



# 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 was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$33,000.00 for damage to the unit, site or property, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The hearing commenced on April 27, 2020 and after 58 minutes, the hearing was adjourned to allow additional time to consider testimony and documentary evidence from the parties. An Interim Decision dated April 27, 2020 was issued, which should be read in conjunction with this decision.

The tenants confirmed that they were served with and had the opportunity to review the landlord's documentary evidence. The tenants' documentary evidence was excluded in full as it was not served on the landlord contrary to the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

### Preliminary and Procedural Matter

The parties confirmed their respective email addresses during the hearing. The parties confirmed their understanding that the decision would be emailed to the parties.

Any applicable orders will be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2018. Monthly rent was \$2,450.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,225.00 at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim for \$33,000.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Clean up of property	\$6,500.00
2. Carpet removal	\$1,200.00
3. Appliances	\$2,500.00
4. Kitchen replacement	\$7,500.00
5. Hardwood floor refinish	\$2,500.00
6. Painting	\$3,000.00
7. Bathrooms	\$3,500.00
8. Carpet replacement	\$4,000.00
9. Door replacement	\$2,300.00
<b>TOTAL</b>	<b>\$33,000.00</b>

Firstly, the tenants did not agree to any of the items being claimed by the landlord.

Regarding item 1, the landlord has claimed \$6,500.00 for the cost to clean up the rental property after the tenants vacated the rental unit. There is no dispute that the landlord did not complete an incoming Condition Inspection Report (CIR) or an outgoing CIR at the start or at the end of the tenancy, which I will address later in this decision.

The landlord referred to some before and after photos in support of this portion of their claim. In the first photo presented, the “before bedroom1” photo is not dated, very small and has furniture and personal items in the photo. The landlord was asked if the rental unit was provided furnished and the landlord confirmed that it was not rented furnished. The photo shows a bed, dresser, TV with TV stand and other personal items covering most of the floor and portions of two walls. Two of the other walls cannot be seen in the photo and a small portion of flooring can be seen. The landlord confirmed there was no after photo to compare the same angle of the before photo.

The next photos presented for item 1 by the landlord was “before living room” and “before living room 2” and were small photos showing a furnished unit with a couch, at least 4 area rugs covering a large portion of the flooring, an ottoman, TV, TV stand, pictures, and drapes. The area rugs covered the portions of worn flooring that were shown uncovered in the after photos entitled “after living 1” and “after living 2”, where no area rugs were shown. The second photo “after living 2” was a small portion of flooring which did not indicate what area of the room it was showing as it was a close up of the flooring.

The landlord presented a quote dated October 8, 2019, which states \$6,500.00 for “clean up of renter’s possessions” and does not provide a breakdown as to the number of hours involved, the hourly rate or the items removed. The landlord claims that all work on the invoice was completed, however, there was no final invoice provided.

The landlord presented 2 kitchen photos, which the landlord stated were taken before the tenants moved into the rental unit. The 2 photos of the kitchen are small and taken from a distance. There are no close ups of the kitchen taken before the tenancy started. The landlord presented 3 after photos of the kitchen, however the first photo shows an area that was not shown on the 2 before photos of the kitchen. The second after photo in the kitchen show a dirty stovetop with personal items on the stove left behind by the tenants including a jug of oil on the stove between the stove elements. The third after photo of the kitchen shows a garbage bag, some debris on the flooring and some scuffs on the cabinets.

The landlord then presented a before basement photo, which shows a partially painted ceiling, two couches, two Adirondack chairs, a coffee table, small fridge, and many storage totes, which cover a large portion of the carpet area. The photo was taken at a distance was very small. The landlord presented 4 after photos of the basement, which show a bed left behind and a small bedside table, and some personal items and some debris on the carpet. There are no obvious stains on showing on the carpet of the small

after photo of the basement as claimed by the landlord. The second after basement photo shows some carpet staining and bag of garbage and some boxes and a couch left behind by the tenants, in addition to other smaller personal items that appear of no value. The third after basement photo is a close up of a glass table left behind with something spilled on the table, and some staining on the carpet below it, and a carpet that does not appear to have been vacuumed and a box of items and a piece of wood on the carpet. The fourth after basement photo shows a different angle, which shows another box of items left behind by the tenant and two cushions for the couch and debris on the carpet and fireplace area.

In addition, the landlord presented a before photo of the outside of the rental unit, which is small and taken at a distance and does not show much of the driveway area to the left of the home. The landlord then presented an after photo of the outside driveway area, which shows a scooter with no rear wheel, and other items include a jack stand, tire, box and other items that are too blurry to determine. The landlord did not provide before photos of the laundry area and did present some after laundry photos which appear to show a mop, boxes, a mini fridge, a toy scooter, a cabinet, some boxes, a pile of clothing, some plastic bags, some pieces of wood, and other small items that could not be determined due to the small size of the photo.

The landlord then presented before and after photos of the lower and main bathrooms. The before photos show two dated bathrooms, one with faux wood panelling and dated laminate countertops and the other with a dated pink bathtub, and what appears to be a dated sink and faucet. The after bathroom photos show a sink that was not thoroughly cleaned, a dirty toilet, and dirty tile. The tiles do not appear broken or damaged in the photo which is very small and could not be enlarged without becoming blurry. The lower after bathroom photo has items such a scissors, a drink cup, and some cleaners on the counter and top of toilet and cabinets. There is no obvious damage showing in the after photos.

The tenant responded to this item by stating that they have no response other than to say that we left those items there and forfeited their security deposit.

Regarding item 2, the landlord has claimed \$1,200.00 for carpet removal. The landlord was asked the age of the carpets and the landlord stated that they believed 2014 but later admitted that they do not have a date the carpets were installed or documentary evidence to support that age of the carpets. Instead, the landlord relied on a before and after photo of the basement. The before photo of the carpet is very small and became

blurry when enlarged. Furthermore, the carpet is covered with 2 couches, two chairs, a mini fridge, lamp, table and many storage bins.

One after basement photo in comparison shows a different area not shown on the before photo and show signs of staining. A different after basement photo shows some food on the carpet but is mainly covered by a mattress and boxspring, and some other personal items. Another after basement photo which is also very small, shows a garbage bag, loveseat with cushions beside it, some boxes, and debris on the carpet. A final after basement photo shows a close up of the carpet but again is a small photo that becomes blurry when enlarged, which makes the photo of very limited weight, which I will discuss later in this decision.

The tenant stated “no response” to item 2.

Regarding item 3, the landlord has claimed \$2,500.00 for appliances, which the landlord clarified was for the removal and replacement of the fridge, stove, washer and dryer. The landlord testified that the age of the fridge and stove at the start of the tenancy was three years old and that the washer and dryer were five years old at the start of the tenancy. The landlord referred to two before kitchen photos and one after kitchen photos, all of which were very small and when enlarged would become blurry. The photos were also taken at a distance, which will be addressed later in this decision.

In terms of appliances, the after kitchen photos show a dirty cooktop on the stove. There is only one after photo of either the laundry washer or dryer. The photo becomes too blurry to get a better view when enlarged and there are no before photos of the laundry washer and dryer. In the one after photo, the appliance is not open and shows some need of cleaning on the top of the appliance. There are also no photos showing the inside of the oven or fridge.

The tenant’s response to this item was that the washer and dryer were functional at the end of the tenancy and questioned the need for the replacement of any of the appliances as the original fridge had failed and was replaced by the landlord about four months into the tenancy with a used fridge. The tenant also testified that the oven worked, and all of the elements worked on the stove as well. The tenant did admit to leaving some personal items on the stove and that it required cleaning on the top.

Regarding item 4, the landlord has claimed \$7,500.00 for the cost to replace the kitchen cabinets and countertops. The landlord presented two before kitchen photos, both of which were taken at a distance and became blurry when enlarged. The landlord also

presented three after photos of the kitchen, which were taken closer up and showed some debris on the flooring, something spilled or stained on the kitchen floor, some scuffs on the lower cabinet doors, and a dirty stove top. In addition, one of the photos showed a cabinet door removed and was leaning on the kitchen wall. The landlord testified that the kitchen cabinets and counters were 25 years old and the tenant's response was "no response" to this item.

Regarding item 5, the landlord has claimed \$2,500.00 to refinish the hardwood flooring in the home. The landlord presented three before photos, which show area rugs covering most of the hardwood flooring and provided no close ups of the hardwood flooring. The photos were so small that when enlarged, they would become blurry. The landlord stated that at the start of the tenancy the rental unit was not furnished, yet the before photos all have furniture and area rugs and other items covering most of the hardwood flooring. The after photos are shown as close ups of hardwood flooring, which appear to scuffing, scrapes and heavy wear; however when compared to before living room photo 2, there is wear showing on at least three areas of the photo, with area rugs covering the places where the after photos were taken, which I will address later in this decision.

In addition, the landlord presented an after hall and after master bedroom photo, with no before hall photo to compare the after photo to. The before master photo shows a bed and dress and table covering some of the flooring compared to one close up portion of a wall and heat register. While there is some debris on the flooring, there does not appear to be obvious damage to the flooring.

The tenant's response was that any wear and tear on the flooring is just normal wear and tear and that the flooring was not in good condition at the start of the tenancy and that there was nothing else to say.

Regarding item 6, the landlord has claimed \$3,000.00 to repaint the rental unit interior. The landlord testified that the interior was 1.5 years old at the start of the tenancy in November 2018. The landlord presented five before photos which included the master bedroom, living room and kitchen. An after ceiling photo was presented which shows flies on the ceiling. The after living photos were so small and taken at such a distance that once enlarged, the photos became blurry, which I will address later in this decision. In the after master bedroom photo, the photo is so small that once enlarged it becomes blurry; however, there do appear to be some scuffs on the lower portion of the wall near the electrical plug. The tenant's response to this item was that the walls were left like that and that the tenant had nothing further to say.

Regarding item 7, the landlord has claimed \$3,500.00 to replace two bathrooms. When asked to clarify what replacing the bathrooms meant, the landlord clarified that they meant to remove and replace the bathtub and tub surround yet none of the after photos show the bathtub or tub surround. The landlord testified that there was no way they were cleaning the toilet and that it had to be replaced and that the tile flooring was ruined. The flooring does not appear to be ruined, which I will address later in this decision.

The tenant's response to this item was that there was nothing wrong with the bathroom upstairs, that the tub was fine and so was the sink and that the tenants should not have to pay for a reno by the landlord. The tenant also stated that instead of trying to clean anything, the landlord has just replaced everything and charged the tenant, which the landlord denied.

Regarding item 8, the landlord has claimed \$4,000.00 to replace the carpet, which the landlord stated was two years old at the start of the tenancy. The before carpet photos show a carpet in average condition and one of the after photos also show the carpets in average condition. Three of the after photos show some staining and dirty carpet in need of cleaning. The tenant's response to this item was that there was nothing to say and that the carpets were in rough shape at the end of the tenancy.

Regarding item 9, the landlord withdrew item 9 during the hearing and did not want to proceed further with item 9. As a result, item 9 will not be considered further in this decision.

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will address the lack of an incoming and outgoing Condition Inspection Report (CIR). Sections 23 and 35 respectively require a landlord to complete both an incoming and outgoing CIR at the start and the end of the tenancy and as the landlord failed to do so, **I caution** the landlord to comply with sections 23 and 35 of the Act in the future. In addition, I find that failure to do either inspection has impacted the landlord's claim as I agree with the tenant that the before photos were more likely than not the listing photos used to advertise the rental unit, which show a fully furnished rental unit, yet the rental unit was not rental fully furnished. Furthermore, I find that all before photos were so small, that when enlarged, they became blurry and as a result I find that all before photos are of little weight. For the photos to be afforded more weight, the landlord could have and should have provided photos of an empty rental unit, clear of furniture, area rugs, boxes, bins, and other items so that the flooring, walls, and other items in the home were not obscured.

In addition, I afford the quote provided by the landlord limited weight as there is no tax information and very little detail about the work performed as it is missing the amount of hours involved, the amount charged per hour and missing key details about the amount of labour versus the amount for materials for my consideration.

**Item 1** – Although the landlord has claimed \$6,500.00 for the cost to clean up the rental property after the tenants vacated the rental unit, I find the invoice fails to indicate how \$6,500.00 was arrived at in terms of the number of hours and the amount charged per hour. I also find the amount of \$6,500.00 is excessive given the photo evidence before me. As a result, I find the landlord has failed to meet parts three and four of the four-part test for damage or loss.

I do; however, find that the tenants breached section 37 of the Act, which requires the rental unit to be left in a reasonably clean condition at the end of the tenancy, which I find the tenants failed to do. As a result, I grant the landlord what I find to be a reasonable amount to reflect that breach, in the amount of **\$2,000.00**. The remainder of this item is dismissed due to insufficient evidence, without leave to reapply.



**Item 2** - The landlord has claimed \$1,200.00 for carpet removal. I am not convinced by the landlord's testimony that the carpets were replaced in 2014 as the landlord did not have a specific date or documentary evidence to support when the carpets were last replaced. Furthermore, I find the before photos do not support that the carpets were in anything better than average condition when the tenancy began in November 2018. I find that the staining in the basement; however, did likely require removal of some carpet and as a result, I grant the landlord a nominal amount due to what I find was damage by the tenants of the carpet exceeding reasonable wear and tear. Therefore, I grant the landlord a nominal amount of **\$200.00** for this portion of their claim.

**Item 3** - The landlord has claimed \$2,500.00 for appliances, which the landlord clarified was for the removal and replacement of the fridge, stove, washer and dryer. As the landlord has the onus of proof to prove their claim, I find the landlord has failed to provide sufficient evidence to support that none of the appliances were in working condition at the end of the tenancy. I would have expected a CIR to support that the appliances were in good condition at the start of the tenancy and not functioning at the end of the tenancy, or at the very least a document from an appliance repair technician stating that none of the appliances were functioning and given that the tenant stated that they appliances were working and just in need of cleaning, I find that the landlord has not met the burden of proof for this item. Therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 4** - The landlord has claimed \$7,500.00 for the cost to replace the kitchen cabinets and countertops. Firstly, I afford the before photos little weight as they were so small and taken at such a distance that when enlarged, they became blurry. Furthermore, I find the after photos did not provide the same view as the before photos, and instead were taken as a close up of dirty kitchen flooring, and some scuffing on the lower cabinets, which I find does not support their need for replacement. In addition, RTB Policy Guideline 40 – Useful Life of Building Elements states that the useful life of kitchen counters and cabinets is 25 years and as a result, I find given that the landlord stated that the kitchen counters and cabinets were 25 years old, as supported by the photos, that this item would have fully depreciated by 100%. Therefore, I dismiss this item due to insufficient evidence, without leave to reapply, as the kitchen cabinets and counters I find have met their useful life.

**Item 5** - The landlord has claimed \$2,500.00 to refinish the hardwood flooring in the home. I am not convinced that the hardwood flooring was not already worn and damaged at the start of the tenancy due to the before photos showing many area rugs and furniture covering the portions of the flooring shown in the after photos. Therefore, I

find landlord has provided insufficient evidence to support that the tenants damaged the flooring beyond reasonable wear and tear as I find the before photos to be of little weight compared to the close of photos provided after the tenancy ended. Consequently, I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 6** – The landlord has claimed \$3,000.00 to repaint the rental unit interior and while RTB Policy Guideline 40 states that the useful life of interior paint is 4 years, I am not convinced that the photos show any damage beyond reasonable wear and tear. I find the scuffs are minor and that the photo evidence is not compelling. Therefore, I find the landlord has failed to meet the burden of proof and I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 7** - The landlord has claimed \$3,500.00 to replace two bathrooms. Although the landlord clarified that they meant to remove and replace the bathtub and tub surround, I find the landlord failed to provide any after photos of the tub and tub surround. I also find that the before photos show bathrooms that look to be as old as the kitchen cabinets, which are 25 years old. I find there is insufficient evidence to support any of this portion of the landlord's claim and as a result, I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 8** - The landlord has claimed \$4,000.00 to replace the carpet, which the landlord stated was two years old at the start of the tenancy. The before carpet photos show a carpet in average condition and one of the after photos also show the carpets in average condition. Three of the after photos show some staining and dirty carpet in need of cleaning. Given the tenant's response that the carpets were in rough shape I find that the landlord is due some compensation; however, I am not satisfied that the amount claimed is reasonable or justified. Therefore, I find the landlord has failed to meet parts three and four of the four-part test for damages or loss.

In addition, the useful life of carpets according to Policy Guideline 40 is 10 years, so at the very least, the carpets had depreciated by 30% by the end of the tenancy. Therefore, after considering the evidence before me, I find that the tenants did stain some of the carpets that required replacement, which is a breach of section 37 of the Act and therefore, to reflect that breach, I grant the landlord a nominal amount of **\$500.00** for this portion of their claim. The remainder is dismissed due to insufficient evidence, without leave to reapply.

**Item 9** – This item was withdrawn by the landlord during the hearing as noted above.

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$2,800.00**, comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Clean up of property	\$2,000.00
2. Carpet removal	\$200.00
3. Appliances	dismissed
4. Kitchen replacement	dismissed
5. Hardwood floor refinish	dismissed
6. Painting	dismissed
7. Bathrooms	dismissed
8. Carpet replacement	\$500.00
9. Door replacement	withdrawn
10. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$2,800.00</b>

Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenants' security deposit of \$1,225.00, which has accrued \$0.00 in interest in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **\$1,575.00**.

### Conclusion

The landlord's claim was partially successful.

The landlord has established a total monetary claim of \$2,800.00. The landlord has been authorized to retain the tenants' full security deposit of \$1,225.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$1,575.00. This order

must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 17, 2020

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Residential Tenancy Branch