



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Marlborough Holdings Ltd.→Katherine Rose  
Maher and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for cleaning and damages to the rental unit;
2. For a monetary order for loss of revenue;
3. To keep all or part of the security deposit and pet damage deposit (the "Deposits"); and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit and pet damage deposit.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord confirmed they received the tenant's evidence. The tenant stated they did not receive the landlord's videos. The landlord's agent stated the tenant was served with a USB at the same time as the other evidence.

As there was an issue with the evidence, I had determined an adjournment was appropriate to ensure the tenant had the videos and a fair opportunity to respond. However, the tenant stated that they wanted to proceed with the hearing and admitted that they did leave the rental unit messy as shown in the video. Therefore, the hearing proceeded, and all evidence filed by the parties will be considered.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to a monetary order for loss of rent?

Are either party entitled to the Deposits?

### Background and Evidence

The parties agreed that the tenancy began on August 1, 2015. Current rent in the amount of \$1,308.26 was payable on the first of each month. The tenant paid a security deposit of \$575.00 and a pet damage deposit of \$575.00. The tenancy ended on July 31, 2020.

### The landlord's application

The landlord claims as follows:

a.	Cleaning and damages	\$1,619.89
b.	Loss of rent	\$1,308.26
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$3,028.15</b>

### Cleaning and Damages

The landlord testified that the tenant did not clean the rental unit at the end of the tenancy. The landlord stated that the tenant left behind, personal items, two TV's, broken planters, some furniture and garbage. The landlord stated that they had to pay to have it cleaned, the estimated amount was \$180.00 and dumping fee was \$45.00. Filed in evidence is a receipt for garbage disposal.

The landlord testified that the tenant also caused damage to the rental unit. The landlord stated that the toilet was cracked and leaking, and the seat was broken and the bolt caps missing. The landlord stated that the cost of the toilet was \$112.00, the cost of the seat was \$19.98, and the bolt caps were \$5.10, plus taxes.

The landlord testified that they had to fix damaged walls, as there were holes and scratches. The landlord stated that there was some kids' markers on the walls and

doors, which had to be painted with "Kilz" to be able to paint over it. The landlord stated that the rental unit was painted when the tenant moved in.

The landlord testified that the carpets had to be cleaned and they paid the amount of \$210.00. Filed in evidence is a receipt.

The landlord testified that they had to pay for labour in the amount of \$987.00 and materials of \$632.89 to fix the damage in the rental unit.

The landlord testified that the freezer handle on the fridge was broken as so were two drawers. The landlord stated that it was cheaper to replace the refrigerator than by the parts. The landlord stated that they seek to recover the amounts the parts would have cost them, not the actual cost of the refrigerator.

Filed in evidence by the landlord is a video.

The tenant testified that they acknowledged that they did not clean the rental unit as they ran out of time. The tenant is not disputing the garbage dumping fees.

The tenant denied they cause any damage to the toilet and that it was not leaking. The tenant stated they are responsible for the broken seat and missing bolt covers.

The tenant testified that the rental unit was not freshly painted when they moved in and this was noted in the move-in condition inspection report that it needed painting at that time. The tenant stated that the walls were not in good condition at the time as they were showing considerable wear.

The tenant testified they are not responsible for any cost for the refrigerator and deny they caused damage.

#### Loss of rent

The landlord testified that due to the condition the tenant left the rental unit they were unable to rent the premise for August 2020.

The tenant testified that while they agree that the rental unit was not cleaned. The landlord had not suffered any loss as they did not have a renter and they had to have the rental unit repainted.

### Tenant's application

The tenant testified that they gave their forwarding address to caretaker in June. The tenant stated that they met with the caretaker, for the inspection on July 31, 2020 and returned the keys. The tenant stated that the caretaker informed them that they did not have the required paperwork and the official inspection would have to be done later. The tenant stated that the landlord did not arrange a second date for the inspection and did not return their Deposits. The tenant seeks double their return of their Deposits.

The landlord testified that the tenant abandoned the rental unit. The landlord stated that the property manager JC has provided a witness statement.

The statement of JC reads in part,

“...[tenant] finally knocked on my door and stated that she was done and that she had a break down over everything and was leaving and would sign what need to be signed before she left. I went with [tenant] to look at what was left and she told me she understood that because of items being in the unit and in the back yard and outside the fence it was not completely clean that she would not fight for her deposit back. She repeated she is one with this place and doesn't care and walked out leaving the keys and drove off”.

[Reproduce as written.]

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Where 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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Landlord's application

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

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

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

### Cleaning and Damages

I accept the evidence of both parties that the tenant did not leave the rental unit reasonably clean. I find the tenant breached the Act, and this caused losses to the landlord. I find the landlord is entitled to recover the estimate amount for cleaning of \$180.00. I find that is a reasonable amount for cleaning based on the video. I also find the garbage disposal fee of \$45.00 reasonable. Therefore, I find the landlord is entitled to recover the cost of **\$225.00**.

I accept the evidence of both parties that the tenant is responsible for the broken toilet seat and missing bolt caps. Therefore, I find the landlord is entitled to recover the cost of \$25.08, plus taxes of \$3.00 for a total of **\$28.08**.

In this case, I am not satisfied that the landlord has established that the tenant is responsible for any other damages for the following reasons. The video the landlord has provided does not show the freezer handle broken or the drawers in the refrigerator broken. There is no documentary evidence of any broken toilet to show it was cracked from neglect.

Further, the evidence of the landlord at the hearing was that the rental unit was painted at the start of the tenancy, five years before the tenancy ended. I find that testimony false as the move-in condition inspection report shows the rental unit needed to be painted at the start of the tenancy and that there was already considerable wear and tear showing. This leads me to question the credibility of the landlord. Further, there was no photographs of the rental unit at the start of the tenancy so I cannot determine what the parties considered to be wear and tear at the time.

I also accept the evidence of the tenant that the carpet cleaning receipt submitted in evidence by the landlord was actually paid by the tenant, and that the landlord's agent wrote their name in the sold to area on the invoice. It would make no sense for the receipt to show the date that the cleaner was booked was on July 28 and the job date of July 31, if this was done after the tenancy had ended. Altering a receipt to obtain a desired outcome, is fraud, and makes me question all the receipts and items purchased that were submitted for this hearing. Therefore, I dismiss the remainder of their claim for damages.

#### Loss of rent

In this case, I am not satisfied that the landlord lost rent solely due to the actions of the tenant. While I accept the rental unit was left messy; however, the landlord did not have the rental unit re-rented at the time and the cleaning and removal of the items at the most would have taken one day to rectify, not an entire month.

Further, I find it more likely than not that the rental unit was not re-rented for August 2020, because it needed painting and maintenance. This was not because of the actions of the tenant as the move-in condition inspection shows the rental unit needed painting in 2010, and the unit was showing considerable wear and tear at that time. The tenant lived in the rental unit for 5 years and none of this maintenance was done during their tenancy. I find any loss was due to the actions of the landlord. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$358.03** comprised of the above described amounts and the \$100.00 fee paid for this application.

I authorize the landlord to keep the above amount from the tenant's Deposits in full satisfaction of this award. This leave a balance of the Deposits in the amount of \$791.97.

### Tenant's application

In this case, I find the landlord filed their application within the statutory time limit, as it was made within 15 days of the tenancy ending pursuant to section 38 of the Act. While I accept the move-out condition inspection was not completed with the tenant; however, the landlord was also claiming other relief than just damages. I find the landlord was entitled to retain the Deposits until their claim was heard. Therefore, I find the tenant is not entitled to the return of double the Deposits.

In this matter the landlord argued that the tenant abandon the rental unit and are not entitled to the return of those Deposits. I find the rental unit was not abandoned by the tenant as the tenancy ended in accordance with the Act, and I am satisfied that the landlord's agent and the tenant met on July 31, 2020 to conduct the move-out condition inspection report.

I accept there may have been issues at the move-out condition inspection, however, both parties provided a different version of events. The tenant's version was the landlord's agent did not have the form to complete at the time and the landlord's version was the tenant left during the inspection. I find both versions are probable.

As the landlord's property manager did not attend the hearing to give evidence, or to be asked question regarding their written statement, I find I am unable to accept the landlord's version over the tenant's without further evidence. I find the landlord has failed to prove that the tenant had extinguished their rights for the return of the Deposits due to insufficient evidence. Therefore, I find that the landlord is not entitled to retain the balance of the Deposits.

I order that the landlord to return the balance due of the Deposits in the amount of **\$791.97** forthwith to the tenant. I grant the tenant a formal monetary order should the landlord fail to comply with my order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenant's application for double the Deposit is dismissed. The landlord is granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. The tenant is granted a formal order for the balance due of their Deposits.

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: December 08, 2020

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Residential Tenancy Branch