



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$1,225.00, and for a monetary order for damage or compensation for damage under the Act in the amount of \$1,000.00; and a monetary order for damages in the amount of \$2,000.00, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 35 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by email, sent on June 5, 2020. The Landlord provided a copy of the email he sent to the Tenant at an address with which he said he had previously corresponded with her, as evidence of service. The copy of the email sent to the Tenant contained the evidentiary documentation the Landlord had submitted to the RTB. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application documents and confirmed them in the hearing. The Landlord also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Landlord that pursuant to Rule 7.4, I would only consider the written or documentary evidence to which he pointed or directed me in the hearing.

At the outset of the hearing, I asked the Tenant about the other tenant named in this Application, and the Tenant told me that it was her young daughter. As such, I find it appropriate to remove the child's name from the Application, pursuant to section 64(3)(c) and Rule 4.2.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Landlord said that the rental unit is an apartment in a big building, which is under four years old. He said that it has one bedroom and one bathroom. The Landlord provided a copy of the Parties' tenancy agreement, which included the following details: The fixed-term tenancy began on December 1, 2019 and was to run to December 1, 2020, and then operate on a periodic or month-to-month basis. The tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$1,375.00, due on the first day of each month. The Landlord confirmed that the Tenant paid him a security deposit of \$680.00, and no pet damage deposit.

The Landlord said that the Tenant called him sometime in May 2020 to say that she would not be able to stay, and that she planned to vacate. The Landlord said that the Tenant did vacate the rental unit on May 31, 2020. The Landlord said the Tenant did not give him a forwarding address, other than that of her parents.

The Landlord said that the Parties did a condition inspection of the rental unit at the

beginning of the tenancy and that the Tenant did not find anything wrong with it. The Landlord said that he did not produce a condition inspection report ("CIR") from this inspection. When asked about an end of tenancy condition inspection, the Landlord said that the Tenant never allowed him to enter the rental unit, that she failed to book the elevator for moving out, and that she dumped/left everything behind in the unit for him to clean up.

The Landlord provided details of his claim in the Application and documentary evidence that he submitted to the RTB and served on the Tenant. I have combined these details in the following monetary order worksheet for easy reference.

	Receipt/Estimate From	For	Amount
1	Rent owing	Owes \$175.00 for each of March & Apr; + \$875.00 for May	\$1,225.00
2	<del>Estimate</del>	<del>Floor replacement</del>	<del>\$1,000.00</del>
3	Patio Door handle	Handle: \$50.00; Install & align: \$150.00	\$200.00
4	Garbage removal by moving company	Take it and dump it	\$275.00
5	Two cleaning ladies	6 hrs in 2 days, @ \$30.00 ea/hr	\$360.00
6	\$300.00 for new door; \$150.00 to install it	Fix refrigerator door	\$450.00
7	Bathroom door lock	New mechanism - \$48.00 + \$50.00 to install	\$98.00
8	Wall repair and painting		\$700.00
		<b>Sub-total</b>	<b>\$3,308.00</b>
		Less security deposit	(\$680.00)
	RTB	Application filing fee	\$100.00
		<b>Total monetary order claim</b>	<b>\$2,728.00</b>

#### #1 UNPAID RENT OWING → \$1,225.00

The Landlord said that for the last three months of the tenancy, the Tenant did not pay

her full rent. He said that the Tenant paid \$1,200.00 per month for March and April 2020, and only \$500.00 in May 2020. The Landlord said that the Tenant, therefore, owed him \$175.00 for each of March and April, and \$875.00 for May for a total amount owing of \$1,225.00.

**#2     DAMAGED FLOORING → \$1,000.00**

The Landlord said that the Tenant did not inform him that she had a pet cat. He said that the cat damaged the flooring; however, he was not able to afford to have it repaired, so this was not done, and is no longer part of the Landlord's claim.

**#3     PATIO DOOR HANDLE → \$200.00**

The Landlord submitted a photograph of the sliding patio door, which shows the door handle out of alignment with the rest of the door. The Landlord said that the patio door would not close. He said it cost him \$50.00 to buy a new handle, and it took \$150.00 to install and align it. He said nobody was even willing to come, given the state of emergency. He did not say how he arrived at \$150.00 for the installation and alignment.

**#4     GARBAGE REMOVAL → \$275.00**

The Landlord said that the rental unit was filled with garbage and junk, as was the storage locker. He submitted a photograph of the storage locker which shows items like toys, small tables, sheets covering something and a decorative poster or picture. The picture of the patio shows five of six boxes of what looks to be garbage, three full garbage bags, and a dirty, large living room chair holding bags and boxes.

The Landlord said he hired a moving company to take what was left behind to the dump, which he said cost him \$275.00. He did not submit a receipt for this service.

**#5     CLEANING → \$360.00**

The Landlord included photographs which illustrate that the Tenant had not cleaned the bathtub, the toilet, the vent in the bathroom, the oven, the microwave, or the stove top. The Landlord said the rest of the apartment was dirty, as well.

The Landlord said that he hired two women who came for a total of six hours and charged \$30.00 per hour each. He said he hired the cleaners on a social media platform, which, he said: "...was the only way to get someone to do it. It took so many

people to reach out to get that thing done.” The Landlord did not submit a copy of an invoice or payment receipt from the cleaners.

#### **#6 REPAIR REFRIGERATOR DOOR → \$450.00**

The Landlord submitted photographs of the refrigerator door, which shows a crack in part of the molding into which a shelf fits. The Landlord said: “I fixed the door of the old one. It was just 3 years old and had nothing else wrong with it. I don’t have that kind of money to buy a new one. \$300.00 plus \$150.00 for someone to install it.”

The Landlord submitted a document he labelled: “Fridge\_replacement\_part.pdf” This document is a “retail order confirmation”, which shows a picture of a door ordered online on June 3, 2020. However, the unit price on this document is \$159.95 U.S. There are no other invoices or receipts for the item or the installation of this claim.

#### **#7 BATHROOM DOOR LOCK REPAIR → \$98.00**

The Landlord said that the bathroom door would not lock at the end of the tenancy. He said: “We needed to remove that whole mechanism and install a new one. It cost \$48.00 to buy and \$50.00 to install.”

The Landlord did not submit any receipts to support the cost of this unit and the installation. He submitted a copy of a hardware store credit card payment record, but this does not set out any of the purchases that led to the charges.

The Landlord submitted a photograph of the bathroom door in order to show what he said was a scratch on the door. I note that the door handle in this photograph is not the sort to have a lock.

#### **#8 WALL REPAIR AND PAINTING → \$700.00**

The Landlord said that the apartment needed a new coat of paint and that there was some damage to be repaired. The Landlord did not submit photographs of the walls to illustrate the damage he said the Tenant did.

The Landlord said he hired someone to repair and paint the walls for \$700.00. He said he had to negotiate with the man to get this price. The Landlord said the rental unit was last painted in 2016 when everything was new.

## Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Landlord testified, I advised him on how I would analyze the evidence presented to me. I told him that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

Landlords' and tenants' rights and obligations for repair and cleaning are set out in sections 32 and 37 of the Act. Section 32 states:

### **Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[emphasis added]

Section 37 of the Act states:

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

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[emphasis added]

**#1 UNPAID RENT OWING → \$1,225.00**

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to sections 26 and 67 of the Act, I award the Landlord with **\$1,225.00** in unpaid rent from the Tenant.

**#2 DAMAGED FLOORING → \$1,000.00**

As the Landlord did not have this damage repaired, he withdrew this claim and, therefore, I dismiss this with leave to reapply.

**#3 PATIO DOOR HANDLE → \$200.00**

I find that the undisputed evidence before me is that the patio door was new in 2016, and that the handle was out of alignment with the door at the end of the tenancy.

The Landlord said he did a condition inspection with the Tenant at the start of the tenancy in December 2019; however, he acknowledged that he did not produce a CIR in this process, despite this being required pursuant to section 23(4) of the Act and section 18 of the Residential Tenancy Regulation (“Regulation”).

Without a CIR from the start of the tenancy or even a CIR from the end of the prior tenancy, the Landlord has only his testimony to support the condition of the rental unit at the start of the tenancy versus the condition at the end. However, without any evidence from the Tenant, I am left with the Landlord's testimony and documentary submissions.

The Landlord did not submit any receipts relating to this claim. I find that the photographs provide evidence of the damage to the door, but without a receipt, I find that the Landlord has provided insufficient evidence to support the full claim; however, in this set of circumstances, I award the Landlord a nominal amount of \$50.00 for the repair, pursuant to Policy Guideline #16 and section 67 of the Act. I, therefore, award the Landlord with **\$50.00** from the Tenant for this claim.

#### **#4 GARBAGE REMOVAL → \$275.00**

A landlord is not allowed to dispose of a tenant's personal property under the Act and Regulation, without following the rules set out in Part 5 of the Regulation, as authorized by section 97 of the Act.

The Regulation states:

### **Part 5 — Abandonment of Personal Property**

#### **Landlord's obligations**

#### **25 (1) The landlord must**

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

#### **(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that**

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or



(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

[emphasis added]

I find that the items left behind in the locker are more likely than not worth less than \$500.00. Further, I find that the photographs submitted by the Landlord indicate that the Tenant had abandoned the items left behind on the patio, given how the items were grouped together on the patio in garbage bags and boxes on top of a decrepit chair. I also find that much, if not all of it was garbage that would not have a market value of over \$500.00. I find the amount claimed for the removal of these items was reasonable in the circumstances of the state of emergency and the difficulty in getting assistance from contractors. As such, I award the Landlord with recovery of **\$275.00** from the Tenant for this claim.

#### **#5     CLEANING → \$360.00**

Based on the Landlord's testimony and photographic submissions, I find that the Tenant did not leave the rental unit "reasonably clean, and undamaged except for reasonable wear and tear," as is required of sections 32 and 37 of the Act. However, the rental unit is a one-bedroom, one-bathroom apartment. Based on his photographs, I agree with the Landlord that the Tenant did not properly clean the rental unit at the end of the tenancy.

However, I find that it should not have taken two people a total of 12 hours to clean this size of an apartment. Based on common knowledge and ordinary human experience, I find that it might have taken an hour to clean the oven and the microwave in the kitchen, another hour for the rest of the kitchen, an hour in the bedroom, an hour in the bathroom, and an hour in the living room and hallways. This comes to five hours for one person. Accordingly, and as a result of this consideration, which is based on the evidence before me, I award the Landlord with recovery of six hours of cleaning at \$30.00 per hour for a total of **\$180.00** from the Tenant for cleaning the rental unit.

#### **#6     REPAIR REFRIGERATOR DOOR → \$450.00**

The Landlord did not say that or if the crack in the refrigerator door affected the manner in which the refrigerator was used. Further, even though there was a condition inspection at the beginning of the tenancy, I find it more likely than not that the Parties would not have opened the refrigerator to look for something like this at the start of the tenancy. The Landlord said that the refrigerator was three years old at the end of the

tenancy. I find there is insufficient evidence before me that this damage was done during this tenancy. Further, I find that this crack amounts to normal wear and tear of appliances in the rental unit. As a result, I dismiss this claim without leave to reapply.

**#7 BATHROOM DOOR LOCK REPAIR → \$98.00**

I find that without any receipts for this claim, there is insufficient evidence before me of what it cost the Landlord to purchase a new lock mechanism or that the door had contained a lock mechanism in the first place.

As a result, I find on a balance of probabilities that the Landlord provided insufficient evidence to support this claim. I, therefore, dismiss this claim without leave to reapply.

**#8 WALL REPAIR AND PAINTING → \$700.00**

The Landlord did not provide any photographs of the condition of the walls in the rental unit. He said it was last painted in 2016.

Policy Guideline #40 (“PG #40”) is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the paint was new in 2016, therefore, it had reached the end of its useful life at the end of the tenancy. This Policy Guideline reflects the useful life of fixtures, appliances, paint, etc., which depreciate all the time through normal wear and tear.

I find that the rental unit was due for a new coat of paint and associated repairs in 2020, anyway. Therefore, I find that it is not the responsibility of the Tenant to pay for this regular maintenance and paint updating in the rental unit. Accordingly, I dismiss this claim without leave to reapply.

### Summary and Set Off

	Receipt/Estimate From	For	Amount
1	Rent owing	175 – Mar & Apr; + 875	<b>\$1,225.00</b>
2	<del>Estimate</del>	<del>Floor replacement</del>	<b>\$0.00</b>
3	Patio Door handle	Handle:\$50; Install & align 150	<b>\$50.00</b>
4	Garbage removal by “Moving Alex”	Take it and dump it	<b>\$275.00</b>
5	Two cleaning ladies	6 hrs over 2 days, @ \$30 ea/hr	<b>\$180.00</b>
6	\$300.00 for new door; \$150 to install it	Fix refrigerator door	<b>\$0.00</b>
7	Bathroom door lock	New mechanism - \$48 + \$50 to install	<b>\$0.00</b>
8	Wall repair and painting		<b>\$0.00</b>
		<b>Sub-total</b>	<b>\$1,730.00</b>
		Less security deposit	(\$680.00)
	RTB	Application filing fee	\$100.00
		<b>Total monetary order claim</b>	<b>\$1,150.00</b>

The Landlord is also awarded recovery of the **\$100.00** Application filing fee from the Tenant.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant’s security deposit of \$680.00 in partial satisfaction of the Landlord’s monetary award, pursuant to sections 67 and 72 of the Act.

I grant the Landlord a Monetary Order from the Tenant for the remainder of the award

owing in the amount of **\$1,150.00**, which must be served on the Tenant by the Landlord.

### Conclusion

The Landlord is partially successful in his claim for compensation from the Tenant in the amount of \$1,730.00. The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant. The Landlord is authorized to retain the Tenant's security deposit in partial satisfaction of the award, pursuant to section 72(2) of the Act.

The Landlord is granted a Monetary Order from the Tenant for the remainder of the award owing in the amount of **\$1,150.00**, pursuant to section 67 of the Act.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: October 21, 2020

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Residential Tenancy Branch