



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords under the Residential Tenancy Act (the “*Act*”) for a monetary order for damages and permission to retain the security deposit. The matter was set for a conference call.

Both the Landlords attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on November 4, 2020, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlords were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matter – *Landlords asking Legal Advice*

At the end of this proceeding, both the Landlords attempted to ask this Arbitrator for legal advice on how they could proceed on other claims.

This Arbitrator advised the Landlords of the independent and impartial role of an Arbitrator and requested that they cease seeking legal advice from this Arbitrator, suggesting that they may wish to seek an attorney to assist them.

Both Landlords continued to persist in demanding legal advice from this Arbitrator.

As the testimony regarding the application before me had been completed, this Arbitrator advised the Landlords of the inappropriateness of their behaviour and ended the hearing.

### Issues to be Decided

- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to retain the security deposit for this tenancy?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlords testified that the tenancy began on July 2, 2020, as an 11 month and 29-day fixed term tenancy. Rent in the amount of \$1,350.00 was payable on the first day of each month, and the Tenant had paid a security deposit of \$675.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlords testified that this tenancy ended on October 21, 2020, in accordance with the *Act*, and that the Tenant had provided them with their forwarding address by email, that same day.

The Landlords testified that the Tenant returned the rental unit to them uncleaned and with walls that required repainting. The Landlords testified that it took three people three hours to complete the cleaning of the interior of the rental unit and one person one and a half hours to clean up the exterior of the rental unit. The Landlord submitted a spreadsheet detailing the hours worked and 10 pictures taken of the rental unit at the end of this tenancy into documentary evidence. The Landlord testified that they are requesting \$675.00 for their hours worked to clean the rental unit, at the rate of \$150.00 per hour for 4.5 hours.

The Landlords also testified that there was repainting to the walls required at the end of this tenancy. The Landlord submitted an emailed quote from a local painter into documentary evidence, and requested an additional \$150.00 for painting.

### Analysis

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

I accept the undisputed testimony of the Landlords that this tenancy end on October 21, 2020, in accordance with the Act, and that the Tenant provided the Landlord with their forwarding address, in writing, that same day.

The Landlord is claiming to retain the security deposit for this tenancy as compensation for their time to clean and repaint the rental unit at the end of this tenancy. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.”

In order to be awarded compensation, an applicant must first prove that there has been a breach of the Act by the Respondent; in this case, that would be the Landlord who needs to prove that the Tenant breached the Act during this tenancy.

Section 37 of the Act states the following regarding the condition of the rental unit at the end of a tenancy:

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

*37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

*(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, and*

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I have reviewed the 10 pictures taken of the rental unit at the end of this tenancy, and I find that the Landlords' evidence supports their claim that the Tenant returned the rental unit to the Landlord in an uncleaned state. Therefore, I find that the Tenant breach section 37 of the Act when they returned the rental unit to the Landlords uncleaned at the end of this tenancy.

As for the value of the Landlords claims, the Landlords have submitted a spreadsheet that shows the Landlords provided three hours of cleaning, (completed by three people), to the interior of the rental unit and 1.5 hours of cleaning (completed by one person) to the exterior of the rental unit at a rate of \$150.00 per hour, totalling \$675.00 for 4.5 hours of cleaning.

I find that the Landlords' claim for \$150.00 per hour for cleaning to be an excessively high rate for hourly cleaning, and an attempt by these Landlords to unjustly enrich themselves. Accordingly, I dismiss the Landlords' claim for 4.5 hours worth of their personal labour for cleaning at the rate of \$150.00 per hour.

However, as it has been determined that the Tenant did return the rental unit to the Landlord uncleaned, I will award the Landlord the nominal rate of \$25.00 per hour for cleaning labour. According to the Landlord spreadsheet, three people cleaned the interior of the rental unit for 3 hours each, for a total of nine hours of cleaning for the interior of the rental unit. Additionally, the spreadsheet shows that one person cleaned the exterior of the rental unit for 1.5 hours. Therefore, I find that a total of 10.5 hours worth of cleaning was completed by the Landlords at the end of this tenancy. Accordingly, I award the Landlords 10.5 hours worth of labour at a rate of \$25.00 per hour, for cleaning the rental unit at the end of this tenancy, for a total award of \$262.50. I grant permission to the Landlords to retain \$262.50 from the security deposit they are holding for this tenancy in full satisfaction of this award.

During the hearing, the Landlord also requested \$150.00 in an estimated cost to have the painting completed at the end of this tenancy. I have reviewed the Landlords picture evidence of the walls of the rental unit at the end of this tenancy, and I find that these pictures depicted walls with normal wear and tear and not damage. Therefore, as a tenant is not responsible for costs associated with normal wear and tear, I dismiss this portion of the Landlords claim in its entirety.

I order the Landlord to return the remainder of the security deposit that they are holding for this tenancy, in the amount of \$412.50, to the Tenant within 15 days of receiving this decision.

If the Landlord fails to return the security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

Conclusion

The Landlords' are granted permission to retain \$262.50 of the security deposit they are holding for this tenancy.

I order the Landlords to return the remaining \$412.50 of the security deposit to the Tenant within 15 days of receiving this decision.

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: February 11, 2021

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Residential Tenancy Branch