



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDL-S, MNDCL-S, MNRL-S, FFL

### **Introduction**

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

- and a monetary order for money owed or compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:58 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on May 30, 2020 by way of registered mail. The landlord provided tracking numbers in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on June 4, 2020, five days after its registered mailing.

The landlord provided sworn testimony that he had also served the tenants on May 31, 2020 with the application for dispute resolution package and evidence by way of email to the email address that the landlord has used in the past for correspondence related

to this tenancy. The landlord provided a copy of this email in his evidence package. In accordance with sections 88, 89, 90, and the Order of the Director dated March 30, 2020, I find the documents deemed served to the tenants on June 3, 2020, 3 days after the documents were emailed.

**Preliminary Issue—Amendment to Landlord’s Application for Compensation or Money Owed**

Although the landlord had applied for a monetary order of \$9,102.75 in their initial claim for losses or money owed associated with this tenancy, since they applied, they have submitted updated invoices and figures that were not included in the original application.

The landlord confirmed that despite the fact that he had submitted the updated figures and corresponding evidence for his claims, he has not filed any formal amendments to this application.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

Rule 4.6 states the following:

***As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.***

***The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.***

***In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.***

It was undisputed that the landlord did not provide the tenants or the RTB with an Amendment to the Application for Dispute Resolution.

No amendments were received in accordance with RTB Rule 4.6. These rules ensure that a respondent is aware of the scope of the hearing and are prepared to respond, if

they chose to do so. While the respondents may have been served with additional evidentiary materials in support of the landlord's claims, these documents do not constitute a proper amendment to the landlord's monetary claims.

Given the importance, as a matter of natural justice and fairness, that the respondents must know the case against them, I do not allow the landlord to amend the figures set out in monetary claim as summarized in the Monetary Order Worksheet. The landlord remains at liberty to make a formal application for a monetary award for damages or losses arising out of this tenancy that were not considered as part of this application. Liberty to reapply is not an extension of any applicable limitation period.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 15, 2015, and ended on April 30, 2020. Monthly rent was set at \$2,000.00, payable on the first of every month. The landlord collected, and still holds, a security deposit in the amount of \$850.00.

The landlord provided the following list of damages and losses for his monetary claim. The landlord provided an updated Scope of Work/Invoice dated June 4, 2020 in their evidentiary materials which lists the final costs plus 5% GST. As stated above, the landlord did not file any amendments to his claim. Accordingly, the actual losses incurred by the landlord as indicated in the final scope of work invoice will be considered up to the maximum amount as indicated on the monetary order worksheet.

<b>Item</b>	<b>Amount</b>
Removal and Disposal of Items left by Tenants (actual cost per scope of work: \$300.00)	\$315.00

Professional Cleaning (per scope of work completed: \$380.00 & 150.00)	525.00
Removal and replacement of damaged bathroom countertop & associated plumbing costs (per scope of work \$500.00 & \$600.00)	787.25&315.00
Towel rail and wall repair (per scope of work \$1,045.00)	787.50
Carpet Cleaning & Stain Removal (per scope of work: \$180.00)	194.27
Replacement of 2 broken light switches (per scope of work: 180.00)	178.40
Bylaw fines & charges	550.00
Repair to blinds (per scope of work: \$198.00)	198.00
Loss of Rental Income May 2020	2,000.00
Loss of Rental Income June 2020	2,000.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$7,950.42</b>

The landlord testified that the tenants failed to leave the suite in reasonably clean and undamaged condition. The landlord provided photos, condition inspection reports, invoices, as well as other documents such as correspondence between him and the tenants in his evidentiary materials.

The landlord testified that the suite remains unrented as he gave an opportunity for the tenants to resolve the issues by obtaining their own quotes for repairs. Despite this, the landlord testified that the tenants failed to follow through, and he had to undertake the repairs and cleaning himself, which has resulted a rental loss of two months. The landlord has not been able to rent out the suite due to the delay in communication with the tenants, as well as the condition of the suite left by the tenants. The landlord provided a copy of the email sent to the tenants summarizing the issues, and giving the tenants a final opportunity to resolve the outstanding issues and money owed. The landlord is requesting compensation for the lost rent for the months of May and June 2020.

The landlord testified that although the building was built in 2010, he refurbished the suite in June and July of 2015 before the beginning of this tenancy by installing new

laminate flooring in the living areas, and repainting the suite. The landlord testified that the carpets were shampooed and clean.

The landlord testified that the tenants not only failed to clean the suite, they also left their furniture and belongings behind. The landlord attempted to mitigate the losses by obtaining several quotes, including for cleaning. The landlord testified that he was able to avoid replacing the mouldy refrigerator by having it professionally cleaned instead. The landlord is seeking reimbursement of these losses associated with the tenants' failure to clean the suite, and remove their belongings.

The landlord testified that the tenants left damage all over the suite including the light switches, countertops, and walls. The landlord testified that he had incurred the cost of hiring a separate plumber in order to install the new countertop. The landlord is seeking reimbursement for the cost of these repairs.

In addition to the damage to the suite, the landlord incurred \$550.00 in strata fines due to the tenant's failure to remove their vehicle during a scheduled cleaning. \$200.00 was levied as a fine, and an additional \$350.00 to cover the cost of a second visit.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the landlord provided sufficient evidence to support that the tenants had moved out without reimbursing the landlord for the strata fines levied due to the tenants' actions. On this basis, I allow the landlord a monetary order for these outstanding fines.

Section 37(2)(a) of the *Act* stipulates 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 find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlord

supported their claims with quotations and invoices. Accordingly, I find the landlord is entitled to compensation for these damages.

I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlord's monetary losses, as is required by section 7(2) of the *Act*. I find that the landlord had attempted to perform the repairs as soon as possible, and prepare the suite for re-rental, but was unable to fill the vacancy in May and June due to the tenants' failure to respond to the landlord, and due to the amount of repairs and cleaning required. On this basis, I allow the landlord's application to recover the lost rental income for May and June 2020.

I am also satisfied that the landlord had provided sufficient evidence to support that the tenants failed to properly clean the suite when vacating the suite. Accordingly, I allow the landlord's monetary claim for cleaning of the suite and carpet. I also find that the tenants failed to remove all of their personal belongings, resulting in a monetary loss for the landlord in order to remove these items. I allow the landlord's monetary claim for the removal and disposal of these items.

Although the landlord testified that the suite was refurnished in 2015, I am not satisfied that the landlord had provided sufficient evidence to support that all fixtures or items in the suite were replaced or repaired in 2015. , therefore will calculate the age of the items below as equivalent to the age of the suite.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of blinds is 10 years. As the tenants moved out in April of 2020, I find that the blinds have reached their useful life. Accordingly, I dismiss the landlord's monetary claim for the blind repair without leave to reapply.

As per the policy, the useful life of a countertop is 25 years. Therefore at the end of the tenancy the countertop had approximately 15 years of useful life left. I find that the landlord suffered a loss in the amount of at least \$1,102.25 for the replacement of the damaged countertop. The approximate prorated value of the remainder of the useful life of the countertop is \$661.35 ( $\$1,102.25/25 \times 15$ ). Accordingly, I find the landlord is entitled to \$661.35 in compensation for the damaged countertop.

As per the policy, the useful life of a light fixture is 15 years. Therefore at the end of the tenancy the light switches had approximately 5 years of useful life left. The approximate prorated value of the remainder of the useful life of the light fixture is \$59.47. ( $\$178.40/15 \times 5$ ). Accordingly, I find the landlord is entitled to \$59.47 in compensation for the damaged light switches.

I am satisfied that the tenants had damaged the fixtures such as the towel rail, causing damage to the drywall. As per the policy, the useful life of a drywall is 20 years.

Therefore at the end of the tenancy the drywall had approximately 10 years of useful life left. The approximate prorated value of the remainder of the useful life of the drywall repairs and associated repair costs are \$393.75 ( $\$787.50/20 \times 10$ ). Accordingly, I find the landlord is entitled to \$393.75 in compensation for the drywall repairs and associated costs such as repainting.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

### **Conclusion**

I issue a Monetary Order in the amount of \$5,934.57 in the landlord's favour under the following terms which allows a monetary award for damage and losses caused by the tenants and allows the landlord to retain the security deposit. The landlord is also authorized to recover \$100.00 for the filing fee.

<b>Item</b>	<b>Amount</b>
Removal and Disposal of Items left by Tenants	\$315.00
Professional Cleaning	525.00
Removal and replacement of damaged bathroom countertop & associated plumbing costs	661.35
Towel rail and wall repair	393.75
Carpet Cleaning & Stain Removal	180.00
Replacement of 2 broken light switches	59.47
Bylaw fines & charges	550.00
Loss of Rental Income May 2020	2,000.00
Loss of Rental Income June 2020	2,000.00
Filing Fee	100.00
Less Security Deposit	-850.00
<b>Total Monetary Order</b>	<b>\$5,934.57</b>

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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.

I dismiss the remainder of the landlord's monetary claims without leave to reapply.

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 24, 2020

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Residential Tenancy Branch