



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Grampian Investments Ltd. c/o DPM Rental Management and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

The landlord filed an Application for Dispute Resolution on August 14, 2020 seeking a monetary order for compensation for rent amounts owing, as well as compensation for damage to the rental unit. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 3, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenants and an agent of the landlord (the “landlord”) attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The tenants confirmed receipt of the landlord’s evidence prepared in advance of this hearing. The landlord also confirmed the evidence prepared by the tenants in advance. On this basis, the hearing proceeded as scheduled.

### Preliminary Matter

In their Application on August 14, 2020, the landlord applied for a monetary order for unpaid rent. At the time of this Application, the tenants had not paid for the month of August 2020. In the hearing the tenants provided that they paid the rent for that month on August 14, 2020. The landlord confirmed this and stated their inclusion of this on their Application was “an honest mistake.”

For this reason, I dismiss this portion of the landlord’s claim here, without leave to re-apply. The issue of rent payment receives no consideration herein.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage caused by the tenant, pursuant to section 67 of the *Act*?

Is the landlord entitled to compensation for the Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

Both the landlord and the tenants provided a copy of the tenancy agreement in their evidence. This shows one of the tenants and an agent for the landlord signed the agreement on May 7, 2018. The tenancy started on that same day, for a fixed term ending on April 30, 2019, thereafter reverting to a month-to-month tenancy. The amount of rent was set at \$1,550 per month payable on the 1<sup>st</sup> of each month.

Both parties verified the tenants paid the \$775 security deposit amount at the start of the tenancy. Neither copy of the tenancy agreement provided by either side, with the missing page 4 of 6 shows this transaction.

The landlord presented that a move-out inspection occurred at the end of tenancy on July 31, 2020. A report documenting that meeting appears in the landlord's evidence. The report shows the amounts of "suite cleaning" at \$210 for an "ozonator". The report also shows the amount of \$630 for "carpet replacement". In the hearing, the landlord stated these items appeared as an "estimate on the report".

The landlord filled in two portions on the report to show: entry, halls, stairs: "ink/bleach stains" and bathrooms: "strong cigarette odour."

Both parties verified that one of the tenants indicated on the agreement that they did not agree with the move-out condition as assessed by the landlord. The tenant wrote on the report: "hallway looks normal wear & tear." The landlord's notation on the agreement is: move-out action items: foyer carpet needs replacing & a handyman is needed to rent an ozonator for bathroom."

In the hearing, the landlord described their final advanced claim: odour remover at \$453.75; and an estimate for flooring at \$745.50. This is as shown on the 'Monetary

Order Worksheet' completed by the landlord on November 17, 2020. They provided a written estimate for work on the carpet that shows "budget for carpet removal and re-installation" for the amount claimed. The landlord provided three photos that show damage and stains to the carpet.

They also provided a detailed receipt for odour removal. This was a "ozinator" rental, running in the unit for 20 hours, and then a return to the unit for a follow-up run for another 20 hours, and then another 22 hours. The receipt describes the initial visit to the unit: "a very strong odour of cooking oils and smoke." The rating over three consecutive days went from "10 to a 7" and then "5.5" and then "smell [was] still present but maybe a 4.5." In the past, the landlord gave written notices to the tenants of an odour present on December 20, 2018 and January 21, 2019. They asked for smoking in the washroom to stop, as well as ensuring that the kitchen fan is used during cooking.

The tenants' prepared evidence contains a letter from the landlord dated July 14, 2020. This gives the reminder that cleaning should include "shampooing the carpets" and other general cleaning. The tenants present an invoice for deep cleaning in the amount of \$157.50. This is for "deep cleaning" including kitchen appliances, surfaces, all rooms. The tenant provided nine photos of the unit to show the state upon move out.

The tenants submit the items claimed by the landlord are due to normal wear and tear after two years of their tenancy. They point to an email from the landlord dated July 13, 2020 wherein the landlord described the return of the security deposit: "If the unit is clean without damage (other than normal wear and tear)."

A further note from the tenants to the landlord after the move-out inspection meeting is in their evidence. In this the tenants state: "the unit had brand new carpets and as part of our responsibility we got the deep cleaning of the entire condo done for which we had a receipt." They offered again to have the cleaners return, which the landlord denied. Also: "We lived in this unit for more than 2 years and it's illogical to expect to have carpet to look like new after 2 years as it's part of wear and tear." In this message the tenants also postulate that the odours were due to the "bleaching agent and acids used during deep cleaning".

In the hearing, the tenants presented that the issue of smoking cigarettes had completely ceased. They mentioned to the landlord about proper ventilation in the unit in the past, with the kitchen "not having a powerful range hood". At the end of the tenancy, their doors remained closed which meant the odour lingered after their

departure. This included the use of cleaning agents by their hired cleaners at the end of the tenancy.

### Analysis

The *Act* section 37(2) requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough 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.

As set out above, the landlord's worksheet identifies two areas in their claim for damages. To determine the landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

For the issue of lingering odour, I find the landlord's evidence reliable in terms of the work completed. I find, based on conversations had in the past, that odour was a persistent issue within the unit. I rule out smoking as a continuing issue and accept the tenants' own testimony that cigarette smoking ceased within the unit after warnings from the landlord and was not an issue at the end of the tenancy.

I find the tenants presented that their cooking ingredients caused lingering odours, and this bolsters the landlord's claim for the need for de-odourization after the move out. I find this is plausible given that it had been raised as a particular issue in the past. The tenants' evidence and testimony does not show they made significant arrangements in the past to dispel the odour or take other measures. I find it reasonable for the landlord to recover the costs for this work.

Regarding the unit entrance carpet, I find the evidence shows significant stains remain. I find the photos show something beyond reasonable wear and tear; however, I am not satisfied of the need for carpet replacement at significant cost. While the tenants

arranged for deep cleaning and paid this cost, there is no record of the carpets being shampooed. This was specifically listed in the landlord's letter of July 14, 2020 that confirmed the end of tenancy. The move-out report shows the landlord crossed out 'cleaning' and replaced that word with the notation 'replacement'. This runs counter to the landlord's need to mitigate any loss. Rather than entire carpet replacement, I find it reasonable for the landlord to recover an approximate cost of carpet shampooing. I provide \$221.25, as a portion of the balance of the withheld security deposit, for this piece of the landlord's claim.

With the landlord successful in their claim for monetary compensation, I award the \$100 Application fee reimbursement to the landlord.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$775.00. By setting off the security deposit, there is no balance remaining as further compensation to the tenants. I am authorizing the landlord to keep the entire security deposit amount as compensation for their claim.

### Conclusion

The landlord is authorized to withhold the entirety of the security deposit in satisfaction of their claim for monetary compensation.

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 24, 2020

---

Residential Tenancy Branch