



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hudson Mews Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 27, 2020 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed;
- For compensation for damage to the rental unit;
- To keep the security deposit; and
- For reimbursement for the filing fee.

L.T. and V.L. appeared at the hearing for the Landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package and Landlord’s evidence.

L.T. testified that the Landlord only received eight photos from the Tenant. L.T. confirmed receipt of a carpet cleaning invoice for \$99.99 but not for \$50.00.

The Tenant testified that he served his evidence in two packages. The Tenant had uploaded evidence to the RTB system August 08, 2020, August 09, 2020 and October 03, 2020. The Tenant testified that the evidence uploaded August 08 and 09, 2020 would have been in the first package sent to the Landlord and the evidence uploaded October 03, 2020 would have been in the second package. The Tenant testified that he

sent the second package by regular mail. The Tenant could not point to evidence submitted to support this.

Pursuant to rule 3.15 of the Rules of Procedure (the “Rules”), the Tenant was required to serve all evidence on the Landlord such that the Landlord received it not less than seven days before the hearing.

I was not satisfied the second package of evidence was served on the Landlord given the conflicting testimony and lack of evidence to support the position of the Tenant.

I heard the parties on whether the evidence in the second package should be admitted or excluded. The Tenant submitted that it should be admitted and said the Landlord knows about the invoice for \$50.00 and he did not receive notification that the Landlord did not get the package. L.T. submitted that the evidence should be excluded because the Landlord is not aware of it.

I excluded the evidence pursuant to rule 3.17 of the Rules. I found it would be unfair to admit evidence when I was not satisfied it was served on the Landlord and was not satisfied the Landlord was otherwise aware of the evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Suite cleaning	\$189.00
2	Repairs and balcony cleaning	\$136.50
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$425.50</b>

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 01, 2019 and was for a fixed term ending July 31, 2020. Rent was \$1,550.00 per month due on or before the first day of each month. The Tenant paid a \$775.00 security deposit and \$150.00 fob deposit.

The parties agreed the Tenant paid a pet damage deposit which was returned along with the fob deposit. The parties agreed the Landlord kept the security deposit.

The Tenant testified that he provided the Landlord with his forwarding address on a notice to vacate June 23, 2020 and on the Condition Inspection Report July 20, 2020. L.T. testified that the Tenant provided the Landlord with his forwarding address on the Condition Inspection Report July 20, 2020.

L.T. acknowledged the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The parties agreed the Condition Inspection Report (the "CIR") submitted is correct in relation to the details of the move-in inspection. The CIR shows an inspection was done August 03, 2019, the CIR was completed, both parties participated and both parties signed the CIR.

The parties agreed the Condition Inspection Report (the "CIR") submitted is correct in relation to the details of the move-out inspection. It shows an inspection was done July 20, 2020, the CIR was completed and both parties signed the CIR. The Tenant signed indicating he does not agree with the CIR.

The Tenant testified as follows in relation to the move-out inspection. He was forced to wait outside while V.L. did the inspection. V.L. then showed him things saying they were not clean. The CIR was not completed in his presence.

V.L. testified as follows in relation to the move-out inspection. He asked the Tenant to wait outside while he did the inspection given the current pandemic. He did the inspection and took notes. He then asked the Tenant to come inside and showed him his notes. The Tenant did not agree with his notes.

***\$189.00 suite cleaning***

V.L. testified as follows. He went over what needed to be cleaned with the Tenant after he did the inspection. He told the Tenant he would be charged for eight hours of cleaning given the state of the rental unit. The Tenant asked for more time to clean. He gave the Tenant a further two to two-and-a-half hours to clean. He came back and the unit was better than before but still not clean. The photos submitted were taken after the Tenant was given a further opportunity to clean the rental unit. A package provided to the Tenant said he would be charged a minimum of four hours of cleaning regardless of what needed cleaning. The Tenant did not agree with this. The Tenant asked to re-do the inspection, but the Landlord could not accommodate the days or times requested.

V.L. further testified as follows. The Landlord had to hire a cleaning company. An invoice for the cleaning has been submitted. The invoice is for four hours of cleaning.

L.T. advised that the invoice in evidence is for one cleaner and noted that other quotes for cleaning were submitted.

The Tenant testified as follows. He spent 15 hours cleaning the rental unit. V.L. told him the cleaning was not good enough and gave him more time to clean. He spent another two hours cleaning. V.L. said it was still not good enough. V.L. would not meet him after hours or on the weekend for an inspection. The CIR originally showed that four hours of cleaning was required but V.L. changed it to six hours when the Tenant did not agree to the four hours of cleaning.

***\$136.50 repairs and balcony cleaning***

L.T. testified that this item is for wall cleaning, wall repair, touch up, materials and labour. L.T. testified that it is also for cleaning the balcony which took the maintenance person two hours at \$40.00 per hour.

The Tenant testified as follows. In relation to the wall, there was only normal wear and tear. In relation to the balcony, he did not want water dripping down to lower units from cleaning the balcony. He spent five hours cleaning the balcony. There is no way it took a further two hours to clean the balcony.

In relation to the photos submitted by the Landlord, the Tenant testified that they were taken prior to him cleaning for a further two hours except for two or three of the photos of the baseboard and balcony which were taken after he cleaned.

In reply, V.L. testified that he took the photos submitted after the Tenant cleaned further. V.L. also testified that the CIR shows the condition of the rental unit after the Tenant cleaned further. I asked V.L. how that worked. I did so given V.L.'s earlier testimony about the process. V.L. then said he misunderstood and the CIR was done before the Tenant cleaned further.

Analysis

***Security deposit***

Under sections 24 and 36 of the *Residential Tenancy Act* (the "*Act*"), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*").

Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties and the CIR, I am satisfied the Tenant participated in the move-in inspection and therefore did not extinguish his rights in relation to the security deposit under section 24 of the *Act*.

Based on the testimony of both parties, I am satisfied the Tenant was asked to wait outside during the move-out inspection. I am satisfied this was at the direction of V.L. and that it was not the Tenant's choice not to participate in the move-out inspection.

Further, I am satisfied the Tenant did participate in the move-out inspection to the extent allowed by going over issues with V.L., doing further cleaning and signing the CIR. I do not find that the Tenant extinguished his rights in relation to the security deposit under section 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for cleaning in addition to damage.

It is my understanding from the testimony of the parties that the keys for the rental unit were provided on the day of the move-out inspection and that the Tenant gave up possession of the rental unit that day, being July 20, 2020. I find the tenancy ended July 20, 2020 pursuant to section 44(1)(d) of the *Act*.

In relation to the forwarding address, I am not satisfied the Tenant provided it June 23, 2020 as the Tenant's notice to vacate is in evidence and it does not include a full forwarding address, it only includes a street name and number. I am satisfied the Tenant provided the Landlord with his forwarding address July 20, 2020 on the CIR as the parties agreed on this.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or claim against it. Given the above, July 20, 2020 is the relevant date. The Application was filed July 27, 2020, within time. I find the Landlord complied with section 38(1) of the *Act*.

### ***Compensation***

Section 7 of the *Act* states:

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

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* states:

(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...

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### ***\$189.00 suite cleaning***

The parties disagreed about the state of the rental unit in relation to cleanliness at the end of the tenancy.

The evidence I have before me about the cleanliness of the rental unit at the end of the tenancy is as follows:

- Testimony of V.L.;

- Testimony of the Tenant;
- Invoice from cleaners;
- Photos taken by V.L.; and
- The CIR.

I note at the outset that the Tenant was required to leave the rental unit reasonably clean as this is the standard in the *Act* and this is what applies. The standard of “reasonably clean” does not mean the rental unit must be perfectly clean. Nor does it mean it must be up to the standard of the Landlord.

V.L. and the Tenant provided conflicting testimony about the state of the rental unit and therefore I have considered what evidence is before me to support V.L.’s position.

I do not find the cleaning invoice sufficient to show the rental unit was not left reasonably clean as the invoice simply outlines what the cleaners did and does not comment on the state of the rental unit.

In relation to the photos, I note the following about the photos of the inside of the rental unit. The photos are of very specific areas of the rental unit. The photos show a very small portion of the rental unit. The photos do not give a good sense of what the rental unit overall looked like at the end of the tenancy. For the most part, the photos show rather minor cleanliness issues.

More importantly in relation to the photos, V.L. and the Tenant disagreed about when the photos were taken. The photos are not time stamped such that I can see when they were taken. The Landlord has not submitted evidence to support V.L.’s testimony about when the photos were taken such as a witness who was present when the photos were taken. Further, I am not confident that V.L. recalls when the photos were taken given his testimony about when the CIR was completed in relation to the Tenant cleaning for a further two hours.

In the circumstances, I am not satisfied about when the photos were taken in relation to the Tenant cleaning for a further two hours. I find this relevant as I am not satisfied the photos reflect the state of the rental unit after the Tenant cleaned for a further two hours. The Tenant acknowledged two or three photos of the balcony and baseboard were taken after he cleaned for a further two hours and I accept this. However, it is not clear to me which of the balcony and baseboard photos were taken after the Tenant cleaned for a further two hours.



In the end, I am not satisfied the photos are sufficient to show the state of the rental unit at the end of the tenancy after the Tenant cleaned for a further two hours. I am not satisfied based on the photos that the Tenant left the rental unit in a state that was not reasonably clean.

I do not find the CIR sufficient to prove the Tenant left the rental unit in a state that was not reasonably clean for the following reasons. First, the CIR was completed before the Tenant cleaned further. Second, V.L. completed the CIR and the Tenant did not agree with it. Therefore, the CIR simply reflects V.L.'s view and testimony and is not independent evidence of the state of the rental unit. In the circumstances, the CIR is not strong evidence of a breach of section 37 of the *Act*.

Given the above, I am not satisfied the Landlord has provided sufficient evidence showing the rental unit was not reasonably clean after the Tenant cleaned it for a further two hours on July 20, 2020. Therefore, I am not satisfied the Tenant breached section 37 of the *Act* and am not satisfied the Landlord is entitled to compensation for cleaning the rental unit.

### ***\$136.50 repairs and balcony cleaning***

In relation to the wall repair, the Landlord submitted a photo of the wall "damage". The photo shows a mark smaller than the size of a nickel. The mark is clearly within the definition of reasonable wear and tear. The mark is barely visible. The paint was not chipped given the superficial nature of the mark. This is the type of "damage" the Landlord should expect when someone is living in the rental unit. I am not satisfied the Tenant breached section 37 of the *Act* in relation to the mark on the wall and am not satisfied the Landlord is entitled to compensation for this issue.

In relation to the balcony cleaning, I understood the Tenant to acknowledge that perhaps he did not do all the cleaning necessary given he did not want water dripping down to lower units. Further, the Tenant acknowledged at least one of the balcony photos was taken after he cleaned for a further two hours. I have looked at the balcony photos and find that, regardless of which one was taken after he cleaned further, some further cleaning of the balcony was required. I am satisfied the Tenant breached section 37 of the *Act* in relation to the balcony.

I am satisfied based on the photos that the Landlord had to have the balcony cleaned further. I am satisfied based on the invoice that a further two hours of cleaning was done at \$40.00 per hour for a total of \$80.00. I am not satisfied \$40.00 an hour to clean

a balcony is reasonable. I find the Landlord could have found a cleaner or a maintenance person to do this for \$20.00 to \$25.00 per hour which is the usual rate for such services. I am only satisfied that the Landlord is entitled to \$50.00 for two hours of cleaning at the higher rate of \$25.00. I award the Landlord this amount.

### ***Filing fee***

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

### ***Summary***

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Suite cleaning	-
2	Repairs and balcony cleaning	\$50.00
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$150.00</b>

The Landlord can keep \$150.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining \$625.00 to the Tenant and the Tenant is issued a monetary order for this pursuant to section 67 of the *Act*.

### **Conclusion**

The Landlord is entitled to \$150.00. The Landlord can keep \$150.00 of the security deposit. The Landlord must return the remaining \$625.00 to the Tenant and the Tenant is issued a monetary order for this. If the Landlord does not return this amount, the Order must be served on the Landlord. If the Landlord fails to comply with the Order, it 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 *Act*.

Dated: December 2, 2020

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Residential Tenancy Branch