



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “Act”), for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Tenant attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenant and the Landlord agreed that they had exchanged each other documentary evidence package. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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### Issues to be Decided

- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on April 25, 2019. Rent in the amount of \$2,100.00 was to be paid by the twenty-fourth day of each month, and the Landlord had been given a \$1,050.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties agreed that a walk-through inspection had been done, but that the move-in and move-out inspection report had not been completed for this tenancy. The Landlord testified that they have had multiple tenancies and that they have never required the inspection report in the past, so they did not complete one for this tenancy and the rental unit had been brand new at the beginning of this tenancy.

The Landlord testified that the tenant returned the rental unit to the Landlord in an uncleaned and damaged condition. The Landlord submitted 14 pictures taken of the rental unit after the tenancy ended into documentary evidence.

The Landlord testified that the kitchen in the rental unit had been extremely dirty, “covered in a layer of grease”, and that it took the two professional cleaners over five hours to clean. The Landlord submitted a copy of the invoice for cleaning into documentary evidence.

The Tenant testified that the rental unit had they had cleaned at the end of tenancy, by professional cleaners, and that no additional cleaning was needed.

The Landlord testified that the carpets were dirty and had several stains at the end of tenancy, requiring professional cleaning. The Landlord submitted a copy of the invoice for carpet cleaning into documentary evidence.

The Tenant testified that they had personally cleaned the carpets and the end of this tenancy, and that the carpets were returned with only normal wear and tear.

The Landlord testified that two sets of blinds had been damaged during the tenancy, the first being a horizontal set in one of the bedrooms and the second a vertical set in the living room. The Landlord testified that the vertical set was missing two panels and that they had received a quote of \$50.00 to purchase two replacement panels. The Landlord testified that the horizontal set had one panel with the end broken off and that they received a verbal quote that it would cost \$50.00 to replace that set of blinds, as they could not be repaired.

The Tenant testified that they agreed they had broken both the horizontal set of blinds in one of the bedrooms and vertical set of blinds in the living room. The Tenant agreed to the replacement cost of \$50.00 for the two missing panels on the vertical blinds in the living room. However, the Tenant did not agree to the full replacement costs of the horizontal blinds in the bedroom, as they believed that the Landlord could repair or replace the one broken panel without having to replace the full set of blinds.

The Landlord testified that they are also claiming for \$200.00 to have the walls in the rental unit patched and painted at the end of the tenancy. The Landlord testified that the walls in the rental unit had many nail and screw holes as well as scrapes and dings that need to be repaired, the Landlord referred to the pictures they submitted into documentary evidence as proof of the needed repair.

The Tenant testified that there was no damage to the walls of the rental unit at the end of this tenancy, only normal wear and tear.

### Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that this tenancy began on April 25, 2019, in accordance with the Act, and that no move-in inspection report had been completed for this tenancy. Section 23 of the Act set the requirement that a move-in inspection is completed for a tenancy, stating the following:

**Condition inspection: start of tenancy or new pet**

**23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) ***The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if***

*(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*

*(b) a previous inspection was not completed under subsection (1).*

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) ***The landlord must complete a condition inspection report in accordance with the regulations.***

(5) *Both the **landlord and tenant must sign** the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

*(a) the landlord has complied with subsection (3), and*

*(b) the tenant does not participate on either occasion.*

Section 23(4) places the onus on the landlord to ensure that an inspection report is completed in accordance with the regulations. With section 19 of the *Residential Tenancy Regulations* (the “*Regulations*”) setting requirements for the condition inspection report, stating the following:

**Disclosure and form of the condition inspection report**

**19** *A condition inspection report must be*

*(a) **in writing,***

*(b) in type no smaller than 8 point, and*

*(c) written so as to be easily read and understood by a reasonable person.*

Pursuant to section 23 of the *Act* and section 19 of the *Regulations*, I find that the Landlord breached section 23 of the *Act* when they did not complete the required written move-in inspection report for this tenancy. Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

**Consequences for tenant and landlord if report requirements not met**

**24** (2) 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

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) **does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

Consequently, pursuant to section 24(2), I find that the Landlord had extinguished their right to make a claim against the security deposit for damage to the residential property for this tenancy.

I also accept the agreed-upon testimony of these parties that this tenancy ended, in accordance with the Act, on April 26, 2020, and that no move-out inspection report had been completed for this tenancy. Section 35 of the Act set the requirement that a move-out inspection is completed for a tenancy, stating the following:

***Condition inspection: end of tenancy***

**35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) *on or after the day the tenant ceases to occupy the rental unit,*  
*or*

(b) *on another mutually agreed day.*

(2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(3) ***The landlord must complete a condition inspection report in accordance with the regulations.***

(4) ***Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.***

(5) *The landlord may make the inspection and complete and sign the report without the tenant if*

(a) *the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*

(b) *the tenant has abandoned the rental unit.*

Section 35(3) again places the onus on the landlord to ensure that an inspection report is completed in accordance with the regulations. As stated above, section 19 of the *Regulations* set the requirement that the condition inspection report be in writing.

Pursuant to section 35 of the *Act* and section 19 of the *Regulations*, I find that the Landlord breached section 35 of the *Act* when they did not complete the required written move-out inspection report for this tenancy. Section 35(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

**Consequences for tenant and landlord if report requirements not met**

**36 (2)** Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) **having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

Consequently, pursuant to section 36(2) of the *Act*, I find that the Landlord had again extinguished their right to make a claim against the security deposit for damage to the residential property for this tenancy.

I have reviewed the Landlord's application, and I note that the Landlord has made a claim against the security deposit for damages to the rental unit and that as of the date of this hearing, the Landlord is still holding the \$1,050.00 security deposit for this tenancy.

Section 38(1) of the *Act* provides the conditions in which a Landlord may retain the security deposit, and to hold that deposit pending the outcome of a claim. Section 38 of the *Act* states the following:

***Return of security deposit and pet damage deposit***

**38 (1)** *Except as provided in subsection (3) or (4) (a), 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.*

*(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*

*(3) A landlord may retain from a security deposit or a pet damage deposit an amount that*

*(a) the director has previously ordered the tenant to pay to the landlord, and*

*(b) at the end of the tenancy remains unpaid.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

***(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].***

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

*(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.*

As it has already been determined that the Landlord had extinguished their right to make a claim against the security deposit, I find that the Landlord breached section 38(5) of the *Act*, by retaining the security deposit pending the outcome of this proceeding.

In this case, I have accepted the agreed-upon testimony of these parties, that this tenancy ended on April 26, 2020. I also accept the testimony of the Tenant that they provided their forwarding address to the Landlord, on May 20, 2020. Pursuant to section 38(1) of the *Act*, I find that the Landlord had until June 5, 2020, to comply with section 38(1) of the *Act* by repaying the deposit in full to the Tenant. However, in this case, that Landlord has not returned the deposit and still holds that deposit as of the date of this hearing.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within the 15 days, the landlord must pay the Tenant double the security deposit.

***Return of security deposit and pet damage deposit***

- 38 (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
  - (b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.***

Therefore, I find that pursuant to section 38(6b) of the *Act*, the security deposit for this tenancy has double in value and is now valued at \$2,100.00 due to the Landlord breach of sections 23, 24, 35, 36 and 38 of the *Act*.

As for the Landlord's claim for compensation, to recover their costs for additional cleaning and the repair of damages to the rental unit at the end of this tenancy, consisting of \$579.60 for cleaning the rental unit and \$121.95 for carpet cleaning, \$100.00 to repair a closet door, \$50.00 to replace window blinds, \$50.00 to replace damaged vertical blinds and \$200.00 to patch and paint walls. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:



“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Throughout this hearing, the parties to this dispute offered conflicting verbal testimony regarding the cleanliness of the rental unit at the end of this tenancy and the existence of damage. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

An Arbitrator normally looks to the move-in/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and seen as a reliable account of the condition of the rental unit. As it has already been established that the Landlord did not complete the required inspection report for this tenancy, I must look to the documentary evidence submitted by the Landlord to support their claim.

I note that the Landlord submitted 14 pictures taken of the rental unit to support their claim; three dated April 29, 2020, eight dated May 3, 2020, and three dated May 20, 2020. I find that the dates these pictures were taken concerning, especially the three pictures dated May 20, 2020, taken 24 days after this tenancy ended. Where I can reasonably accept that some pictures may be taken after the inspection date, especially when a move-out inspection is not thorough; however, I find that the further away from the end of tenancy date that a picture is taken, the less credible or reliable that picture becomes when considered as evidence, in regard to the condition of the rental unit on a specific date.

Nevertheless, I have reviewed all 14 of the pictures submitted into documentary evidence by the Landlord, and I find that these pictures show a reasonably cleaned rental unit, admittedly with three areas where cleaning had been missed; under the fridge, under the power knobs on the stove and the stovetop drip tray. After reviewing these pictures, I find that there is insufficient evidence before me to support the need for 12 hours of additional cleaning and carpet cleaning at the end of this tenancy. Therefore, I dismiss the Landlord's claim for the recovery of their full cost of \$579.60 for cleaning and \$121.95 for carpet cleaning.

Although I have found that the Landlord has not substantiated the entirety of their claim for cleaning, I do find that the pictures show that some additional cleaning was required in the kitchen at the end of this tenancy. Accordingly, I award the Landlord the nominal amount of \$100.00 to have under the fridge, under the power knobs on the stove, and the stovetop drip tray cleaned at the end of this tenancy.

I acknowledge the Landlord's verbal claim that this rental unit had been brand-new at the beginning of this tenancy; however, even if that were true, the unit is now used and will never be brand-new again. A Landlord must understand that a rental unit will be returned, at the end of the tenancy, aged and decreased in value through the normal wear and tear, given the term of the tenancy. Additionally, the Landlord must also understand that the *Act* requires a rental unit to be returned reasonably cleaned, not spotless.

As for the Landlord's claim for the replacement cost of the damaged horizontal blinds, I accept the testimony of the Tenant that they did damage the horizontal blinds during this tenancy. However, I heard conflicting verbal testimony regarding the need to replace the entire set of horizontal blinds or if they could be repaired. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that remains the Landlord.

I have reviewed the entire documentary package submitted by the Landlord, and I find that they have not submitted any documentary evidence to support their claim that the horizontal blinds could not be repaired or to support the dollar value they are requesting in their claim. In the absence of sufficient evidence to support the value of the Landlord's claim and that they had acted reasonably to mitigate their losses, I find that I must dismiss the Landlord's claim for \$50.00 in the replacement costs for the horizontal blinds.

However, as the Tenant has agreed that they did damage the horizontal blinds during this tenancy, I find that the Landlord is entitled to a nominal award of \$25.00 due to the damage caused by the Tenant to the horizontal blinds.

During the hearing, the Tenant agreed that they had damaged a set of vertical blinds in the rental unit, and they agreed to the \$50.00 charge to repair the vertical blinds. Accordingly, I award the Landlord \$50.00 to have the vertical blinds repaired in the rental unit.

The last item in the Landlord's claim is to recover their cost to patch and paint damaged walls, in the amount of \$200.00. Again, the parties to this dispute offered conflicting verbal testimony regarding the presence of damage walls in the rental unit at the end of this tenancy. As this is the Landlord's claim, they again hold the burden of prove to provide sufficient evidence over and above their testimony to establish their claim.

I noted that the Landlord had submitted only one picture, into documentary evidence to support their claim of damaged walls. I have reviewed this picture and find that the picture shows one line of slight discoloration, that on a balance of probabilities was caused by a couch had rubbed against the wall. After reviewing this picture, I find that this picture evidence before me, to be in line with normal wear and tear, not damage. As a Tenant is not responsible for costs associated with normal wear and tear, I find that I must dismiss the Landlord's claim for the recovery of their cost of \$200.00 to patch and repair damaged walls due to this tenancy.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I have awarded the Landlord \$275.00, consisting of 100.00 in a nominal award for cleaning, \$25.00 in a nominal award for a damaged horizontal blind, \$50.00 in the agreed cost to replace two missing vertical blinds, and \$100.00 in the recovery of the filing fee paid for this hearing. I grant permission to the Landlord to retain \$275.00 of the security deposit for this tenancy, in full satisfaction of this award.

I order the Landlord to return the remaining \$1,825.00 security deposit, that they are holding for this tenancy, to the Tenant within 15 days of the date of this decision.

I grant the Tenant a conditional monetary order in the amount of \$1,825.00, to be served on the Landlord in the event that the Landlord does not comply as ordered.

Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$1,825.00**. The Tenant is 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: June 30, 2020

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Residential Tenancy Branch