



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GEORGIAN HOUSE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On September 14, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

C.M. attended the hearing as an agent for the Landlord. Both Tenants attended the hearing as well. All in attendance provided a solemn affirmation.

C.M. advised that a Notice of Hearing package and some evidence was served to each Tenant by registered mail on September 22, 2020, and the Tenants confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that each Tenant has been sufficiently served the Notice of Hearing packages and some evidence.

She also advised that the balance of the Landlord’s evidence was served to the Tenants by registered mail on December 18, 2020. The Tenants confirmed that they received this evidence, that they had reviewed it, and that they were prepared to respond to it. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

Tenant S.H. advised that he served the Tenants’ evidence to the Landlord by posting it to the rear door of the residential building on January 4, 2020. When he was questioned why he served the evidence in this manner and how he expected the Landlord to receive it, he stated that another resident of the building was to pick up this evidence and deliver it to the Landlord’s office. C.M. confirmed that she had received this evidence, that she had reviewed it, and that she was prepared to respond to it. Despite this evidence not being served to the Landlord pursuant to Section 88 of the *Act* or in accordance with Rule 3.15 of the Rules of Procedure, as C.M. was prepared to respond to the Tenants’ evidence, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 31, 2019 and ended when the Tenants give up vacant possession of the rental unit on August 31, 2020. Rent was established at \$1,820.00 per month and was due on the first day of each month. A security deposit of \$910.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection report was conducted on May 31, 2019 and that a move-out inspection report was conducted on September 1, 2020. As well, they agreed that the Tenants provided their forwarding address in writing prior to the tenancy ending and by email on September 10, 2020.

C.M. advised that the Landlord is seeking compensation in the amount of **\$150.00** for cost of cleaning the curtains. She stated that these were cleaned at the start of the tenancy and she referenced a cleaning agreement that the Tenants signed indicating that if the Tenants did not professionally clean them at the end of the tenancy, it would cost \$150.00 to have them done. As the Tenants did not provide a receipt for having these professionally cleaned, the Landlord is seeking this compensation.

S.H. confirmed that they were given the option to clean the curtains themselves and that similar to other residents of the building, they washed the curtains in the washing machine. They then hung them back up, took pictures of them, and submitted those pictures to support their position.

C.M. advised that the curtains were clean, that there was nothing wrong with the curtains nor was there any damage to them, and that the only issue was that they were wrinkled.

S.H. stated that they have been hanging for months now and are likely not wrinkled anymore.

C.M. advised that the Landlord is seeking compensation in the amount of **\$89.25** for the cost of bringing in an appliance repair technician to examine a fridge that the Tenants claimed was not operating properly. She stated that the Tenants informed her in June 2020 that their fridge was not functioning properly, and when she investigated, she discovered that the Tenants had packed the freezer completely full. She advised them to remove some items so that air could flow through the appliance and operate more efficiently. The Tenants complied but complained that it still did not function properly, so C.M. removed the fridge and provided the Tenants with a replacement fridge in the meantime. She defrosted the fridge for three days, then plugged it in and placed some items in the fridge. In addition, she purchased a thermometer to ensure that it was cooling to the proper temperature. It seemed to be functioning properly and the fridge was returned to the Tenants.

The Tenants then advised her that it was still not working so C.M. called in a technician on July 2, 2020 to investigate. The technician determined that the fridge was operating normally but the freezer dial could not be turned up to the maximum level, or else it would cause the fridge not to operate optimally. She referenced an invoice submitted as documentary evidence which supports the Landlord's position that the fridge was operating normally. In addition, she stated that the fridge has been in use by another tenant and she has not received any complaints.

S.H. agreed with the Landlord's account of the fridge complaint; however, he referred to the pictures that they submitted and noted that the fridge was very old and did not have an air flow design. He stated that if a fridge was designed with a dial that had a maximum setting, it should be able to function on that setting. Otherwise, this would be indicative of a fridge that is not functional. He acknowledged that they filled the fridge full due to COVID.

Tenant N.B. advised that when the fridge was returned, it "heated up", it made a lot of noise, and that their food would spoil. While she acknowledged that the technician may have taken the temperature of the fridge to confirm that it was operating within acceptable levels, the Tenants did not ever attempt to document any temperature issues with the fridge. The only indication they had that it was not functioning was that their food would spoil. Despite the technician's recommendation not to turn the fridge up to the maximum cooling temperature, the Tenants did so anyways, and their food would still spoil. They did not submit any evidence to support their position that the fridge was not functioning properly.

Finally, C.M. advised that the Landlord is seeking compensation in the amount of **\$200.00** for the cost of repairing three scratches in the hardwood flooring. She stated that pre-existing marks were noted on the move-in inspection report, and she noted the deficiencies in the move-out inspection report. She referenced the pictures submitted to

illustrate the damaged areas. She submitted an invoice of the cost to repair this damage by their handyman. It took this person eight hours, at a cost of \$25.00 per hour, to sand, fill, and stain the hardwood to restore it to a re-rentable condition.

S.H. referenced pictures submitted as documentary evidence and stated that the 40-year old floor was not in perfect condition. They never walked on the floors with their shoes on and whatever damage is a result of normal wear and tear. Alternately, the damage was “probably” caused by the Landlord moving the fridge in and out of the rental unit with a dolly. He stated that there was wall damage caused by these moves as well.

N.B. suggested that C.M. or other employees of the Landlord had walked into the rental unit with their shoes on and may have caused this damage. She stated that they put plastic protection on their furniture so no damage would have been caused to the floors.

C.M. advised that her or the Landlord’s employees were required by WorkSafeBC to keep their shoes on; however, towards the end of the tenancy, she purchased shoe covers for any situations where entry to the rental unit was necessary.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As all parties agreed that a move-in and move-out

inspection report was conducted with the Tenants, I find that the Landlord did not extinguish the right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address prior to the tenancy ending and then again on September 10, 2020. As the tenancy ended on September 1, 2020 after the move-out inspection was completed, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The evidence before me is that the Landlord made this Application to claim against the deposit on September 14, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframe, and as the Landlord did not extinguish the right to claim against the deposit, I am satisfied that the doubling provisions do not apply to the security deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for compensation in the amount of \$150.00 for cost for cleaning the curtains, I find it important to note that the cleaning agreement indicates there will be a cleaning charge for the curtains. However, the undisputed evidence is that the curtains were cleaned at the end of the tenancy and that there was no damage to the curtains, nor was there anything wrong with them other than they may still be wrinkled. As such, I am not satisfied that the Landlord has established a basis for this claim. Consequently, I dismiss it in its entirety.

With respect to the Landlord's claim for compensation in the amount of \$89.25 for the cost of the fridge repair technician, when reviewing the evidence before me, there are C.M.'s submissions that the Tenants complained of a problem with the fridge and that she took steps to address these issues. When the Tenants advised that there was still a problem, she hired a technician who investigated, and evidence was presented that this technician determined that the fridge was functioning properly. On the other hand, the Tenants made submissions that the fridge "heated up", that it made a lot of noise, and

that their food would spoil. However, they provided insufficient evidence to support any of these claims that the fridge was not operating properly.

When reviewing the totality of the evidence before me, I find that the Landlord has provided sufficient and compelling evidence that any concerns raised by the Tenants about the fridge were addressed and that a repair technician confirmed that it has been operating as it should. As a result, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$89.25** to remedy this claim.

Finally, regarding the Landlord's claim for compensation in the amount of \$200.00 for the cost to repair damage to the flooring, I acknowledge that there is a dispute over the alleged damage to the flooring. However, I have evidence from the Landlord indicating noted damage on the move-in inspection report and pictures depicting damage to the floors that differ from those noted on the inspection report. Conversely, there are pictures from the Tenants of the flooring, their speculation that any damage to the flooring was attributed to other people, and that any damage to the flooring was simply reasonable wear and tear.

When reviewing the totality of the evidence before me, I find that the Landlord's evidence carries more weight than the Tenants' suggestion that any damage was caused by someone other than themselves. As such, I am satisfied that the Landlord has provided sufficient, persuasive evidence to support a claim for this damage, on a balance of probabilities. Consequently, I grant the Landlord a monetary award in the amount of **\$200.00** to satisfy this claim.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenants**

Appliance repair	-\$89.25
Repair of floor damage	-\$200.00
Partial recovery of filing fee	-\$100.00
Security deposit	\$910.00
<b>TOTAL MONETARY AWARD</b>	<b>\$520.75</b>

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$520.75** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: January 6, 2021

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Residential Tenancy Branch