



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S MNDCL-S FFL

### Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary order in the amount of \$3,605.42 for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord attended both dates of the hearing. The tenant CR (tenant) attended the first portion of the hearing on May 19, 2020 only. Both parties 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 May 19, 2020 and after 63 minutes, the hearing was adjourned to allow additional time for the parties to provide testimony and present their documentary evidence. On June 15, 2020, this matter was reconvened and only the landlord attended and after an additional 33 minutes, the hearing concluded.

The parties confirmed service of all relevant documentary evidence and confirmed that they had the opportunity to review documentary evidence prior to the hearing. I find the parties were sufficiently served under the Act as a result.

### Preliminary and Procedural Matters

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties. If the landlords are entitled to a monetary order, the monetary order will be emailed to the landlords for service on the tenants.

### Issues to be Decided

- Are the landlords 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?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A fixed-term tenancy began on June 1, 2017 and after 3 months reverted to a month to month tenancy. The parties agreed that the tenants vacated the rental unit as of November 30, 2019. Originally monthly rent was \$1,150.00 per month and was due on the first day of each month and was increased during the tenancy to the final amount at the end of the tenancy being \$1,127.50 per month. The tenants paid a security deposit of \$550.00, which has accrued no interest under the Act, and which the landlords continue to hold.

During the hearing, the landlord requested to lower their monetary claim from \$3,605.42 to \$2,890.75, which I find does not prejudice the tenants. The landlords' reduced monetary claim of \$2,890.75 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fix hole in wall	\$31.50
2. Toilet seat	\$46.86
3. Toilet paper holder	\$30.28
4. Oven range element	\$15.75
5. Window – sliding mechanism	\$7.88
6. Window – lock	\$19.06
7. Window screens	\$325.50
8. Carpet	\$442.05

9. Closet doors	\$495.19
10. Carpet deep cleaning	N/A (could not be cleaned)
11. Apartment cleaning	\$196.88
12. Blinds	\$152.30
13. Loss of rent for December 2019	\$1,127.50
<b>TOTAL</b>	<b>\$2,890.75</b>

There is no dispute that the landlords did not complete an incoming Condition Inspection Report (CIR) at the start of the tenancy or an outgoing CIR at the end of the tenancy, which I will address later in this decision. Instead, the landlord is relying on before photos from the advertisement of the rental unit and pictures taken by the landlord at the end of the tenancy, which will be described further below.

Regarding item 1, the landlords have claimed \$31.50 to fix a hole in the wall of the rental unit that the landlord stated was damaged by the tenants. The parties reached a mutual agreement on this item pursuant to section 63 of the Act, which I will address later in this decision.

Regarding item 2, the landlords have claimed \$46.86 for the cost to replace a damaged toilet seat lid that the landlord claims was broken at the end of the tenancy. The landlord testified that they replaced the toilet seat 3-4 months before the end of the tenancy, and that the tenants did not advise of any problems with the new toilet seat during the tenancy. The landlord submitted a receipt for the amount claimed plus labour. The landlord referred to a photo of a toilet seat hinge, which does not obviously look broken. The tenant's response to this item was that the tenants didn't do anything to break the toilet seat and that there must have been something internally that broke if it was broken. The landlord stated that they could not rely on a warranty for the toilet seat as the tenants did not inform the landlord that the toilet seat was broken.

Regarding item 3, the landlords have claimed \$30.28 to replace a broken toilet paper holder. The landlord referred to a colour photo, which shows a broken toilet paper holder with parts missing, which the landlord stated was taken at the end of the tenancy. The landlord referred to a receipt for more than the amount claimed and stated that the package also contained a towel ring and towel bar, which the landlord is not charging the tenant for. The tenant's response to this item was that they had never used the toilet paper holder and could not recall it ever being intact during the tenancy.

Regarding item 4, the landlords have claimed \$15.75 for a missing stove element, which the tenant agreed with, and to which the parties resolved by way of a mutually settled agreement pursuant to section 63 of the Act.

Regarding item 5, the landlords have claimed \$7.88 to replace a broken window sliding mechanism. The landlord stated that their contractor charged 15 minutes for this item and referred to the contractor invoice in support of this item. The tenant's response to this item was that the window did not open properly during the tenancy and the landlord was not advised as the tenants did not require that window to open. The landlord replied by stating that the tenants would allow their children to climb out of the windows, which caused the window to stop sliding correctly. The tenant claims that the window their children were allowed to climb through was a different window than the one shown by the landlord in a colour photo presented during the hearing and circled.

Regarding item 6, the landlords have claimed \$19.06 to repair what the landlord described as a broken window lock, which was a missing window lock receiver. The landlord submitted an invoice for the missing window lock receiver. The tenant did not deny that the window lock receiver was missing by the end of the tenancy.

Regarding item 7, the landlords have claimed \$325.50 for window screens and testified that of the seven window screens, only one was in good condition at the end of the tenancy, with 1 missing and 5 damaged. The landlord stated that the tenant may have damaged the blinds when removing them or forgot to install the one missing. The tenant testified that they did not take the window blinds with them when they vacated and that the tenants did not notice that the window screen were bent. The landlord replied by stating that they would not bend their own window screens.

Regarding item 8, the landlords have claimed \$442.05 to replace carpet that according to the landlords, could not be cleaned at the end of the tenancy and that the tenants cut a chunk out some of the carpets near the hot water tank without the permission of the landlord. The landlord stated that instead of carpet, the landlord chose to replace the carpet with laminate and including the labour to install the laminate, the total was \$442.05; however, the landlord stated that in an effort to reduce the cost to the tenants, they are not charging the tenants for the laminate underlay or the 24 hours of time it took to install the laminate. In terms of pricing, the landlord testified that they were able to purchase the laminate cheaper than an equivalent carpet. The landlord estimated that the carpet was installed in 2017 but could not provide a specific date.

The tenant's response to item 8 was that they cut out the carpet due to the hot water tank weeping water and was covered in mould. The tenant stated that they advised the carpets were not in good condition at the start of the tenancy and required cleaning, which the tenant's documentary evidence supports. The landlord replied by stating that the tenants cut the carpet without permission and that if there was a leak from the hot water tank, it was thoroughly dried afterwards so no mould should be present. The landlord also stated that they could not see all the staining left behind on the carpets by the tenants until all of their personal items were removed from the rental unit. The tenants stated that they cleaned the carpets in November 2017, which the landlord paid the invoice for, and then two additional cleanings, October 23, 2018 and August 29, 2019. In addition, the landlord referred to several after photos showing significant staining on the carpets.

As the tenants did not attend the second portion of the hearing, which dealt with items 9, 11, 12 and 13, I consider the remaining items to be undisputed by the tenants, which I will address later in this decision.

Regarding item 9, the landlords have claimed \$495.19 for damaged closet doors, which were supported by photo evidence. The landlord stated that closet doors were not damaged at the start of the tenancy and were badly damaged at the end of the tenancy, which is shown in the photo evidence. The landlord set out the cost of the closet doors at 3 doors at \$70.00 per door, plus 2 hours to source the doors at \$80.00, plus tax on the materials and 1.5 hours to install the doors for a total of \$495.19. The photo evidence shows swelling on the closet doors and the broken core of one of the doors.

Regarding item 10, the landlords are not making a claim for carpet cleaning due to what the landlord stated were carpets that could not be cleaned due to the smell, damage, and level of staining caused by the tenants. The landlord also stated that there was smell of feces and urine throughout the carpets, which added to the need for replacement when considering the damage to the carpet by the tenants cutting the carpets.

Regarding item 11, the landlords have claimed \$196.88 to clean the rental unit including cleaning the dirty stove shown in the photos and the windows and some walls, which are also shown in the photo evidence. The landlord testified that the tenant was not telling the truth during most of the hearing to avoid having to pay the landlords compensation. The photo evidence presented for this item shows a rental unit full of personal items strewn throughout the unit, and items covering most surfaces including a toaster oven placed over the missing element of the stove. The landlord testified that it

took 6.25 hours to clean the rental unit at \$30.00 per hour for a total of \$187.50 before 5% tax was added, which is how the landlord arrived at the amount claimed of \$196.88.

Regarding item 12, the landlords have claimed \$152.30 for the cost to replace damaged blinds in the rental unit, which the landlords stated were not damaged at the start of the tenancy. The landlord stated that they were not sure why the tenants removed the blinds and damaged them, but that the tenants did a lot of weird things during the tenancy. The amount claimed is comprised of labour and materials comprised of \$89.30 for supplies including tax, plus 2 hours of labour at \$63.00. The landlord stated that there were blinds at the start of the tenancy, and that the blinds had been damaged and removed by the tenants, without permission during the tenancy.

Regarding item 13, the landlords have claimed loss of rent for December 2019, due to the severe smell of feces and urine in the rental unit, the need for cleaning and carpet replacement, and that although the landlords were unable to rent the rental unit until April 15, 2020, which was 4.5 months after the tenancy ended, the landlord stated they were not charged for more than one month as shipping delays for items were not the fault of the tenants; however, the condition and need for cleaning were the fault of the tenants and that December 2019 the landlords could not have rented the rental unit causing a loss of rent in the amount of \$1,127.50.

In summary, the landlord stated that the tenants vacated the rental unit leaving a bad odour, musty smell with urine and feces on the carpets, damage in the rental unit and the need for the work claimed. The landlord also stated that they have attempted to reduce costs where possible.

### 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 landlords bear the burden of proof to prove all four parts of the above-noted test for damages or loss.

I will first address the lack of incoming and outgoing CIRs. Section 23 and 35 of the Act require the landlord and tenant complete written CIRs at the start and at the end of the tenancy, which the landlord failed to do. As a result, I caution the landlord to comply with sections 23 and 35 of the Act in the future.

**Item 1** – As noted above, the parties reached a mutual agreement on this item pursuant to section 63 of the Act, which was for the tenants to compensate the landlords \$31.50 for the cost to repair a hole in the drywall caused by the tenants. As a result, I order the parties to comply with their mutual agreement regarding this item pursuant to sections 62(3) and 63 of the Act.

**Item 2** - The landlords have claimed \$46.86 for the cost to replace a damaged toilet seat lid that the landlord claims was broken at the end of the tenancy. I find the photo evidence presented by the landlord does not support a broken toilet seat, and based on the disputed verbal testimony, I find the landlord has failed to meet the burden of proof for this item. I find that the landlord has failed to meet parts one and two for the test for damages or loss and therefore, I dismiss this portion of the landlords' claim due to insufficient evidence.

**Item 3** - The landlords have claimed \$30.28 to replace a broken toilet paper holder. I find the photo evidence, clearly shows a broken toilet paper holder, and that I find it highly unlikely that since 2017, the tenants never asked for the toilet paper holder to be repaired if it was like that when the tenants moved in. Therefore, I find the landlords have provided sufficient evidence to meet the burden of proof and I find the tenants damaged the rental unit contrary to section 37 of the Act, and I find this damage exceeds normal wear and tear. I award the landlords **\$30.28** as claimed as a result.

**Item 4** - The parties reached a mutually settled agreement pursuant to section 63 of the Act, for this item, comprised of **\$15.75** for a missing stove element. As a result, I order

the parties to comply with their mutual agreement regarding this item pursuant to sections 62(3) and 63 of the Act.

**Item 5** – The landlords have claimed \$7.88 to replace a broken window sliding mechanism. The landlord stated that their contractor charged 15 minutes for this item and referred to the contractor invoice in support of this item. Given the tenant's response to this item that they would allow their children to climb out of the windows, I find it more likely than not that that action caused damage to the window sliding mechanism and prefer the evidence of the landlord over that of the tenant for this item. Therefore, I find the tenant breached section 37 of the Act and that climbing out of the windows is not reasonable behaviour, which is likely to cause damage. As such, I award the landlord **\$7.88** as claimed as I find the landlord has met the burden of proof.

**Item 6** - The landlords have claimed \$19.06 to repair what the landlord described as a broken window lock, which was a missing window lock receiver. The landlord submitted an invoice for the missing window lock receiver. As the tenant did not deny that the window lock receiver was missing by the end of the tenancy, and consistent with my finding regarding item 5 above, I find the landlord has met the burden of proof and I award the landlord **\$19.06** as claimed for this item.

**Item 7** - The landlords have claimed \$325.50 for window screens and testified that of the seven window screens, only one was in good condition at the end of the tenancy, with 1 missing and 5 damaged. The landlord stated that the tenant may have damaged the blinds when removing them or forgot to install the one missing. Consistent with my finding for items 5 and 6 above, and given that the tenant admitted to their kids climbing out of the windows, which I find to be unreasonable, I prefer the landlord's version of events regarding this item and I find the landlord has met the burden of proof. Therefore, I award the landlord the full amount claimed of **\$325.50** and I do not apply depreciation and I find that climbing out of the windows is negligent behaviour likely to cause damage to the window and the window screens.

**Item 8** - The landlords have claimed \$442.05 to replace carpet that according to the landlords, could not be cleaned at the end of the tenancy and that the tenants cut a chunk out some of the carpets near the hot water tank without the permission of the landlord. I accept that the landlord stated was able to replace the carpet with laminate and including the labour to install the laminate, the total was \$442.05 and I find that the landlords have complied with section 7 of the Act, which is similar to part four of the test for damages or loss by reducing the amount by not charging the tenants for the laminate underlay and the time to install the laminate. I also do not apply depreciation



as I find that by cutting the carpet without the permission of the landlord is negligence and that the carpets could not be easily repaired due to the obvious damage the tenants caused by cutting the carpet. Therefore, I find the tenants are liable for the full amount claimed of **\$442.05** for this item and find that the landlords have met the burden of proof. I note that the carpet cleaning by the tenants does not outweigh the damage of cutting the carpet and the smell described by the landlord and what I find to be severe staining on the carpets.

**Item 9** – I accept the landlords undisputed claim for \$495.19 for damaged closet doors, which were supported by photo evidence. I also don't apply depreciation, as I find the tenants were negligence in their care of the closet doors, which were obviously damaged. Therefore, I find the landlord has met the burden of proof and I award the landlords **\$495.19** for this item.

**Item 10** – As this item was not for an amount claimed, I dismiss item 10 as there was no amount claimed for this item.

**Item 11** - The landlords have claimed \$196.88 to clean the rental unit including cleaning the dirty stove shown in the photos and the windows and some walls, which are also shown in the photo evidence. I find the landlords have met the burden of proof and that the tenants failed to comply with section 37 of the Act, which requires the tenants to leave the rental unit in reasonably clean condition and undamaged, except reasonable wear and tear. I find the rental unit was left dirty by the tenants and I award the landlords **\$196.88** as claimed for this item.

**Item 12** – I accept the landlord's undisputed testimony and evidence that the landlords spent \$152.30 for the cost to replace damaged blinds in the rental unit, which the landlords stated were not damaged at the start of the tenancy. I find the photo evidence also supports this portion of the landlords' claim and as a result, I find the landlords have met the burden of proof and I award the landlords the full amount claimed of **\$152.30**.

**Item 13** – I accept and agree with the landlords that they suffered a loss of rent for December 2019, due to the smell of feces and urine in the rental unit, the need for cleaning and carpet replacement, and that the landlords complied with section 7 of the Act and part four of the test for damages or loss by not claiming for additional months of loss of rent. Therefore, as mentioned above that I find the tenants breached section 37 of the Act due to the dirty and damaged condition of the rental unit at the end of the

tenancy, I find the landlords have met the burden of proof for this item. As a result, I award the landlords **\$1,127.50** for loss of December 2019 rent under the Act.

As the landlords' application was mainly successful, I grant the landlords **\$100.00** for the recovery of the cost of the filing fee, pursuant to section 72 of the Act.

I find the landlords establish a total monetary claim of **\$2,943.89** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Fix hole in wall	\$31.50 by mutual agreement
2. Toilet seat	Dismissed
3. Toilet paper holder	\$30.28
4. Oven range element	\$15.75 by mutual agreement
5. Window – sliding mechanism	\$7.88
6. Window – lock	\$19.06
7. Window screens	\$325.50
8. Carpet	\$442.05
9. Closet doors	\$495.19
10. Carpet deep cleaning	Dismissed as no amount claimed
11. Apartment cleaning	\$196.88
12. Blinds	\$152.30
13. Loss of rent for December 2019	\$1,127.50
14. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$2,943.89</b>

I will now address the tenants' security deposit of \$550.00 that the landlords continue to hold. Pursuant to sections 38 and 67 of the Act, I grant the landlords authorization to retain the tenants' full security deposit of \$550.00, which has accrued \$0.00 in interest under the Act, in partial satisfaction of the landlords' monetary claim. Pursuant to section 67 of the Act, I grant the landlords a monetary order for the balance owing by the tenants to the landlords in the amount of **\$2,393.89**.

Conclusion

The landlords' claim is mostly successful.

The landlords have established a total monetary claim of \$2,943.89. The landlords have been authorized to retain the tenants' full security deposit, including \$0.00 in interest of \$550.00 in partial satisfaction of the landlords' monetary claim pursuant to sections 38 and 67 of the Act.

The landlords are granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlords in the amount of \$2,393.89. 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 both parties. The monetary order will be emailed to the landlords 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: July 9, 2020

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Residential Tenancy Branch