



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants confirm that their email addresses as set out in the Landlord's application are correct.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement started on December 15, 2017 and ended on February 29, 2020. At the outset of the tenancy the Landlord collected \$797.50 as a security deposit and the pet deposit was returned at the end of the tenancy. The Parties mutually conducted both a move-in and move-out inspection with completed reports copied to the Tenants. The Tenants did not agree with the move-out report details of damage.

The Landlord states that the Tenants left multiple scratches and gouges on the laminate flooring in the living room, dining room and entry. The Landlord states that the flooring

was new in 2015 and that this was set out in the tenancy agreement. The Landlord states that the flooring was replaced with new laminate and the Landlord claims the costs of \$1,680.00. the Landlord states that the useful life of the damaged laminate is 10 years. The Tenants acknowledge that the Landlord's photos show damage. The Tenants state that they believe that the damage is pre-existing as they did not leave the damages. The Tenants state that they followed the Landlord's instructions for the care of the flooring and had pads on the bottom on their furniture legs. The Tenants state that they provided a video that shows the pads on their furniture. The Tenants state that the move-in inspection was done when there was poor lighting. The Landlord states that during the tenancy the Tenants were very aware about any problems as they would always point out any damage to the Landlord. The Landlord states that the Tenants viewed the unit in good lighting before the move-in inspection and never called the Landlord about damage to the floors. The Landlord states that it does not have the video referenced by the Tenants and only has a video that was submitted as evidence in June 2020. The Tenants state that the video was contained on a usb stick that was provided to the Landlord.

The Landlord states that the Tenants left picture hanging nail hooks on the walls, with one wall at the landing that had over 20 holes. The Landlord states that the Tenants also left dents and scratches on the walls. The Landlord states that the Tenants covered half the holes that were left. The Landlord states that the baseboards and kitchen cupboards were also left with gouges and scrapes. The Landlord states that big chunks were missing on the textured walls in the kitchen. The Landlord claims \$1,000.00. The Landlord states that the actual cost was over this amount but that the Landlord did not amend the application to increase the amount being sought for this damage claim. The Landlord provides a detailed invoice that includes repair costs to the walls. The Landlord states that the cupboards were freshly painted at move-in and that the Landlord was painting the cupboards when the Tenants viewed the unit. The Landlord states that the walls of the unit were painted in November 2017. The Tenants do not deny the holes and marks left but argue that this is only reasonable wear and tear. The

Tenants state that they left no big holes, used proper picture hanging nails and followed the requests of the Landlord. The Tenants state that the damage to the textured paint portion was pre-existing and that although it is not noted on the move-in report the Tenants noticed the damage later but said nothing to the Landlord as it was barely noticeable.

The Landlord states that the Tenants left the fridge finish with scratches. The Landlord states that the fridge was new in the summer of 2017 at a cost of \$1,089.00 and that the warranty expired a year later. The Landlord states that the warranty had expired by the time the fridge started to leak. The Landlord claims \$475.00 as the costs of refinishing and provides an invoice for this cost. The Tenants state that the photo provided by the Landlord does not show any damage and that it was cleaned as directed by the Landlord. The Tenants state that the fridge leak started in November or December 2018 and argues that if the fridge was new as stated by the Landlord then it should have been under warranty. The Tenants states that the fridge was not new. The Landlord states that the photos of the fridge supplied by the Tenant show the damage. It is noted that both Parties provided an extensive number of photos.

### Analysis

Section 37 of the Act provides 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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

The Landlord's photos show some slight scratches and a few small gouges on the flooring. However, there does not appear to be any damage that would render the

flooring unusable and there was no evidence that the flooring with the damage created usage problems as “flooring”. Floors are meant to be walked on and have furniture placed on them. It would be unreasonable to expect the Tenants to not move pieces of their furniture and I accept the Tenants’ undisputed oral evidence that pads were placed on the furniture legs. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the flooring to be replaced. I dismiss the claim for costs to replace the flooring.

The Landlord’s photos of the walls show minor dents and scratches. It is undisputed that the Tenants used picture hanging nails on the walls and the few nail holes on the bedroom walls from these nails can only be considered reasonable wear and tear. The photos of the kitchen cupboards show what appears to be paint thinning, particularly the paint that was placed over what appears to be metal drawer handles. This indicates reasonable wear and tear on what appears to be a poor original paint job. The photos of the baseboards indicate minor marks that should have only needing small touch-ups. For these areas I find that the Landlord has not substantiated that the Tenants left them damaged beyond wear and tear. However, given the undisputed evidence of over 20 such nail marks on the one wall I find that this amounts to damage beyond reasonable wear and tear. Further the photos of the textured walls do show a flattening over small areas of the texture and there are small bits of the texture missing from the corners of the walls and I find that this amounts to damage beyond reasonable wear and tear. As there is no way to determine the costs that may be attributed to these areas, I find that the Landlord has only substantiated nominal compensation of **\$100.00**.

None of the fridge photos show any distinct damage. While there may have been an overall reduction in the fridge finish, and this cannot be readily determined by the photos, this damage would only be cosmetic and there is no evidence that the Tenants used abrasive cleaning on the fridge. The Landlord provided no other evidence to support the damage to the finish such as evidence of the state of the fridge from the persons who undertook the refinishing. For these reasons I find on a balance of

probabilities that the Landlord has not substantiated the costs claimed for refinishing and I dismiss this claim.

The Landlord made no submissions in relation to its claim for unpaid utilities. I note that the Tenant provided documentary evidence that these utilities were paid, and it may have been an oversight by the Landlord in raising this claim. In any event this claim is dismissed and if the utilities were not paid by the Tenants the Landlord has leave to reapply on this claim.

As the Landlord's claim has met with minimal success, I find that the Landlord is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$150.00**. Deducting this amount from the security deposit plus zero interest of **\$797.50** leaves **\$647.50** to be returned to the Tenants.

#### Conclusion

I Order the Landlord to retain \$150.00 from the security deposit plus interest of \$797.50 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$647.50**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: November 4, 2020

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Residential Tenancy Branch