



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for damage to the rental unit;
- Authorization to withhold all or a part of the Tenant’s security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords and the Tenant’s Agent (the “Agent”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Agent confirmed the Tenant’s receipt of the Notice of Dispute Resolution Proceeding package, including a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Landlords. The Agent also confirmed that no documentary evidence was served on the Landlords or submitted to the Residential Tenancy Branch (the “Branch”) in relation to this Application.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the Landlords, a copy of the decision and any orders issued in their favor will be emailed to them at the email address confirmed in the hearing. At the request of the Agent, a copy of the decision will be emailed to the Tenant at the e-mail address provided in the hearing and mailed to their mailing address listed in the Application.

### Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

### Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?

Are the Landlords entitled to withhold all, or a part, of the Tenant’s security deposit in full or partial repayment of any compensation owed?

If the Landlords were not entitled to withhold the Tenant’s security deposit, is the Tenant entitled to the return of all, or double, the amount of their deposit?

Are the Landlords entitled to recovery of the filing fee?

### Background and Evidence

The parties agreed that the tenancy began on November 15, 2018, and ended by way of mutual agreement on November 15, 2019. There was also no dispute between the parties that the rental unit was in new condition at the start of the tenancy, that a condition inspection and report were completed in compliance with the *Act* and the regulations at the start and end of the tenancy, that the Tenant provided their forwarding address to the Landlords in writing on November 14, 2019, and that the Tenant paid a \$675.00 security deposit, which the Landlords still hold.

The Landlords stated that the rental unit was not properly cleaned at the end of the tenancy, necessitating 8 hours of cleaning by the Landlords. The Landlords stated that they are not perfectionist but that the rental unit was extremely neglected by the Tenant and that everything in the rental unit was either not cleaned by the Tenant or required re-cleaning. They stated that the walls needed to be cleaned several times before they could be re-painted due to wax, grease, and a general lack of cleaning over time, and that the floors needed to be scrubbed and cleaned several times due to sticky residue. They sought \$38.61 for the the cost of cleaning supplies and \$400.00 in labour costs for cleaning (8 hours at \$50.00/hour, \$25.00/person). In support of this testimony the

Landlords submitted a video taken of the rental unit just prior to the start of the tenancy, a video taken after the move-out condition inspection, photographs of the rental unit at the end of the tenancy, the condition inspection report, and a receipt for the cost of cleaning supplies.

The Agent stated that they visited the rental unit just prior to the end of the tenancy and denied that the rental unit was not reasonably clean, stating that there may have been a few bits of dust, and a little wax on one wall but other than that, the rental unit was reasonably clean. The Agent stated that the Tenant had hired cleaners to clean the rental unit at a cost of \$20.00 per hour and that the cleaners had cleaned the rental unit for 5 hours on November 13, 2019. As a result, the Agent argued that the Landlords are not entitled to cleaning costs. A receipt for the cost of cleaning was not submitted by the Tenant or Agent.

The Landlords stated that there were lots of dents, gouges, and scuffs on the walls throughout the rental unit, far more than would constitute reasonable wear and tear for the length of the tenancy. They also stated that there was wax spilled on one wall and that the walls had to be cleaned several times before they could be repaired and painted. The Landlords sought \$643.89 for the cost of the painting as they stated that the rental unit had been painted just prior to the start of the tenancy and that repairs, and painting were necessary due to the wall damage caused by the Tenant. In support of their testimony the Landlords submitted a video taken of the rental unit just prior to the start of the tenancy, a video taken after the move-out condition inspection, photographs of the rental unit at the end of the tenancy, the condition inspection report, proof the rental unit was painted just prior to the tenancy, and an invoice for painting the rental unit after the tenancy ended.

The Agent for the Landlord denied that the walls were damaged in a way that would constitute more than reasonable wear and tear. The Agent stated that they had visited the rental unit on several occasions throughout the tenancy, once just prior to the end of the tenancy, and that the walls were undamaged. The Agent stated that the Tenant had not even hung any artwork or put nail holes in the walls and that due to their employment, the Tenant had spent several months away from the rental unit. As a result, the Agent argued that the Landlords are not entitled to painting costs because the walls were either undamaged, or any damage constitutes reasonable wear and tear.

The Landlords also sought \$569.71 for depreciation to the laminate flooring. The Landlords stated that new flooring was installed at the start of the tenancy and that the floors are so scuffed and dulled from the Tenant's lack of care either during the tenancy,

or during move-out, or both, that they have depreciated by approximately 1/3, based on an average life span of 30 years. The Landlord stated that this damage constitutes more than reasonable wear and tear for the length of the tenancy. In support of their testimony the Landlords submitted a video taken of the rental unit just prior to the start of the tenancy, a video taken after the move-out condition inspection, photographs of the rental unit at the end of the tenancy, the condition inspection report, and proof that new flooring was installed just prior to the start of the tenancy and the cost of that flooring. The Landlords stated that the \$569.71 sought represents 1/3 the cost of the flooring and installation just prior to the start of the tenancy and that they are seeking depreciation rather than repair or replacement costs as it is difficult to repair or replace only sections of the flooring.

The Agent stated that floors may have had a little dirt on them but denied that they were scuffed or damaged whatsoever by the Tenant. The Agent stated that the Tenant had only lived there one year, and was overseas a lot, and as a result, could not have damaged the floors as alleged by the Landlords. The Agent also stated their belief that the Landlords are simply trying to bring the rental unit up to their own unreasonable standards as they are, or have, already moved back into the rental unit as their own residence. The Agent therefore denied that the Landlords are entitled to any depreciation costs for the floor stating that the flooring is undamaged and the Landlords are trying to take advantage of the Tenant.

### Analysis

Section 7 of the *Act* states if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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

I am satisfied based on the testimony and documentary evidence before me that some efforts were made by the Tenant to clean the rental unit at the end of the tenancy, however, I find that these efforts fall significantly short of meeting the standard for reasonable cleanliness. The move-out condition inspection report states that the entry, kitchen, living room, stairwell, bathroom, and master bedroom are dirty and that the exterior could have been cleaner. The Tenant signed the move-out condition inspection report on November 14, 2019, and agreed that it accurately reflects the condition of the

rental unit. Further to this, the photographic and video evidence submitted by the Landlords shows that the entire rental unit needed cleaning. More specifically, the stove and oven were very dirty and appeared not to have been cleaned at all, the floors were exceptionally dirty and although they may have been swept, they were not scrubbed or thoroughly cleaned, the baseboards and cupboards were dirty and dusty, the bathroom had not been cleaned thoroughly, the washer and dryer appear not to have been cleaned, and there was wax splashed across one wall and the floor.

As a result, I dismiss the Agent's testimony that the rental unit was reasonably clean and find that the Tenant breached section 37 (2) of the *Act* by failing to leave it reasonably clean at the end of the tenancy. I find that the costs sought by the Landlords for cleaning are reasonable and I therefore grant their claim for \$438.61 in cleaning costs.

I am also satisfied based on the testimony and documentary evidence before me that the walls of the rental unit were damaged beyond what can be considered reasonable wear and tear over a one year tenancy. Residential Tenancy Policy Guideline #1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. It also states that tenants are responsible for washing scuff marks, finger prints, etc. off the walls and for all deliberate or negligent damage to the walls.

From the condition inspection report and the photographic and video evidence submitted by the Landlords I can see numerous scuffs, gouges, and dents throughout the entire rental unit, far more than would be expected for the short duration of this tenancy if the Tenant used the rental unit in a reasonable fashion. I am also satisfied that the rental unit was in new condition at the start of the tenancy. Although I do not believe that the Tenant deliberately damaged the walls, I find that the Tenant was negligent either during the course of the Tenancy or at the time of move-in/out, causing the damage to the walls. As I am satisfied that the damage to the walls does not constitute reasonable wear and tear, I therefore find that the Tenant is responsible for the costs of repairing and repainting the damaged walls.

Having reviewed the cost of painting the rental unit prior to the tenancy, as well as the invoice for painting the rental unit after the end of the tenancy, I am satisfied that the costs sought by the Landlords for this repair are reasonable. As a result, I grant the Landlords' claim for \$643.89 in painting costs.

Although the Landlords also sought \$569.71 in compensation for depreciation to the laminate flooring, I am not satisfied that they are entitled to these costs. Although the move-out condition inspection report notes that the floors are scratched in the master bedroom, kitchen and living room, in the video taken after the condition inspection the Landlords point out only one scratch in the kitchen area. No photographs have been submitted of any other floor damage and no other scratches or gouges can be seen by me in the video. Further to this, although the Landlords stated that the floors are also significantly dulled and depreciated, they looked identical to me, aside from cleanliness and the one scratch, in the videos taken before the start of the tenancy and after the end of the tenancy. As a result, I am not satisfied that the floors are damaged aside from the one scratch, or that any additional damage, should it exist, constitutes more than the reasonable wear and tear you would expect of a brand new floor after someone used it for a year and moved into the rental unit and then out again. As a result, I dismiss the Landlords' claim for \$569.71 in floor depreciation costs without leave to reapply.

Pursuant to section 72 of the *Act*, I grant the Landlords recovery of the \$100.00 filing fee. Having made the above findings, I will now turn my mind to the matter of the Tenant's security deposit.

Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), of the *Act*, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

There is no evidence before me that either party extinguished their rights in relation to the security deposit and the parties agreed in the hearing that the Tenant provided their forwarding address in writing to the Landlord on November 14, 2019, and that the tenancy ended on November 15, 2020. Although the Landlords filed their Application on November 15, 2019, they paid their filing fee on November 19, 2020, and as a result, I find that their Application was not considered made until November 19, 2019. Based on the above, I find that the Landlords complied with section 38 of the *Act* by filing their Application seeking to retain the Tenant's security deposit for the costs of cleaning and repairs on November 19, 2019.

I have already found above that the Landlords are entitled to \$1,182.50 in compensation from the Tenant for cleaning and repair costs, as well as recovery of the filing fee.

Section 72 of the *Act* states that if I order a tenant to pay any amount to landlord, I may order that the payment be deducted from the security deposit. As a result, I authorize the Landlords to withhold the Tenant's \$675.00 security deposit in partial repayment of the \$1,182.50 owed to them by the Tenant. Pursuant to section 67 of the *Act*, the Landlords are also entitled to a Monetary Order in the amount of \$507.50 for the remaining balance owed.

### Conclusion

Pursuant to sections 72 and 67 of the *Act*, I grant the Landlords authorization to withhold the Tenant's \$675.00 security deposit and grant them a Monetary Order in the amount of \$507.50. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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 20, 2020

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Residential Tenancy Branch