



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL, MNSDB-DR, FFT

### Introduction

This hearing dealt with cross applications filed by the parties. On March 24, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 25, 2020, the Tenant made an Application for Dispute Resolution seeking a return of the security deposit and pet damage deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On or around April 1, 2020, the Landlord amended her Application to change the amount of monetary compensation she was seeking pursuant to Section 67 of *Act* as the Tenant had paid her the utilities owed. The Tenant confirmed that she paid these amounts.

These Applications were originally set down for a hearing on July 31, 2020 at 1:30 PM but were subsequently adjourned for reasons set forth in the Interim Decision dated July 31, 2020. The Landlord attended the reconvened hearing; however, the Tenant did not attend at any time during the 32-minute hearing. All in attendance provided a solemn affirmation.

In my Interim Decision, the Landlord was Ordered to re-serve the entirety of her evidence to the Tenant in accordance with the *Act*, and that it must be deemed received by the Tenant no less than fourteen days before the reconvened hearing. The Landlord advised that she re-served this evidence to the Tenant by registered mail on August 18,

2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on August 21, 2020. Based on this undisputed evidence, I am satisfied that the Landlord's evidence has been served to the Tenant. As such, I have accepted this evidence and will consider it when rendering a Decision.

In addition, in my Interim Decision, the Tenant's Application was dismissed without leave to reapply because she did not serve it in accordance with the *Act*. Regardless, as her Application pertained to the return of her deposits, and as the Landlord had made a claim against them, these issues would be dealt with in any event. Moreover, the Tenant was Ordered to re-serve the entirety of her evidence. However, as the Tenant did not attend the hearing to speak to this, I am not satisfied that this evidence was re-served to the Landlord. As such, I have excluded the Tenant's evidence and I will not consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 27, 2015 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit. Neither party could remember when the tenancy ended but it was on or around March 13, 2020. The rent

was established at \$3,400.00 per month and it was due on the first of each month. A security deposit of \$1497.50 and a pet damage deposit of \$1,000.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Both parties agreed at the original hearing that a move-in inspection report was conducted on June 24, 2015. The Tenant advised that she did not get a copy of this report and the Landlord “assumed” that her daughter, who conducted the move-in inspection report with the Tenant, gave a copy to her.

During the reconvened hearing, the Landlord advised that in the Tenant’s own evidence, the Tenant referenced that she had a copy of the move-in inspection report.

The Landlord advised that she did not conduct a move out inspection report with the Tenant due to the COVID pandemic. She also did not give the Tenant two opportunities to conduct a final move-out inspection. She stated that she met the Tenant on the morning of March 13, 2020 and received the keys back later that afternoon when she found them in the mailbox. Once she obtained these keys, she conducted a move-out inspection by herself. She advised that she attempted to negotiate with the Tenant over the security deposit and pet damage deposit; however, the Tenant was not willing. As such, and due to the pandemic, she attempted to do a verbal move-out inspection.

The Tenant advised that the Landlord did not schedule a move-out inspection report with her and there was no communication regarding this. She stated that the Landlord came to the rental unit on the morning of March 13, 2020 and said she would come back later. The Landlord then came back later that afternoon and took pictures; however, the Tenant had not cleaned or moved yet. She stated that she left two keys on the counter but kept one key so that she could come back on March 16, 2020 to clean the rental unit and to clean the carpets. She then left that key in the mailbox on March 16, 2020.

All parties agreed that the Tenant’s forwarding address was provided to the Landlord by email on February 11, 2020.

The Landlord advised that she is seeking compensation in the amount of **\$3,320.21** for 50% of the cost of installation and replacement the carpet. She stated that the carpet was 10 years old, that it was in good condition at the start of the tenancy, that it did not smell, and that there were no stains. She submitted that the Tenant smoked in the rental unit and her pets defecated on the carpets. When the Tenant gave notice to end her tenancy, the Landlord told her not to “worry about the carpet” because her intention

was to sell the property. However, she could not sell it due to the COVID pandemic, so she had to prepare the rental unit to re-rent to a new tenant.

She referenced the pictures that she submitted as documentary evidence to support her position that there were stains on the carpet due to the Tenant's pets, and that there were also rust and makeup stains on the carpet as well. She noted that there were stains everywhere, except the bedrooms. She submitted a quote for the cost to replace the carpet and she stated that she is only requesting half of this amount as the carpet was 10 years old already. She also submitted pictures to corroborate this damage.

The Tenant confirmed that she had one cat in the rental unit. She stated that the carpet was at least 20 years old. She submitted that she had her stepdad clean the carpet in the major walkways yearly and that it was professionally cleaned at the end of the tenancy.

The Landlord advised that she is seeking compensation in the amount of **\$892.50** for refinishing the flooring in the kitchen. She stated that the entire main floor of the rental unit was hardwood, that there were a "couple of scratches" at the start of the tenancy, and that the flooring was "mostly in good condition". At the end of the tenancy, she testified that there were lots of scratches on the flooring, that the hardwood in the kitchen was damaged because of water damage, that there was pet damage on the flooring, and that there was also damage caused by moving furniture.

She submitted that her insurance company determined that the water damage to the kitchen flooring was due to the Tenant likely not paying attention to water overflowing from the water dispenser. As the Tenant had a carpet under the fridge, this saturated the carpet and trapped the water. As a result, over time, the moisture caused significant gaps in the hardwood. Her insurance company rejected the Landlord's claim as it was evident that the Tenant was negligent in causing this damage. She stated that the flooring was installed in 2010 and she submitted pictures of this damage to support her claim. In addition, she also submitted an estimate of the cost to fix this damage.

The Tenant was not at the reconvened hearing to make any submissions with respect to this claim.

The Landlord advised that she is seeking compensation in the amount of **\$1,158.25** for 50% of the cost of refinishing the flooring in other areas of the rental unit. She stated that the move-in inspection report noted that there were two scratches on the floor already, so this is the reason she is only asking for half of the refinishing costs. She

referenced pictures of large, extensive scratches on the hardwood flooring in almost every room. She submitted an estimate of the cost to repair this damage to support her claims.

The Tenant was not at the reconvened hearing to make any submissions with respect to this claim.

Finally, she advised that she is seeking compensation in the amount of **\$150.00** for the cost of cleaning the rental unit as the Tenant did not leave it in a re-rentable state. She stated that the walls were not wiped down, that the blinds and every window were dirty, that under the stove was not cleaned, that the washer and dryer were dirty, that the tile grout needed to be cleaned, and that the holes in the walls were not filled. She submitted pictures of the condition of the rental unit to support this claim. She advised that she could not hire a cleaner on April 1, 2020 due to the COVID pandemic, so she cleaned the rental unit herself. She stated that while she estimated \$30.00 per hour for five hours of cleaning, she actually spent over 16 hours returning the rental unit to a re-rentable state.

She stated that the Tenant had hired a cleaner prior to vacating the rental unit; however, this person could not clean the rental unit sufficiently because the work required exceeded the budget that the Tenant gave her. She was at the rental unit when this cleaning was happening, and she stated that the cleaner told her that she “would not have taken on the job if she knew how dirty it was, but [she] was a friend” of the Tenant’s mother.

The Tenant was not at the reconvened hearing to make any submissions with respect to this claim.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend a move-out inspection.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against the security deposit and pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports or provide a copy as per the *Regulations*.

Regarding the move-in and move-out inspection reports, I am satisfied that the Tenant was provided with a copy of the move-in inspection report as per her email. However, the consistent and undisputed evidence is that the Landlord did not offer at least two opportunities for the Tenant to attend a move-out inspection. Consequently, I find that the Landlord extinguished her right to claim against the security deposit and pet damage deposit for damage.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the security deposit and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenant’s forwarding address on February 11, 2020. As the tenancy ended on or around March 13, 2020, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The consistent evidence before me is that the Landlord made this Application to claim against the deposits on March 24, 2020. While the Landlord extinguished her right to claim against the deposits for damage, the Landlord originally also applied for compensation for utilities owed, which is not

damage. As a result, I am satisfied that the doubling provisions do not apply in this instance to the security deposit.

However, with respect to the pet damage deposit, this can only be claimed against if there is damage due to the pets. While the Landlord advised of damage that was due to the pets, she extinguished her right to claim against the pet damage deposit as she failed to comply with Section 35 of the *Act* and provide the Tenant with two opportunities to attend a move-out inspection. While she was still entitled to claim for damages due to the pets, the pet damage deposit should have been returned in full within 15 days of March 13, 2020. As the Landlord did not return the pet damage deposit in full within 15 days of this date, the Landlord in essence illegally withheld the pet damage deposit contrary to the *Act*. As a result, I am satisfied that the Landlord breached the requirements of the *Act*. As such, under these provisions, I grant the Tenant a Monetary Order amounting to double the original pet damage deposit, or **\$2,000.00**.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Landlord's claim for compensation in the amount of \$3,320.21 for 50% of the cost of installation and replacement the carpet, based on the move-in inspection report, I am satisfied that the carpets were in fair to good condition at the start of the tenancy. While there is no move-out inspection report, I am permitted to consider if either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Though the parties had different estimations of the age of the carpet, I find it important to note that Policy Guideline # 40 outlines the average useful life of carpets as 10 years. When reviewing the pictures submitted by the Landlord, I am satisfied that the carpet did not appear to be in a worn or tattered condition. As such, while at the end of the average useful life according to the policy guideline, I find that the carpet still had years of useful life left.

Furthermore, the pictures clearly depict large stains and marks that I would not find to have reasonably existed at the start of the tenancy. I would also not attribute these stains to be ordinary wear and tear as these stains appear to be obvious damage caused by the Tenant's negligence. As a result, I am satisfied that the Landlord was required to install new carpet due to the considerable damage caused by the Tenant. However, even though Landlord already gained the benefit of at least ten years of the existing carpet, as I am satisfied that the carpet still had useful years of life left, I find that the Landlord has established a monetary award in the amount equivalent to 1/4 of the replacement cost, or **\$1,660.11**.

With respect to the Landlord's claim for compensation in the amount of \$892.50 for the cost of refinishing the kitchen floors, based on the undisputed evidence before me, I am satisfied that the Tenant was negligent in damaging the kitchen flooring, necessitating the requirement to refinish the hardwood flooring. As such, I find that the Landlord should be granted a monetary order in the amount of **\$892.50** to cover the cost of returning the kitchen flooring to a re-rentable condition.

Regarding the Landlord's claim for compensation in the amount of \$1,158.25 for 50% of the cost of refinishing the flooring in other areas of the rental unit, when reviewing the evidence before me, I am satisfied that there were large, visible scratches and gouges in the hardwood flooring. Based on the significance of this damage, I do not find it reasonable that these were present at the start of the tenancy, nor do I find these to be consistent with the move-in inspection report. As such, I am satisfied that the Landlord has substantiated this claim, and I award a monetary order in the amount of **\$1,158.25** to satisfy this issue.

Finally, with respect to the Landlord's claim for compensation in the amount of \$150.00 for the cost of cleaning the rental unit, I am satisfied from the undisputed evidence before me that the rental unit was not left in a suitable condition for re-rental and that additional cleaning was required. As a result, I find that the Landlord has corroborated this claim, and I grant her a monetary award in the amount of **\$150.00**.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

As the Tenant was not successful in her claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.



Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Carpet replacement	\$1,660.11
Kitchen floor refinishing	\$892.50
Hardwood floor refinishing	\$1,158.25
Cleaning	\$150.00
Recovery of filing fee	\$100.00
Security deposit	-\$1,497.50
Double pet damage deposit	-\$2,000.00
<b>TOTAL MONETARY AWARD</b>	<b>\$463.36</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$463.36** 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.

The Tenant's Application is dismissed without leave to re-apply.

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 27, 2020

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Residential Tenancy Branch