



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      MNDL-S, FFL  
                                 MNSD, FFT

### 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants were served with the landlord's application for dispute resolution via registered mail on December 19, 2019. Both parties agree that the landlord was personally served with the tenants' application for dispute resolution on December 18, 2019. I find that both parties were served in accordance with section 89 of the *Act*.

### **Issues to be Decided**

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
4. Is the landlord 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 landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2019 and ended on November 30, 2019. Monthly rent in the amount of \$1,650.00 was payable on the first day of each month. A security deposit of \$825.00 and a pet damage deposit of \$825.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord applied for dispute resolution on Monday December 16, 2019. Both parties agree that the landlord sent the tenants \$974.90 via e-mail money transfer on December 16, 2019; however, due to a bank hold, the tenants were not able to deposit it until December 17, 2019.

Both parties agree that the landlord's agent and the tenants completed a move in condition inspection report at the beginning of the tenancy. The move in condition inspection report was not entered into evidence by either party.

Both parties agree that the landlord fired her agent just prior to the move out condition inspection. Both parties agree that the landlord and the tenants completed a move out condition inspection report on November 30, 2019 and that this report was different than the report completed on move in. The move out condition inspection report completed was RTB form #27 and was entered into evidence. The move in section of the report

entered into evidence is blank. Both parties agree that the tenants' forwarding address was provided to the landlord on the move out condition inspection report on November 30, 2019.

Section Z of the Tenancy Agreement states that the tenants are responsible for the following damages:

1. Payment of hydro bill when received/notified;
2. Complete mowing of all lawns;
3. More cleaning windows, interior bay window and heater, wash dining room floor, laundry room full clean.

The landlord and Tenant K.O. signed the move out condition inspection report. Tenant K.O. testified that she agreed with the contents of the move out condition inspection report.

The landlord testified that the following damages arose from this tenancy:

| <b>Item</b>       | <b>Amount</b>     |
|-------------------|-------------------|
| Cleaning          | \$120.00          |
| Re-finish floor   | \$ 360.00         |
| Electrical repair | \$ 417.76         |
| Hydro bill        | \$160.10          |
| <b>Total</b>      | <b>\$1,057.86</b> |

### Cleaning

The landlord testified that the tenants did not properly clean the subject rental property when they moved out. The landlord testified that the tenants did not clean the windows, screens, fireplace, sliding glass doors, bathroom or laundry room. The landlord testified that she cleaned the subject rental property for four hours and is seeking \$30.00 per hour for a total of \$120.00.

The move out condition inspection report states that the following areas were dirty:

- The living room heater;
- The master bedroom windows; and
- The utility room.

The move out condition inspection report does not state that the fireplace, sliding glass doors, or bathroom were dirty. No photographs were entered into evidence. The landlord testified that she spent 1.5 hours cleaning the bathroom.

The tenants testified that the subject rental property was very clean when they moved out and that the tenants hired a cleaner who cleaned the subject rental property for 5.5 hours. The tenants testified that the bathroom was very clean at the end of the tenancy. The tenants testified that the landlord was very picky at the end of the walk through and started to complain about a few minor details such as the windows. The tenants testified that while they disagreed with the landlord's complaints, they agreed to hire a cleaner to re-attend at the subject rental property to clean the areas the landlord indicated on the move out condition inspection report but the landlord refused and said that she would hire her own cleaner. The tenants testified that they disputed the necessity of further cleaning.

#### Re-finish floor

The landlords testified that the wood floors at the subject rental property were in good condition when the tenants move in and were scratched when the tenants moved out. The landlord entered into evidence an estimate in the amount of \$360.00 to re-finish the floors. The move out condition inspection report states that the floors in the living room and dining room were scratched.

The tenants testified that the floors were scratched when they moved in.

#### Electrical repair

The landlord testified to the following facts. The tenants removed a light fixture and its corresponding light switch and left them on the floor. The tenants left live wires dangling from the ceiling where the fixture used to be. The tenants wrecked a plug in the living room which had scorch marks on it. The electrician told the landlord that it was scorched because it was used to carry a heavy load such as a space heater. The light switch in the carport was broken off and had to be replaced.

The landlord entered into evidence an invoice and a quote from an electrician. The invoice is dated December 19, 2019 in the amount of \$163.74 and states in part:

- Repairs to rental unit

- Install temporary light fixture to cover exposed live wiring left by tenant.
- Original fixture mounting hardware missing and fixture left on floor
- Replace heat damaged outlet in living room likely caused by use of heavy load. Electric space heater or fire place?
- Replace original light switch in location left open with exposed live wiring. Likely removed to install dimmer switch.

The quote is dated May 4, 2020 in the amount of \$157.50 and states in part:

- Installation of new light fixture. Require to replace original fixture removed by tenant and not replaced. Original mounting hardware lost.

The landlord testified that she has not yet purchased a new light fixture to be installed but a local store has a light fixture worth \$104.32 on hold for her. The landlord entered into evidence an advertisement for a light switch in the amount of \$92.99. The landlord is seeking this amount plus tax totalling \$104.32.

Tenant M.B. testified that during the tenancy he turned the light switch controlling the chandelier on and the light went poof. Tenant M.B. then took the chandelier down and left all the pieces on the floor. Tenant M.B. testified that he capped the wires and did not leave live wires dangling. Tenant M.B. testified that the living room plug had char marks when they moved in and they did not use the plug. Tenant M.B. testified that the carport light switch may have been damaged by the tenants' firewood, but he did not know.

Tenant K.O. testified that the second receipt is from May 2020, nearly six months after the tenancy ended and the tenants should not be responsible for damages that occurred so long after the tenancy ended. The landlord testified that the repairs were not made right away because she did not have the money.

#### Hydro bill

The landlord testified that the tenants owe one hydro bill in the amount of \$160.10. The hydro bill was entered into evidence. The tenants testified that they are not disputing this claim.

### Tenant's Claim- Double Security Deposit

The tenants testified that the landlord did not return their security deposit within fifteen days of the end of the tenancy so they are entitled to recover double their security deposit from the landlord.

The landlord testified that since the 15<sup>th</sup> day fell on a Sunday, she was permitted to file her claim and return a portion of the deposit on the following Monday, December 16, 2019.

### Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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 tenant 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 claim fails.

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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 21 of the Residential Tenancy Act Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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.

### Cleaning

Section 37(2)(a) 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.

I find that neither party provided a preponderance of evidence to contradict the move out condition inspection report. When the testimony of the parties differs, I rely on the move out condition inspection report.

Based on the move out condition inspection report I find that the bathroom, fireplace and sliding glass doors were clean.

Based on the move out condition inspection report I find that the following areas of the subject rental property required cleaning:

- living room heater;
- master bedroom windows;
- utility room;
- interior bay window and heater; and
- dining room floor

I find that the tenants breached section 37(2) of the *Act* by failing to clean the above areas. I find that the landlord suffered a loss from this non-compliance; however, I find that the landlord is not entitled to recover damage for time spent cleaning areas not

proved to have been dirty at the end of the tenancy. The landlord did not provide a breakdown of how long she spent cleaning each area. Therefore, I find that the landlord has not proved the value of the loss she suffered. Nonetheless I find that the landlord has proved that the tenants breached the *Act* and she suffered a loss as a result. I therefore find that the landlord is entitled to recover nominal damages for cleaning in the amount of \$80.00.

#### Re-finish floor

The landlord testified that the tenants damaged the flooring. The tenants testified that the floors were damaged when they moved in. The landlord did not provide any evidence other than her testimony, to prove the move in condition of the floors. I find that the landlord has failed to prove that the tenants damaged the floors. The landlord's claim for \$360.00 is therefore dismissed.

#### Electrical repair

Based on the testimony of the parties I find that tenant M.B. removed a chandelier and light switch and left the pieces on the floor. Based on the electrician invoices dated December 19, 2019, I find that the tenant left live wires at the subject rental property. I find that on a balance of probabilities, the tenant lost pieces of the chandelier left on the floor.

The landlord testified that the tenants damaged the living room plug. The tenants testified that the plug was damaged when they moved in. I find that the landlord has not proved the move in condition of the living room plug. I find that the landlord has not proved on a balance of probabilities that the tenants damaged the living room plug.

The landlord testified that the tenants damaged the light switch in the car port. Tenant M.B. testified that his fire wood may have damaged it. I find, on a balance of probabilities, that the tenants damaged the light switch in the car port.

The landlord testified that she has not replaced the light fixture taken down by the tenants because she did not have the funds. The landlord entered into evidence a quote for the light fixture installation and an advertisement for a new light fixture. I accept the landlord's testimony that she has not yet purchased and installed a new light fixture



because she did not have the funds to do so. I find that the landlord was not obligated to immediately make repairs if she was financially unable to do so.

Based on my above findings, I find that the landlord is entitled to recover 70% of the electrical invoice. I have deducted 30% for the cost of fixing the living room plug. 70% of \$163.74 is \$114.62.

I find that the landlord is entitled to recover the cost of the installation of a new light fixture in the amount of \$157.50 because the tenants removed it and the landlord has proven the value of her loss.

Residential Tenancy Policy Guideline #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. Light fixtures have a useful life of 15 years. Neither party provided evidence as to the age of the light fixture and whether or not there was some useful life left so I am not able to complete a useful life calculation on the light fixture. Nonetheless, I am satisfied that the landlord suffered a loss as a result of the tenants removing the light fixture and losing pieces of it. I therefore find that the landlord is entitled to \$30.00 in nominal damages for the light fixture.

#### Hydro bill

As both parties agree that the tenants owe the landlord \$160.10 for their last hydro bill, I award the landlord \$160.10.

#### Tenant's Claim- Double Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Residential Tenancy Branch Rules of Procedure Defines "Days" as follows:

- a. If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- b. If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- c. In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.
- d. In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

This definition applies whether or not an act can be carried out using an online service.

In this case, the time for applying to the Residential Tenancy Branch for authority to retain the tenants' deposits fell on a Sunday (December 15, 2019) which is a day when the Residential Tenancy Branch and Service BC are not open during regular business hours. Therefore, the time for the landlord to apply was extended to Monday December 16, 2019. The landlord applied for authority to retain the tenants' deposits on December 16, 2019. I find that the landlord applied to retain the tenants' deposits in accordance with section 38 of the *Act* and the tenants are therefore not entitled to the return of double their security and pet damage deposits.

The landlord retained \$675.10 from the tenants' deposits. Pursuant to my above decision, the landlord is entitled to keep \$542.22 of the retained deposit and must return the remaining \$132.88 to the tenants.

As both parties were successful in their claims, I find that neither party will be awarded their filing fee from the other, pursuant to section 72 of the *Act*.

**Conclusion**

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

| <b>Item</b>                             | <b>Amount</b>   |
|---|-----------------|
| Amount of deposits retained by landlord | \$675.10        |
| Less cleaning                           | -\$80.00        |
| Less electrical repairs                 | -\$302.12       |
| Less hydro bill                         | -\$160.10       |
| <b>TOTAL</b>                            | <b>\$132.88</b> |

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: May 21, 2020

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Residential Tenancy Branch