



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mt Lehman Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

The landlord filed an application for dispute resolution (the “Application”) on May 6, 2020 seeking an order for compensation for damage caused by the tenant. The landlord applied to use the security deposit towards compensation on this claim and to recover the filing fee for the Application.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 28, 2020. The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, both parties confirmed they received the evidence prepared by the other. The tenants stated they received evidence within a narrow timeframe prior to the date of this hearing.

The landlord submitted a copy of an email dated May 6, 2020. They attached their prepared evidence, and the “instructions, date and time of the hearing.” From this, I am satisfied they fulfilled the requirements of informing the other party of the hearing information, as well as provided their evidence in a timely manner. In the hearing, the tenant confirmed they did not prepare documentary evidence in advance.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation, applying the security deposit to the claim, pursuant to section 37 and 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to its terms. Both the landlord and tenant signed this agreement on March 1, 2017. The tenancy started on that day for a fixed term ending on February 28, 2018. The monthly rent was \$1,250.00 per month; however, by the end of tenancy in 2020 the rent had increased to \$1,284.00. The tenant paid a security and pet damage deposit of \$625.00 on January 19, 2017.

The tenancy ended when the tenant sent email to the landlord to say they were “giving [the landlord] written notice to end our tenancy . . .in one month from [February 28, 2020].” On their Application, the landlord noted: “The tenant did give notice, but moved out without providing an opportunity to schedule a move out inspection.” In the hearing, the tenant verified the move-out date of March 31, 2020.

In the hearing, the landlord stated that the tenant did not give a forwarding address to the landlord prior to their move out. The tenant confirmed this detail in the hearing.

The landlord prepared a ‘Monetary Order Worksheet’ and signed that document on May 5, 2020. The amount of their claim is \$1,932.50. Subtracting the amount of the security deposit from this amount, the claim becomes \$1,307.50. Their monetary claim is as follows:

item	for	\$ amount
1.	6 burned out lights	60.00
2.	repair dryer handle	60.00
3.	patching & painting	765.00
4.	carpet cleaning	75.00
5.	move out cleaning	500.00
6.	replace carpet	472.50
	security deposit	- 625.00
	<b>TOTAL AMOUNT</b>	<b>1,307.50</b>

The landlord provided a copy of a Condition Inspection Report. This was completed and signed with the tenant initially at the start of tenancy on March 1, 2017. The landlord provided that the tenant did not attend the final move-out inspection on March 31, 2020. The complete report shows the above amounts for damages and bears the notation “no show” and “no forwarding address”.

The landlord provided a copy of a single receipt showing items 1 – 3 above. Item 3 states: “Extensive Wall Repair/Paint, Spot-painted doors, baseboards, ledges & trim throughout whole

suite.” Photos show painting spots throughout the unit, in the “main area” and all other rooms in the unit.

Items 4 and 5 are shown on a single receipt. Pictures show carpet stains throughout and other points of detail with respect to cleaning. The receipt shows “25 hrs x \$20.00/hr”. This receipt is dated March 31, 2020.

A receipt for item 6 is dated April 20, 2020. This shows “Carpet removal, New carpet and pad.” The Condition Inspection Report shows “Replace 2<sup>nd</sup> bdrm carpet.” Pictures show the “2<sup>nd</sup> Bdrm Carpet”, after vacuuming.

For item 5, I am not satisfied of the amount as reflected in the photos provided. The receipt is not itemized with respect to individual pieces of cleaning. Additionally, the invoice was dated the same day when the tenant moved out on March 31, 2020. It is not clear when the cleaning was accomplished, and I am not satisfied of the landlord’s effort at minimizing this piece of the loss. The amount, as presented, appears more haphazard than actualized.

The tenant did not provide documentary evidence. In the hearing, the stated the unit was “absolutely not spic-and-span”; however, they stated the photos “[do] not look like the state of the rental unit when they left it.” They underlined that they were deemed an essential worker when a pandemic began. This contributed to their high-risk status with transmission because of their work. They acknowledged there would be some “cleaning and painting”, and the “damage deposit. . .would satisfy the cost.”

### Analysis

The relevant portion of the *Act* regarding the return of the security deposit is section 38:

- (1) . . .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. . .any security deposit. . .to the tenant. . .;
  - (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant’s written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution within the 15 days set out in the *Act*. Moreover, I find the tenant’s statement in the hearing that the security deposit amount “would satisfy the cost” is a tacit acknowledgement that the landlord will retain the

deposit. The issue then is the assignment of responsibility, if at all present, for any damage to the unit requiring reimbursement.

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the landlord provided evidence of the unit condition at the start of the tenancy. The photos provided show its state at the end of the tenancy, in contrast to what the initial report provides. I am satisfied that damage or loss exists. With regard to section 37(2), I am satisfied that it results from a violation of the *Act*.

On specific amounts, I see no evidence showing six burned out lights needing replacement. Moreover, I am not sure of the need to engage repair services for light replacement. I infer from the cost of \$10.00 each that these six items are lightbulbs. I reduce the landlord's claim by this amount.

For item 5, I am not satisfied of the amount as reflected in the photos provided. The receipt is not itemized with respect to individual pieces of cleaning. Additionally, the invoice was dated the same day when the tenant moved out on March 31, 2020. It is not clear when the cleaning was accomplished, and I am not satisfied of the landlord's effort at minimizing this piece of the loss. I award no compensation for this portion of the landlord's claim. The amount, as presented, appears more haphazard than actualized.

I find the landlord has provided sufficient evidence to establish the amount of damage requiring repair for carpets, paint and the dryer handle. I award the amounts as claimed by the landlord for these items.

I find the landlord is entitled to an award for the amount of \$1,372.50.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,372.50. After setting off the security deposit, there is a balance of \$747.50. I am authorizing the landlord to keep the security deposit amount and award the balance of \$747.50 as compensation for the damages itemized and presented in their evidence.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to sections 32, 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$847.50 for damage or loss amounts and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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: September 14, 2020

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Residential Tenancy Branch