



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 60 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant stated that she served her written evidence package to the landlord by registered mail on September 15, 2020. The tenant confirmed the Canada Post tracking number verbally during the hearing. The landlord claimed that he did not receive the evidence but that the mailing address that the tenant used was correct. The Canada Post tracking number on the website indicates that the mail was delivered on September 16, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's evidence on September 20, 2020, five days after its registered mailing.

Both parties affirmed that they were ready to proceed with this hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy ended on February 29, 2020. Monthly rent in the amount of \$5,500.00 was payable on the first day of each month. A security deposit of \$2,750.00 was paid by the tenant. A written tenancy agreement was signed by both parties. A previous Residential Tenancy Branch ("RTB") decision, dated June 29, 2020, was issued by a different Arbitrator regarding the tenant's application, which awarded the tenant a monetary order of \$5,500.00 against the landlord, for the return of double the security deposit. The file number for that decision appears on the front page of this decision.

The landlord seeks a monetary order of \$2,750.00 plus the \$100.00 application filing fee.

The landlord provided a monetary order worksheet claiming \$1,680.00 for painting and \$1,107.75 for a deep clean, totalling \$2,787.75, but maintained that he only wanted \$2,750.00 from the tenant. He stated that both parties conducted a move-out condition inspection on February 29, 2020, and the tenant did not sign the report. He said that the tenant did not clean the rental unit, so he had to pay for the whole unit to be cleaned and shampooed for \$1,107.75, for which he provided an invoice but not a receipt which he said he had. The landlord claimed that the tenant did not paint the rental unit after causing 11 nail holes and 13 hook holes in the walls, for a total of 24 holes. He said that the holes could not just be patched and the contractor had to repaint the entire rental unit. He provided an invoice but no receipt, which he said he had. He stated that he took photographs of the rental unit. He explained that the rental unit was a brand-new luxury unit that had never been lived in before the tenant.

The tenant disputes the landlord's application. She stated that she did not clean the rental unit or shampoo the carpets when she vacated but the landlord told her not to worry and he would return her security deposit the next day. She claimed that her art was professionally hung using hangers and there were five art pieces with two hooks each for a total of ten hooks. She said that she does not believe the landlord repainted the entire unit because the landlord had a video of the rental unit from March 2020 with the hooks still in the wall after she moved out. The tenant stated that she would be willing to pay \$200.00 to clean and \$400.00 to shampoo the carpets because she agrees that she did not complete this work, as required.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$200.00 for cleaning and \$400.00 for shampooing carpets, for a total of \$600.00. The tenant agreed to pay the above amounts during the hearing. I find that these are reasonable amounts for cleaning and shampooing, which the tenant was required to complete but failed to do so, in accordance with Residential Tenancy Policy Guideline 1.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for \$2,187.75 without leave to reapply.

I find that the landlord did not sufficiently prove his claim, failing to properly explain the photographs, invoices, and other documents that the landlord submitted for the hearing. The landlord did not go through any of the above documents during the hearing. I notified the landlord during the hearing that he had the burden to prove his claim. I provided the landlord with ample time and opportunity to present his claim. I asked the

landlord questions and referred to his invoices, but he still failed to go through these documents during the hearing.

I find that the tenant did not cause excessive damage beyond reasonable wear and tear to the walls at the rental unit, as per Residential Tenancy Policy Guideline 1. I find that the landlord failed to show that there were 24 holes in the walls because he did not go through any of his photographs or other documents during the hearing. The tenant maintained that she only caused 10 holes, which I find is not excessive. Therefore, I find that the tenant is not responsible for the cost of repainting the entire rental unit.

I also note that the landlord did not provide any receipts for the painting or cleaning claimed, he provided invoices with balances due. He did not indicate when the work was done, what he paid, when he paid it, how he paid it, or any other such information. He claimed that he had receipts that he could have provided for this hearing, but he did not do so. The tenant disputed the landlord's claims and questioned whether he even had the repainting work done. It is the landlord's burden to prove these amounts and claims.

Therefore, the landlord's claims for cleaning of \$507.75 (since the tenant agreed to pay \$600.00 for cleaning and shampooing towards this cost) and painting of \$1,680.00, are dismissed without leave to reapply.

As the landlord was only successful in this application based on what the tenant agreed to pay during the hearing, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

A previous RTB decision ordered the return of double the deposit, totalling \$5,500.00, to the tenant. Therefore, the tenant's security deposit has already been decided, and is *res judicata*, at this hearing. The security deposit of \$2,750.00 is not available to offset against the landlord's monetary order.

Accordingly, the landlord is provided with a monetary order for \$600.00 against the tenant.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$600.00 against the tenant. 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 remainder of the landlord's application is dismissed without leave to reapply.

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: October 01, 2020

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Residential Tenancy Branch