



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package via Canada Post Registered Mail on October 3, 2020 and the submitted documentary evidence via XpressPost on December 18, 2020. The tenants stated that the landlord was served with their submitted documentary evidence via email on January 4, 2020. The landlord confirmed receipt of the email containing the tenants' evidence. I accept the undisputed affirmed evidence of both parties and find that both parties are deemed sufficiently served as per section 90 of the Act.

During the hearing the landlord clarified that his monetary claim has been amended to \$849.04 as per the submitted copy of a monetary worksheet ((#RTB-37) dated December 17, 2020. The landlord removed the claim of \$80.00 for a plumber. The clarified details of which are provided below in the decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?  
Is the landlord entitled to retain all or part of the security deposit?

## Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2020 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated February 29, 2020. The monthly rent was \$1,500.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$750.00 was paid.

The landlord seeks a clarified monetary claim of \$849.04 which consists of:

\$173.25	Carpet Cleaning
\$57.75	Labour, re-hang bifold door and closet shelf repair
\$100.00	Drywall Repairs/Painting
\$250.00	Cleaning
\$4.47	Storage Locker Key
\$39.54	light bulb replacement (9)
\$50.00	washer repair
\$24.55	Registered Mail Postage (Dispute)
\$24.93	Photos for Evidence
\$24.55	Registered Mail Postage (Evidence)
\$100.00	RTB Filing Fee

The landlord claims that the tenants vacated the rental unit on September 19, 2020 in a mutual agreement to end tenancy. Upon taking possession of the rental unit on September 20, 2020 a condition inspection for the move-out was conducted with the tenants' agent. The landlord found the rental unit dirty and damaged requiring repairs and cleaning.

The landlord submitted receipt/invoices for all claims save and except the \$250.00 claim for miscellaneous cleaning. The landlord stated for that claim he has submitted a statutory declaration detailing the landlord's efforts in cleaning the rental unit which required 9 hours of cleaning requiring various cleaning utensils and consumeable cleaning supplies for the period between September 20, 2020 and September 22, 2020. The landlord stated that cleaning took place throughout the rental unit including walls, window sills, linoleum floors, the sundeck, kitchen (including fridge, freezer and cabinets) and the bathrooms and windows. The landlord submitted a total of 63

document files consisting of photographs (condition of the rental unit at the end of tenancy), receipts/invoices, a completed condition inspection report for the move-in for comparison, an invoice for painting dated March 14, 2020 in which the rental unit was newly painted just before the tenancy began. The landlord stated that at the end of tenancy the landlord tested the washing machine by turning it on. The landlord discovered that it was making a “banging noise” while operating. The landlord stated that he hired a repair technician to inspect/repair the washer who determined that the washer was overloaded. The landlord has submitted a written statement from the repair technician to this effect.

The tenants argued that at the end of tenancy the landlord denied them access to the rental unit beginning September 20, 2020 to make repairs and clean the rental unit after they had vacated the rental. The tenants’ confirmed that their agent attended the move-out condition inspection and completed the report with the landlord but refused to sign it on September 20, 2020. The tenants claim that rent was paid up until the end of September 2020 which would allow them continued access to make repairs and clean. The tenants also confirmed that since the first day of living in the rental unit the washer has been making the “banging noise” whenever its been used and that this has never been reported to the landlord.

The tenants conceded and agreed to the following landlord’s claims:

\$57.75	Labour, re-hang bifold door and closet shelf repair
\$4.47	Storage Locker Key
\$39.54	light bulb replacement (9)
\$101.76	Total

The tenant disputes the remaining items of the landlord's claims. During the hearing the tenants made repeated references to her evidence submissions but failed to provide sufficient context or cite any specific documentary evidence. The tenants provided affirmed testimony that they offered to either clean the unit or pay for a cleaning service. The tenants argued that the amount requested by the landlord for cleaning is unreasonable as they have made telephone inquires which provided a 1-2 hour service to completely clean a 2 bedroom unit at an approximate cost of \$100-\$150. No evidence in support of this estimate was provided.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed testimony of both parties and find based upon the evidence that I prefer the evidence of the landlord over that of the tenants. I find that despite the tenants' argument that the landlord refused to give access to the tenants after the condition inspection report for the move-out, it was completed with the tenants' agent and the tenancy was at an end. The landlord provided reasonable and convincing testimony that a mutual agreement to end tenancy was made for September 19, 2020 despite not providing any supporting evidence. Despite this a Final Notice to conduct a move-out inspection was served to the tenants who elected to have an agent attend on September 20, 2020. The detailed photographs and the incomplete condition inspection report for the move-out made by the landlord show the condition of the unit at the end of tenancy. On this basis, I find that the landlord has submitted sufficient evidence that the rental unit was left dirty and damaged by the tenants requiring cleaning and repairs. I accept the landlord's undisputed evidence regarding the receipts and invoices for cleaning and repairs despite the tenants' arguments that a 1-2 hour cleaning of the rental unit would be sufficient. The landlord has been successful in the following claims:

\$173.25	Carpet Cleaning
\$100.00	Drywall Repairs/Painting
\$250.00	Cleaning
\$50.00	washer repair
\$100.00	RTB Filing Fee

The tenants conceded and agreed to the following landlord's claims:

\$57.75	Labour, re-hang bifold door and closet shelf repair
\$4.47	Storage Locker Key
\$39.54	light bulb replacement (9)

During the hearing the landlord sought recovery of the following claims stating that he had suffered as a result of filing this application the loss for these expenses.

\$24.55	Registered Mail Postage (Dispute)
\$24.93	Photos for Evidence
\$24.55	Registered Mail Postage (Evidence)

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. I find that these costs are associated to providing evidence and serving the respondent the hearing package to be part of litigation costs. Accordingly, the Landlord's claim for recovery of litigation costs are dismissed.

The landlord has established a claim for:

\$173.25	Carpet Cleaning
\$100.00	Drywall Repairs/Painting
\$250.00	Cleaning
\$50.00	washer repair
\$57.75	Labour, re-hang bifold door and closet shelf repair
\$4.47	Storage Locker Key
\$39.54	light bulb replacement (9)
\$675.01	Total

The landlord is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$750.00 security deposit in partial satisfaction of this claim, leaving an outstanding balance of \$25.01.

### Conclusion

The landlord is granted a monetary order for \$25.01.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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 26, 2021

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Residential Tenancy Branch