



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

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

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenant RJ attended the hearing. As both parties were present, exchange of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and the landlord acknowledged service of the tenant's evidence. Both parties stated they had no issues with timely service of documents.

### Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Can the landlord recover the filing fee?

### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is a basement suite located in the landlord's single family home. The landlord had the home built for her and she took occupancy in October of 2010 and the basement suite was first occupied in March of 2011. This tenancy began on October 1, 2016 with rent set at \$1,800.00 per month payable on the first day of the month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 was collected which the landlord continues to hold. The landlord testified a condition inspection report was done at the commencement of the tenancy and a copy of it was provided as evidence by the landlord.

The tenancy ended when the co-tenant, NL gave the landlord a notice to end tenancy on May 1, 2020. RJ gave his notice on May 4<sup>th</sup>. The last day of the tenancy was May 31, 2020 and both tenants and the landlord were present for a condition inspection upon move out at 7 or 8 o'clock that night. When asked whether she brought the original condition inspection report with her for the move-out condition inspection, the landlord testified she's not sure, and that she can't recall.

She was also unable to remember whether the original condition inspection report was shown to the tenants on May 31<sup>st</sup>, if damage was noted on the report at the time or if it was presented to the tenants for signature. She testified she is unable to recall whether the tenants refused to sign it or if it wasn't presented to them; however the condition inspection report provided as evidence for this hearing does not bear the signatures of either tenant on move-out. In answer to my question of whether damage was marked on the condition inspection report with both tenants present, the landlord answered, "I think I did".

The landlord remembers that the tenants pointed out damage to the bathroom above the door caused by them when moving out. The tenants were preoccupied with moving and the inspection was rushed. The landlord does recall going to the rental unit the next day, taking pictures because the lighting was better during the day. Those pictures were presented as evidence in these proceedings.

The landlord testified that there was damage to the rental unit caused by the tenants during their four-year tenancy. The primary concern for the landlord is the laminate

flooring sustaining gouges and scratches in the second bedroom and the den. The landlord has provided a quote from a handyman chosen by her to do the work of replacing the floors. For the second bedroom, the handyman quoted between \$682.50 and \$1,023.75 to replace based on the quality of the flooring. The den is quoted at between \$550.00 and \$825.00. In addition, the handyman would charge \$300.00 to remove and reinstall the baseboards. The landlord testified that the tenant offered the services of his friend to fix the gouges and scuffs with putty or to use existing laminate from the closets to patch the damaged areas, however those offers were declined.

The unit sustained paint damage above the bathroom door and a towel rack was missing after the tenants moved out. The landlord's handyman estimates it would cost \$195.00 to fix and \$20.00 for materials. Photos of the damage were provided as was the quote from the handyman as evidence. The landlord claims there was other wall damage done to the unit, however her handyman neglected to provide her with a quote for repairs. It wasn't included in the landlord's Application for Dispute Resolution or in the monetary order worksheet provided for this hearing.

The tenant provided the following evidence. He was not present for the condition inspection report done at the commencement of the tenancy, although co-tenant was. On May 31<sup>st</sup>, he recalls the landlord had a piece of paper in her hands but it was never shown to him. He never knew there was a condition inspection report until he asked for it from the landlord via facebook on June 4<sup>th</sup>. The tenant notes that the one sent to his co-tenant on June 1<sup>st</sup> is blank in the column for condition of unit at move-out, however the one sent to him on June 4<sup>th</sup> is filled in. Several items were filled in after May 31<sup>st</sup>, in the absence of either him or his co-tenant. Neither of them had the opportunity to sign the condition inspection report during the date of the move-out inspection since it was not presented to them.

The tenant acknowledges he put a towel holder above the door in the bathroom which removed some paint when it was taken down. Regarding the missing towel rack, the tenant testified it was never properly installed and the screws wouldn't keep it affixed to the wall. It wasn't ripped out of the wall, it just kept falling off. The original towel rack was thrown out during the move.

The floors were in alright condition upon move in, not perfect. In both bedroom 2 and in the den, the tenant acknowledges damage was sustained to the floors during their tenancy. The tenant takes the position that the entire floors do not need to be replaced and that the putty repairs or patch replacement using flooring from the closets as suggested by his friend from the flooring company would suffice. The tenant concedes

that those repairs would not bring the condition of the floors to the same as when he first moved in.

### Analysis

Section 7 of the Act states: 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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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.

Part 3 of the Residential Tenancy Regulations require the parties to complete a condition inspection report when the tenancy begins and again at the end of the tenancy. The landlord is required to bring the condition inspection report to compare the condition of the unit and itemize the damage for which the tenant is responsible for and obtain the tenants' signature and statement that the tenant either agrees or disagrees as to the fair representation of the condition.

As stated above, the onus is on the landlord to prove her version of the facts is the one most likely to be true. I find that the landlord provided unreliable testimony regarding whether she complied with Part 3 of the regulations and brought the condition inspection report with her for the move-out inspection on May 31<sup>st</sup>. Comparing the June 1<sup>st</sup> condition inspection report sent to the co-tenant NL to the one sent to the tenant RJ on June 4<sup>th</sup>, I am satisfied the landlord compiled it between June 1<sup>st</sup> and June 4<sup>th</sup> when the tenants did not have the opportunity to disagree with it. The condition inspection report was not completed in accordance with Part 3 of the Regulations.

Section 21 of the regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to

the contrary. Since the condition inspection report was not completed in accordance with the regulations, I find that I cannot rely upon it as evidence of the state of repair and condition of the rental unit.

I turn then to the testimony of the parties. The tenant has acknowledged that the condition of the floors was 'alright' when he moved in, but damaged when he moved out. This applies to both the second bedroom and the den. Section 32(3) of the Act states that 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. Based on the tenant's testimony, I find that the second bedroom and den floors were damaged and not repaired by the tenant. The landlord is entitled to have them both replaced at the tenant's cost.

Residential Tenancy Branch Policy Guideline PG-40 [Useful Life of Building Elements] states:

*When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*

*If the 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 or replacement.*

Hardwood or parquet flooring has a useful life of 20 years, according to PG-40. As the floors were already 10 years old, I consider that there was only a half life of 10 years left to the flooring and I award the landlord one-half of the estimates provided by the handyman for as compensation. I choose the lower end of each estimate, as the quality of the original floors was not actual hardwood, but laminate made up of indeterminate material.

Item	Amount
Second bedroom flooring	\$682.50/ 2 = \$341.25
Den flooring	\$550.00/2 = \$275.00
To remove and replace baseboards	\$300.00/2 = \$150.00
GST	\$38.31
<b>Total</b>	<b>\$804.56</b>

The landlord seeks compensation for the missing towel rack and damaged paint area above the bathroom door. The tenant acknowledges the rack was thrown out at the end of the tenancy and that the paint came off when removing a different towel holder. I accept the tenant's version of the truth in saying that the towel rack was improperly installed, causing it to fall off. This is not damage caused by the tenant and the landlord will not be compensated for the labour to reinstall it. The landlord will be awarded compensation in the amount of **\$9.00** to replace the rack that was thrown out by the tenant.

For repainting the area above the bathroom door, I find this damage caused by the tenant that was not repaired. The landlord has not provided a quote for this specific job and so I will grant the landlord nominal damages in the amount of **\$75.00** to repaint the area damaged by the tenant.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit and pet damage deposit in the sum of \$1,800.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain a portion of the deposits in full satisfaction of the monetary claim.

The final portion of the landlord's application concerns costs associated with registered mail. My abilities to award compensation are restricted by Section 67 of the Act and are limited to claims where damage/loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award fees paid to mail documents.

Item	Amount
Flooring	\$804.56
Towel rack	\$9.00
Painting above bathroom door	\$75.00
Filing fee	\$100.00
Less deposits	(\$1,800.00)
<b>Total</b>	<b>(\$811.44)</b>

Conclusion

The landlord is to return \$811.44 of the tenants' security deposit and pet damage deposit in accordance with section 67 and 72 of the Act. I issue a monetary order in the tenants' favour in the amount of **\$811.44**.

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 07, 2020

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Residential Tenancy Branch