rental unit could not be re-rented due to the tenant's failure to comply with the *Act* or the tenancy agreement, nor am I satisfied that the rental unit was in such a perfect condition at the beginning of the tenancy.

Given the photographs and other evidence, I am satisfied that the landlord's claim is in retaliation for the tenant's successful application resulting in double the amount of the security deposit. The landlord's application is dismissed.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 29, 2020

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Residential Tenancy Branch