



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL

### Introduction

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

- A Monetary Order for Damage for the landlords – pursuant to section 67 of the Act

The landlord and the tenants attended this teleconference hearing. The tenants confirmed that they received the landlord's notice of hearing package and evidentiary materials which were sent to them by registered mail. I find the tenants were served in accordance with sections 88 and 89 of the Act.

The landlord did not receive the tenants' documentary evidence that was submitted by the tenants to the Residential Tenancy Branch, six days before the hearing.

The hearing process was explained, and the parties were given a full opportunity to be heard, present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing.

### Preliminary Matter – Late Evidence

On July 17, 2020, six days before the hearing, the tenants provided documentary photographic evidence to the landlord by email. The landlord testified that the additional photographic evidence was not made available to the landlord and that the tenant only provided an email without any documentation or photographs being attached. Copy of the photographic evidence was also uploaded to the Residential Tenancy Branch. I note for the tenants' future reference that email service is not allowed unless an application for substituted service has been granted by the Director.

Rule 3 of the Rules of Procedure provides comprehensive requirements and guidance for service and exchange of evidence. If a party does not comply with the timelines included in Rule 3, that party risks the evidence not being considered. I considered whether the acceptance of the late evidence would prejudice either party or result in a breach of the principals of natural justice and the right to a fair hearing. I determined that if I were to accept the tenants' late evidence, the landlord would be denied the opportunity to prepare for and submit their case and rebuttal to the late evidence. This would be prejudicial against the landlord and consequently ruled the tenants' late evidence would not be considered. The tenants were advised that they could still provide testimony. Both parties agreed to proceed without this late evidence, consequently, this evidence was excluded.

#### Preliminary Matter: Amendment of the landlord's claim

In the landlord's monetary claim, the landlord included the tenants' owed utility bill. The parties agreed that the tenants' utility bill was paid by the tenants and agreed to the withdrawal of this portion of the landlord's claim. Pursuant to Rules of Procedure 4.2 and with the parties' agreement, this portion of the landlord's claim was withdrawn.

#### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage to the rental unit – pursuant to section 72 and 67 of the Act?

#### Background and Evidence

The parties agreed that this tenancy started as a one-year lease on Jan 13, 2017 and later converted to month to month tenancy. Rent was \$1700.00 per month. The tenants paid a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$500. The landlord continues to hold the deposits in trust. This tenancy ended February 29, 2020.

The parties further agreed that there was no condition inspection report signed at the start of the tenancy. Both parties did a walk through the property at the start.

The landlord testified that the rental unit was clean at the start of the tenancy and that there were some minor damages like a chipped tub, 3 chipped tiles and that the carpet was not new (5 years old) but was in a clean condition. The landlord further testified that the rental unit had been fully renovated in 2005. The Landlord stated she lives out of town. The landlord takes the position that the rental unit was left damaged and unclean. The landlord provided extensive photographic evidence in support of her claim for

damage to the rental unit by the tenants and their pets. The carpets, the underlay and the subflooring were urine stained and damaged and needed to be completely replaced. The landlord submitted testimony and evidence in support of her claim for a monetary order of \$5307.78 and stated that she tried to minimize the cost by looking for cheaper floors and not listing every single possible cost or damage in the rental unit – such damage to the kitchen cabinets, cost for carpet installation, broken shelves or inoperable door. The landlord claims are summarized below:

			Total Claimed
1	Cleaning	20 hrs at \$25.00 per Hr	\$500.00
2	Flooring	Materials	\$1,724.87
3	Home Hardware	Wall Repairs	\$40.28
4	Dollarama	Cleaning supplies	\$49.85
5	Home Hardware		\$41.03
6	Rona		\$53.66
7	Home Hardware	Primer	\$176.22
8	Flooring	Removal and Installation	\$2,010.00
9	Repairs & replacement		\$711.87
		Total claimed	\$5,307.78

The tenants take the position that when they did the walkthrough at the start of the tenancy, there were a few broken tiles around the kitchen, there was a missing drawer, the yard was a mess but the mess was not visible until much later in spring, as the yard was covered with snow when they moved in, in the middle of winter. The landlord acknowledge that the yard was covered with snow.

The tenants testified that on February 29, 2020 when they were moving out and were continuing to cleaning the rental unit, the landlord arrived and commented on the house being dirty; with this comment the tenants determined to abandon their effort in continuing to clean. The tenants agreed that they did not leave the rental unit in the best shape but that everyone was trying very hard to clean. The tenants explained that their older cat had kidney disease and that they tried very hard to keep the carpets clean. The tenants testified that they cleaned the carpets but agreed that the next day when they returned there was a very strong smell that she described as “a freak thing” because they had cleaned the carpets. The tenants further testified that on the last day of the tenancy they were under a lot of stress due to the disappearance of her spouse

who was suffering depression and anxiety which resulted in the involvement of the police and ended with an admission to hospital.

The tenants agree that the rental unit was not left in the best shape but take the position that some of the damage that the landlord is claiming for was already in the rental unit and attribute some of the damages to the landlord's previous tenant who left without notice in December of 2016. The tenants are of the position that the previous tenant did some of the damage such as the damage to the handle of the kitchen window, the broken screen, broken light plates and broken door handle.

The tenants explained that some of the damage they caused was accidental, such as the hole in the wall which was caused by their son-in-law and the broken hearth caused by her husband when he stepped on it. The tenants remarked that at the start of the tenancy the hearth had a few cracked tiles but admit that her husband accidentally stepped on it and broke it.

The tenants testified that as of the hearing date they had not requested nor provided their forwarding address to the landlord for the return of the security or the pet damage deposit.

As per section 63 of the Act, I offered the parties an opportunity to reach a settlement. The tenants made an offer which the landlord rejected and requested I proceed with the adjudication of the landlord's claims.

### Analysis

Under section 7 of the Act:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points – in this case the landlord has the burden of proof to establish:

- that a damage or loss exists;
- that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- the value of the damage or loss; **and**

- steps taken, if any, to mitigate the damage or loss.

Under section 67 of the Residential Tenancy Act, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

In this case it was undisputed by the tenants that the rental unit was not left in a reasonable clean and undamaged condition. While I appreciate that the tenants were under significant stress due to the health status of one of the tenants, as well as the health status of one of their pets, this does not excuse them from their responsibilities under the 37 (2) (a) of the Act which states:

### **Leaving the rental unit at the end of a tenancy**

**37 (2)** When a tenant vacates a rental unit, the tenant must  
(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

I find the landlord provided evidence and testimony to support her claim that the tenants violated the Act by leaving the rental unit in damaged and dirty condition and that as a result of the damage the landlord suffered a loss. I find the landlord has provided evidence to support her loss and has established that she mitigated the loss by not claiming for every possible singular damage noted as well as by selecting flooring that was less expensive. Having determined this, I must also determine what if any damage was due to reasonable wear and tear.

Residential Tenancy Branch Policy Guideline #40 provides guidance in determining awards for damages based on the useful life of building elements. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Under the heading of Damages, the Policy reads:

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

In the hearing the landlord stated that the rental unit had been fully renovated in 2005, 12 years before the tenants rented the unit in 2017. Considering this, the useful life of building elements will be calculated from the renovation date of 2005.

The useful life of building elements will be applied to the flooring materials, flooring removal and installation in the following percentages:

	Claimed	Useful Years	Years left	Amount granted
Flooring materials	\$1,724.87	20	5	25%
Flooring removal and installation	\$2,010.00	20	5	25%
Primer	176.22	5	0	(nominal) 10%

Policy Guideline 1 under the heading of Painting states:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The tenants agreed that one of the tenants accidentally damaged a wall leaving a hole. As the landlord is not responsible for the damage caused by the tenants, I grant a nominal amount of 10% towards the cost of the primer.

Despite the fact that the landlord's application does not include a request to retain the security and pet damage deposits, the offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposits if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, I order the landlord to keep the entire amount of the deposits, \$1,350.00, in partial satisfaction of the monetary order.

As the landlord has proved its claims, I grant a monetary award in the amount of **\$998.94**, calculated as follows:

			Claimed	Granted
1	Cleaning	20 hrs at \$25.00 per Hr	\$500.00	\$500
2	Flooring	Materials	\$1,724.87	\$431.22
3	Home Hardware	Wall repairs	\$40.28	\$40.28
4	Dollarama		\$49.85	\$49.85
5	Home Hardware		\$41.04	\$41.04
6	Rona		\$53.66	\$53.66
7	Home Hardware	Primer	\$176.22	\$17.62
8	Flooring	Removal and Installation	\$2,010.00	\$502.50
9	Repairs & Replacement		\$711.87	\$711.87
		Total	\$5,307.79	\$2,348.04
		Offsetting provision		\$1,350
		Net Award		\$998.04

### Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$998.04**. The tenants must be served with 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.

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: Aug 18, 2020

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Residential Tenancy Branch