



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** FFL MNDL-S

### Introduction

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

- a monetary order for money owed or compensation 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

### Preliminary Issue—Amendment to Landlord's Application

The landlord submitted a revised monetary worksheet with an additional \$50.00 claim for stove cleaning which was not included in the original application.

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 by the respondent(s) not less than 14 days before the hearing.***

In this case the landlord did not file any amendments in accordance with Rule 4.6.

As an amendment was not received in accordance with RTB Rule 4.6, and the respondents have the right to review and respond to the amendment and supporting evidence, the additional \$50.00 claim will not considered as part of this application.

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

Is the landlord entitled to monetary compensation for losses?

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

### **Background and Evidence**

This fixed term tenancy began on August 1, 2019, and was to end on July 31, 2020. The tenancy ended after a Mutual Agreement to end Tenancy was signed on January 15, 2020 by both parties to end the tenancy effective April 30, 2020. Monthly rent was set at \$1,500.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$750.00, which the landlord still holds.

The landlord is seeking compensation for the following losses associated with the tenancy:

<b>Item</b>	<b>Amount</b>
Late Fee – April 2020 rent	\$25.00
1 Key	5.00
Burn Marks on wall	20.00
Multiple chip marks – bathroom	20.00
Trim repair on cabinet	10.00
Repair to ceiling, paint	525.00
Carpet Cleaning	157.50

Loss of Rent – May 2020	1,500.00
<b>Total Monetary Order Requested</b>	<b>\$2,262.50</b>

The landlord is seeking a \$25.00 late fee for the April 2020 rent. The tenants do not dispute that the April 2020 rent was late, as the tenants had applied for a partial rent subsidy due to the pandemic, and were awaiting the rent subsidy payment.

The landlord testified that a key was not returned by the tenants, and is seeking \$5.00 in reimbursement for this missing key. The tenants testified that they had mailed back this missing key by way of regular mail to the landlord.

The landlord submitted an estimate to repair the burn marks on the concrete, which the landlord believes was caused by cigarettes. The tenants dispute this claim, stating that they were non smokers.

The landlord also submitted a monetary claim in the amount of \$20.00, which is an estimate to repair chip marks in the bathroom sink and bathtub, which the landlord testified was intentional damage caused by the tenants. The landlord testified that the fixtures were approximately 10 years old, and in perfect condition at move-in. The tenants dispute the landlord's claim, citing wear and tear.

The landlord is also seeking a monetary claim of \$10.00 to repair a cabinet, which showed chipping of the paint and finish. The landlord testified that the age of the cabinets were approximately 10 years old. The tenants dispute this claim, citing regular wear and tear.

The landlord is seeking a monetary claim in the amount of \$525.00 for repairs to the stains on the bathroom ceiling. The landlord testified that on they had conducted monthly inspections, and on January 8, 2020, there were no visible stains on the bathroom ceiling. The landlord noticed the damage on February 15, 2020 when she did a suite inspection. The landlord believes that the tenants caused the damage as retaliation against the landlord after requesting additional money for utilities, and for demanding the early termination of the fixed-term tenancy. The landlord testified that when she had informed the tenants of the stain on March 12, 2020 during the suite inspection, and no explanations were offered.

The landlord noticed on April 26, 2020 during another suite inspection that the tenants had attempted to clean the stain by wiping it, scraping off some of the textured ceiling. The landlord submitted an invoice for handyman services, which also referenced

mattress removal. Both parties confirmed that the landlord did not suffer a monetary loss in relation to the mattress removal. The tenants dispute causing the damage to the ceiling.

The landlord is also seeking reimbursement for carpet cleaning, which the landlord testified was approximately 5 years old, and professionally cleaned at the beginning of the tenancy. The tenants testified that they had rented a machine, and had cleaned the carpets thoroughly. The tenants submitted pictures to support that they had cleaned the carpet.

The landlord submitted a copy of the move-in and move-out inspection reports, invoices, and photos in support of their claim.

Lastly, the landlord is seeking \$1,500.00 in lost rental income for May 2020 due to the tenants' failure to accommodate showings. The landlord testified that they had advertised the suite for rent on March 20, 2020, and wanted to show the suite in the last week of March 2020. The landlord was able to re-rent the suite for June 1, 2020, but testified that the tenants had sabotaged the showings by smoking marijuana and posting notices that they had Covid 19.

The tenants testified that they had concerns about the landlord showing the rental unit due to Covid 19, and that the landlord attempted to show the unit despite their concerns. The tenants also dispute smoking marijuana, and attribute any scents to a cultural practice of smudging, where sage is burned. The tenants testified that they offered virtual showings of the rental unit.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The landlord is seeking \$25.00 in late fees for the month of April 2020. As set out in Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures, the referenced non-payment of rent in the landlord's application falls under the "affected rent" period of March 18, 2020 to August 17, 2020. As per the Policy Guideline and associated tenancy regulation, "a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required." I find that the tenants provided a valid reason for the late payment of rent, and as the late payment fell within the period of "affected rent", I dismiss this portion of the landlord's application without leave to reapply.

The landlord is also seeking the loss of rental income for the month of May 2020 as the landlord feels that the tenants hindered the landlord's ability to show the rental unit. The landlord noted a smell that deterred prospective renters from wanting to rental unit. The tenants testified that this smell was due to a cultural practice, and not due to smoking or similar contravention of the *Act*. The landlord testified that the tenants had also cited Covid-19 as a concern, which hindered the landlord's ability to show and re-rent out the

suite. I note that the Ministerial Order dated March 30, 2020 set the following restrictions on the landlord's right to entry:

***Landlord's right to enter rental unit – Residential Tenancy Act***

*8 (1) Despite section 29 (1) (b) of the Residential Tenancy Act and sections 11 (2) (a) and (3) of the Schedule to the Residential Tenancy Regulation, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.*

*(2) If a landlord gave written notice under section 29 (1) (b) of the Residential Tenancy Act before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.*

*(3) Despite any section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:*

- (a) an emergency in relation to the COVID-19 pandemic exists, and*
- (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.*

Although the landlord did attempt to show the suite before the Ministerial Order came into effect, I am not satisfied that the landlord had provided sufficient evidence to support that the delay in re-renting the suite can be attributed to the tenants' actions, or that the tenants had deliberately and maliciously sabotaged the landlord's ability to re-rent the rental unit. Accordingly, I dismiss the landlord's application for loss of rental income without leave to reapply.

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.

As stated above, the landlord bears the burden of establishing their claim. I have considered the landlord's claim for the damage to the ceiling. Although I am satisfied that this damage did occur during this tenancy, as evidenced by the landlord's regular suite inspections, I find that the landlord failed to establish that it was due to the tenants' neglect or actions that the ceiling was damaged. Although the landlord suspects that the tenants had damaged the ceiling as retaliation against the landlord, this suspicion is not supported in evidence or by witness testimony. On this basis, the landlord's monetary claim to repair the damaged ceiling is dismissed without leave to reapply.

The landlord also filed a monetary claim for damage to the cabinet, sink, and tub. The landlord's photos depict damage to these items, which are noted on the move-out inspection report. In consideration of the evidence before me, I am not satisfied that the damage claimed exceeds regular wear and tear. Furthermore, I find that the landlord failed to support the value of losses claimed. For these reasons, I dismiss the landlord's monetary claim for losses associated with the damage to the cabinet, sink, and tub without leave to reapply.

The landlord also submitted a monetary claim in the amount of \$20.00 for burn marks that the landlord believes was caused by the tenants' actions. Similarly, I am not satisfied that the landlord provided sufficient evidence to support that the tenants caused this damage, nor did the landlord provide sufficient evidence to support the value of their loss. Accordingly, I dismiss the landlord's monetary claim for this loss.

The landlord submitted a monetary claim for carpet cleaning, which the landlord testified was cleaned at the beginning of the tenancy. The landlord testified that the carpet was 5 years old. The tenants testified that they had cleaned the carpet at the end of the tenancy. Despite the tenants' evidence and testimony, I find that the landlord's evidence shows that there are significantly more stains on the carpets than noted at the inspection at the beginning of the tenancy. I find that the tenants failed to properly clean the carpet, which caused the landlord a monetary loss for professional cleaning. Accordingly, I allow the landlord's monetary claim for carpet cleaning.

Although the tenants testified that they had returned the key to the landlord by regular mail, I find that the tenant failed to provide sufficient evidence to show that the key was indeed returned to the landlord. On this basis, I allow the landlord's monetary claim for the missing key.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was partially successful in their application, I find that the landlord is entitled to recover half of the filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary awards.

## **Conclusion**

The landlord is granted a monetary award for the following claims:

Item	Amount
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1 Key	5.00
Carpet Cleaning	157.50
Recovery of half of the filing fee	50.00
<b>Total Monetary Order to Landlord</b>	<b>\$212.50</b>

The remainder of the landlord's entire application is dismissed without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary awards. The remaining \$537.50 shall be returned to the tenants. I issue a Monetary Order in the amount of \$537.50 in the tenants' favour for the return of the tenants' security deposit, which the landlord still holds.

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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 24, 2020

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Residential Tenancy Branch