



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: MNDCT, MNSD, FFT  
Landlord: MNDL-S, MNDCL-S, FFL

### **Introduction**

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenants' security deposit and pet damage deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants and landlord S.H. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Preliminary Issue- Service of Application for Dispute Resolution

Both parties agree that the landlords served the tenants with their application for dispute resolution and amendment via registered mail. I find that the landlords' application for dispute resolution and amendment were served on the tenants in accordance with section 89 of the *Act*.

The tenants testified that they served the landlords with their application for dispute resolution via registered mail on January 13, 2020 and that it was returned to them on February 1, 2020. The tenants provided the Canada Post tracking numbers to confirm the above mailings. The Canada Post tracking numbers are located on the cover page of this decision. The Canada Post website states that the items were unclaimed. The tenants provided the address they sent the packages to and landlord S.H.confirmed that the tenants sent the packages to the correct address. The landlord testified that she lives on a float house and her mail does not always make it to her house.

Section 89 of the *Act* allows service of an application for dispute resolution by registered mail. Section 90 of the *Act* states that a document given or served in accordance with section 89 [*special rules for certain documents*], unless earlier received, is deemed to be received if given or served by mail, on the 5th day after it is mailed.

I find that the tenants served the landlord with their application for dispute resolution in accordance with section 89 of the *Act*. Pursuant to section 90 of the *Act*, I find that the landlords were deemed served with the tenants' application for dispute resolution.

### Preliminary Issue- Admissibility of Evidence

The landlords uploaded evidence to the Residential Tenancy Branch dispute management system on several occasions, the last two occasions being April 2, 2020 and April 6, 2020, five days and one day, respectively, before this hearing. Both parties agree that the landlords served the tenants with the above evidence on April 3, 2020. The tenants testified that they did not have time to review and respond to that evidence.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state that evidence should be served on the respondent at least 14 days before the hearing. Section 3.15 of the *Rules* states that evidence should be served on the applicant at least seven days before the hearing. Section 3.11 the *Rules* state that if the arbitrator

determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the tenants testified that they did not have time to review and respond to the evidence contained in the landlord's evidence package served on April 3, 2020. I find that the landlords' late evidence deprived the tenants of their ability to review and respond to the landlords' evidence. I therefore exclude the landlords' evidence package that was served on the tenants on April 3, 2020, as it was unreasonably late.

#### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. Are the tenants entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
6. Are the tenants entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
7. Are the tenants entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on December 1, 2016 and ended on October 31, 2019. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants testified that they provided the landlord with their forwarding address via registered mail on November 18, 2020 and that the landlords received it on November 22, 2020. Landlord S.H. confirmed receipt of the tenants' forwarding address on or around November 22, 2020.

The landlords applied for dispute resolution on November 15, 2019 and did not return the deposits to the tenants.

Both parties agree that the landlords did not ask the tenants to complete a move in condition inspection report and that one was not completed. Both parties agree that the landlords and tenant B.K. attended at the subject rental property on November 1, 2019 to complete a move out inspection and inspection report. Both parties agreed that the inspection did not go as planned and that after some disagreements on the before and after state of the subject rental property, tenant B.K. sat in the kitchen while the landlords walked through the property. Both parties agreed that the move out condition inspection report entered into evidence by the landlords was completed after the tenant left the subject rental property.

The landlords entered into evidence an unsigned statement from a friend who helped them move out of the subject rental property just before the tenants moved in. The letter states that the subject rental property was very clean and in good condition when the landlords moved out on November 30, 2016.

The landlords entered into evidence a signed statement from their son which states that he was living with his parents when they moved out of the subject rental property on November 30, 2016 and that the house was in a clean and good condition.

The tenants entered into evidence a signed letter from tenant B.K.'s father which states that the subject rental property had not been cleaned to a move in ready standard when the tenants moved in.

Landlord S.H. testified that the following damages arose out of the tenancy:

<b>Item</b>	<b>Amount</b>
Painting	\$1,260.00
Carpet cleaning	\$630.00
Blinds- bay window	\$189.60
Blinds- bedroom	\$85.09
Toilet paper holder	\$11.75
Curtains- front bedroom	\$44.73
Curtains- back bedroom	\$44.73
Curtains- tv room	\$44.73
Garbage disposal	\$24.00
Move out clean	\$675.00
Cleaning supplies	\$46.56
<b>Total</b>	<b>\$46.56</b>

### Painting

Landlord S.H. testified to the following facts. The tenants left a lot of holes in the walls of the subject rental property, particularly in three rooms. The tenants patched many of the holes but did not paint them. A professional painter fixed the walls throughout the subject rental property and painted the three worst rooms. The landlords' son painted the rest of the subject rental property. The subject rental property was last painted in the fall of 2015. The landlords entered into evidence an invoice for painting in the amount of \$1,200.00 plus 5% GST. Photographs showing a large number of patched holes were entered into evidence. Photographs of some unpatched holes were also entered into evidence.

The tenants testified that they patched the holes they left in the walls.

Carpet Cleaning

Landlord S.H. testified to the following facts. The tenants left the carpets in a very dirty condition. The landlords hired a professional to clean the carpets. The landlords entered into evidence photographs of dirty bath water, which landlord S.H. testified was the water from the carpet cleaner after going over the carpets. An invoice in the amount of \$600.00 plus 5% GST was entered into evidence.

Photographs of the carpet entered into evidence show debris, they do not appear to have been vacuumed.

The tenants testified that they rented a carpet cleaning machine and washed the carpets after they moved out. A carpet cleaning receipt was entered into evidence. The tenants testified that they were not sure when the photographs entered into evidence were taken. Landlord S.H. testified that they were taken on or around November 2, 2019.

Blinds- bay window

Landlord S.H. testified to the following facts. The blinds in the bay windows were approximately five years old when the tenants moved in and were chewed on by the tenants' pet. A receipt in the amount of \$189.60 was entered into evidence.

The tenants agreed that they are responsible for the damage to the blinds.

Blinds- bedroom

Landlord S.H. testified to the following facts. The pull cord for the blinds in the bedroom is damaged and tangled to such an extent that they cannot be untangled. The landlords entered into evidence a photograph of the tangled cord. Landlord S.H. testified that the photograph shows that one string of the pull cord is looser than the other and is proof that they are damaged and do not function properly.

The tenants testified that all the blinds at the subject rental property were in good working order when they left the subject rental property and that the photograph entered into evidence by the landlord just shows that one string needs to be pulled through, not that it is broken. The tenants confirmed that they tangled the pull cord.

Landlord S.H. testified that the bedroom blinds were approximately five years old when the tenants moved in. The landlords entered into evidence an advertisement for new blinds in the amount of \$85.09.

Toilet paper holder

Landlord S.H. testified that the tenants broke the toilet paper holder. The tenants testified that the toilet paper holder broke, but not through any fault of their own.

The landlord entered into evidence a receipt for a new toilet paper holder in the amount of \$11.75.

Curtains- front bedroom

Landlord S.H. testified that the curtains in the front bedroom were covered in cat hair to such an extent that she threw them out. A photograph of same was entered into evidence. Landlord S.H. did not know how old the curtains were. A receipt in the amount of \$44.73 for new curtains was entered into evidence.

The tenants agreed that they are responsible for the damage to the curtains.

Curtains- back bedroom

Landlord S.H. testified that the curtains in the back bedroom were covered in cat hair to such an extent that she threw them out. No photographs of the back-bedroom curtains were entered into evidence. Landlord S.H. did not know how old the curtains were. A receipt in the amount of \$44.73 for new curtains was entered into evidence.

The tenants testified that there were no curtains in the back bedroom when they moved in and so they bought curtains which they left at the subject rental property when they moved out.

Curtains- tv room

Landlord S.H. testified that the tenants ripped the curtains in the tv room. A photograph of same were entered into evidence. The tenants testified that the tv room did not have curtains when the moved in and the curtains left behind in the tv room when they moved out were their own.

Garbage disposal

The landlord testified that the tenants left a dresser and a few other items in the subject rental property which then had to be hauled to the dump. A dump receipt in the amount of \$24.00 was entered into evidence.

The tenants testified that they left the dresser at the subject rental property but would have retrieved it if the landlord had asked them to.

Move out clean

Landlord S.H. testified that the subject rental property was left in a filthy condition and that it took her and landlord R.J. 27 hours to clean. The landlords are seeking payment for their time at a rate of \$25.00 per hour. The landlords entered into evidence a log off all the hours spent cleaning the subject rental property. The landlords entered into evidence numerous photographs from the subject rental property which show that it was in a dirty condition.

The tenants testified that they cleaned the subject rental property before they moved out. In response to the landlords' photographs, the tenants testified that they were not sure when the photographs were taken. Landlord S.H. testified that they were taken on or about November 2, 2019.

Cleaning supplies

The landlord testified that she spent \$46.56 on cleaning supplies. Receipts for same were entered into evidence.



### Tenants' Claim

The tenants testified that they are seeking the return of double their security deposit and pet damage deposit from the landlords.

The tenants testified that the landlords agreed to let them use the garage during the course of their tenancy, but the landlords never removed their belongings from the garage. The tenants testified that they are seeking a reduction of 10% of their rent for the duration of their tenancy (35 months) which amounts to a reduction of \$7,350.00, for loss of use of the garage. To evidence the agreement between the landlord and the tenants, the tenants provided an email dated October 27, 2016 from landlord S.H. to tenant B.K. which states in part:

I also want to confirm that we will be using the garage as storage at least until we figure out what we're doing with the items that we can't move to our new place.

The tenancy agreement, which was signed on October 29, 2016, makes no mention of the garage. The tenants testified that during the course of the tenancy they asked the landlords once verbally and a second time via email, to have use of the garage. The email was not entered into evidence. The tenants testified that after each request the landlords said that they were not going to move their belongings and the tenants could not use the garage.

Landlord S.H. testified that she and landlord R.J. never agreed to allow the tenants to use the garage at the subject rental property. Landlord S.H. testified that, as per the email entered into evidence by the tenants, if they found alternative storage and moved their belongings out of the garage, then they would allow the tenants to use the garage. Landlord S.H. testified that they never told the tenants that they would definitely move their belongings out.

### Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the claimant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

### Painting

Residential Tenancy Policy Guideline #40 (PG #40) is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

PG #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenants moved out, there was no useful life left on the paint. I therefore find that since the useful life of the paint was expired when the subject rental property was re-painted, the landlords are not entitled to recover the cost of painting from the tenants.

### Carpet Cleaning

Section 37(2) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlords entered into evidence photographs of the subject rental property that landlord S.H. testified were taken on or around November 2, 2019. The tenants testified that they were not sure when the photographs were taken. I found the landlords testimony to be forthright and honest. I accept landlord S.H.'s testimony that the photographs were taken on November 2, 2019. I find the move out condition inspection report to be of no value as the parties did not complete it together and as there was no move in condition inspection report, there is nothing to compare the move out condition inspection report to.

Landlord S.H. testified that the carpets at the subject rental property were very dirty and did not appear to have been cleaned. The tenants testified that they rented a carpet cleaner and cleaned the carpets when they moved out. Based on the receipt for the

carpet cleaner entered into evidence by the tenants, I find that the tenants rented a carpet cleaner to clean the subject rental property; however, based on the photographs, I find that the tenants did a very poor job which necessitated the landlords to re-clean the carpets. I therefore find that the tenants did not comply with section 37 of the *Act* and the landlords suffered damages in the amount of \$630.00 which is evidenced by the invoice for same. I find that the landlords acted reasonably in hiring a professional to clean the carpets and are entitled to recover \$630.00 from the tenants.

#### Blinds- bay window

The tenants testified that they are responsible for the damage to the bay window blinds. PG #40 states that the useful life of drapes and venetian blinds is 10 years (120 months). At the time the tenants moved out, the blinds were approximately eight years old and there was approximately 24 months of useful life left on the blinds. I find that since the blinds required replacing after only eight years (96 months), the tenants are required to pay according to the following calculations:

$$\$189.60 \text{ (cost of blinds)} / 120 \text{ months (useful life of blinds)} = \$1.58 \text{ (monthly cost)}$$
$$\$1.58 \text{ (monthly cost)} * 24 \text{ months (expected useful life of blinds after tenants moved out)} = \$37.92$$

#### Blinds- bedroom

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 onus to prove their case is on the person making the claim.

Based on the photographs entered into evidence it is not possible to determine if the blinds are broken. As the landlords bear the burden of proof, I find that the landlords have not proved that the bedroom blinds are damaged; however, they have proved that the tenants tangled the pull cord because the tenants agreed that they did.

Residential Tenancy Policy Guideline 16 states that 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 that the landlords are entitled to nominal damages in the amount of \$20.00.

Toilet paper holder

I find that the landlords have not proved, on a balance of probabilities that the toilet paper holder broke due to the actions of the tenants rather than regular wear and tear. I therefore dismiss the landlords' claim for the cost of the toilet paper holder.

Curtains- front bedroom

The tenants testified that they are responsible for the damage to the front bedroom curtains. Landlord S.H. testified that she did not know how old the front bedroom curtains were; I therefore cannot complete a useful life calculation and cannot determine the proper quantification of the landlords' damages. Nonetheless I find that the landlords suffered a loss and I award them \$10.00 in nominal damages for the front bedroom curtains.

Curtains- back bedroom

I find that the landlords have failed to prove, on a balance of probabilities, that the subject rental property had curtains in the back bedroom when the tenants moved in. No move in condition inspection report was completed which would have provided clarity on this issue. I therefore dismiss the landlords' claim for the back bedroom curtains.

Curtains- tv room

I find that the landlords have failed to prove, on a balance of probabilities, that the subject rental property had curtains in the tv room when the tenants moved in. No move in condition inspection report was completed which would have provided clarity on this issue. I therefore dismiss the landlords' claim for the tv room curtains.

Garbage disposal

Section 37(1) of the *Act* states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

The tenants moved out of the subject rental property on October 31, 2019. It was the tenants' responsibility at that time to remove all their possessions which they failed to do. I find that the tenants' failure to comply with section 37(1) of the *Act* resulted in the landlord suffering a loss which is evidenced by the garbage dump receipt. I find that the landlords acted reasonably in disposing of the tenants' abandoned items. I find that the landlords are entitled to recover the garbage dump cost in the amount of \$24.00 from the tenants.

Move out clean and cleaning supplies

Section 37(2) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As stated earlier in this decision, I accept landlord S.H.'s testimony that the photographs showing the cleanliness of the subject rental property, were taken on November 2, 2019. Based on those photographs I accept landlord S.H.'s testimony that it took her and landlord R.J. 27 hours to clean the subject rental property. I find that the tenants breached section 37 of the *Act* by leaving the subject rental property dirty. I find that the landlord suffered a loss due to the tenants' failure to clean and that the landlords have quantified that loss by keeping a record of their cleaning hours and providing receipts for their cleaning material. I find that \$25.00 per hour is reasonable. I find that the landlords are entitled to \$675.00 for cleaning the subject rental property and \$46.56 for the cost of cleaning supplies.

Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and

inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that 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 does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the “Regulations”), the second opportunity must be in writing.

Landlord S.H. testified that no joint move-in condition inspection was conducted and that no move in condition inspection report was completed. Responsibility for completing the move in inspection report rests with the landlords. I find that the landlords did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act*.

Since the landlords did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord’s eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished.

Section 38 of the *Act* requires the landlords to either return the tenants’ security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants’ provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have 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*.

In this case, while the landlords made an application to retain the tenants’ security deposit and pet damage deposit within 15 days of receiving the tenants’ forwarding address in writing, they are not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, the tenants are entitled to receive double their security deposit and pet deposit as per the below calculation:

$\$1,050.00$  (security deposit) \* 2 (doubling provision) =  $\$2,100.00$

$\$1,050.00$  (pet damage deposit) \* 2 (doubling provision) =  $\$2,100.00$

**Total = \$4,200.00**

*Rent Reduction- Garage*

I find that the tenants have not proved, on a balance of probabilities, that the landlords agreed to provide the tenants with use of the garage as part of their tenancy agreement. I find that the October 27, 2019 email between the parties, which was sent prior to the signing of the tenancy agreement, clearly states that the landlords planned on retaining the garage for their use; however, if that changed, and the landlords removed their property, the tenants would be permitted to use the garage. I find that the landlords did not agree to provide the tenants with use of the garage. I therefore dismiss the tenants' claims for a rent reduction.

I note that the landlords were not adversely affected by hearing the tenants' claim as the rent reduction claim was dismissed and the doubling of the security and pet damage deposits would have been made under the landlords' claim as they applied to retain the tenants' deposits. When a landlord makes an application to retain the tenants' deposits, the arbitrator will determine at that time if the tenant is entitled to the doubling provision under section 38 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 of the *Act*. I find that the landlords monetary claim will be offset from the tenants' monetary claim.

As both parties were successful in their applications for dispute resolution, I find that, pursuant to section 72 of the *Act*, neither party is entitled to recover their filing fee from the other.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

<b>Item</b>	<b>Amount</b>
Doubled security and pet damage deposits	\$4,200.00
Less carpet cleaning	-\$630.00
Less blinds- bay window	-\$37.92
Less blinds- bedroom	-\$20.00
Less curtains- front bedroom	-\$10.00
Less garbage disposal	-\$24.00
Less move out clean	-\$675.00
Less cleaning supplies	-\$46.56
<b>Total</b>	<b>\$2,756.52</b>

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: April 08, 2020

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Residential Tenancy Branch