



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S, MNRL-S, FFL

### Introduction

The landlord filed an application for dispute resolution (the “Application”) on November 20, 2020. They seek an order for compensation for: monetary loss or other money owed; outstanding rent; and damage to the rental unit. Additionally, they seek to recover the filing fee for the Application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 12, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

At the outset of the hearing, both parties confirmed they received the evidence of the other. On this basis, the hearing proceeded.

### Issue(s) to be Decided

Is the landlord granted a monetary order for money owed, outstanding rent, and/or compensation for damage or loss, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The landlord submitted a copy of the Residential Tenancy Agreement that both parties signed on July 1, 2019. There was a regular yearly agreement in place. The agreement is clear that the period of the tenancy is fixed, starting on July 1, 2019 and ending on June 30, 2020. It is specified that at the end of the term, the tenant must vacate. The rent amount was \$2,200. The tenant paid a security deposit amount of \$1,000 on July 4, 2019. The rent amount did not include the utilities of hydro and gas.

The tenant advised the landlord that they wished to end the tenancy. This was via email on September 30, 2020, to end on October 31, 2020. After this, the landlord submits that the tenant “refused to make a full payment” for October rent. The landlord then served a notice to end tenancy for this reason. The tenant then “refused to move out and stated that [they] will move out on October 31, 2020.”

The landlord’s Application for compensation is threefold. For each component, the landlord applies to retain the security deposit as part of the compensation.

#### A. Damage to the rental unit

First, the landlord claims for damage to the rental unit, and the repairs they paid for. This is shown on the Application to be \$5,488.52. As set out on their ‘Monetary Order Worksheet’ (the “worksheet”), this includes:

1	painting – estimate	\$2,000
2	carpet replace with laminate	\$2,524.70 worksheet (Application shows \$2,073.87)
3	cleaning	\$200
4	damaged light bulbs	\$64.53
5	fridge damage	\$287.27
6	dishwasher	\$1,038.00 worksheet (Application shows \$826.05)

They provided 14 photos showing damage within the unit. This includes scratches to the floor, a black-painted wall, a broken closet door, a dishwasher interior, and blinds missing. The landlord provided two separate, undated letters from witnesses who listed damages to the unit.

For item 1, four receipts list 14 items of miscellaneous work, totalling \$2,000.

In the hearing, the landlord stated that at the end of the tenancy, they had to paint the house, and had to take a few days off. The only place that was clean at the end of the tenancy was the fridge. They stated the amount of damages was \$4,524.99 for which they provided receipts.

With painting, the landlord stated they painted the unit from October 31 to November 13. This was all rooms and the kitchen, “everywhere”. They pointed to the photo that shows one bedroom wall painted black.

The tenant responded to this portion of the landlord’s claim in the hearing to say they were not sure of the need for painting throughout, relying on their photos. This was “regular wear and tear” which means the landlord would have to paint in any event.

For item 2 above, the landlord provided receipts totalling \$2,335.70, showing:

- a) a total payment of \$986.90 for laminate flooring.
- b) a paid amount of \$450 for carpet removal in three bedrooms.
- c) laminate installation (\$470), 12-pieces of baseboard (\$336), removal of baseboard and carpet edging (\$50). This subtotal is \$856 (with 5% GST: \$898.80).

For item 4, two separate receipts show the purchase of lightbulbs: for \$37.80 and \$28.73. This totals \$66.53.

For item 5 above, the landlord provided a receipt showing “fridge broken and missing part”. This is shown to be “shelf-glass” and “pan-crisper”. A photo of this appears in the landlord’s evidence.

For item 6 above, the landlord provided a receipt showing a paid amount of \$1,038.84. In the hearing the landlord provided that the amount on the Application (\$826.05) did not include the amount they paid for an additional warranty. In the hearing, the tenant responded to say: “this is new information that the dishwasher was broken.”

#### B. outstanding rent amounts owing

For the second part of their monetary claim, the landlord claimed for the amount of \$2,321.88, which incorporates the Application filing fee. This is for remaining amounts of rent owing for October 2020. Also, there were amounts for utilities owing carried over from September. The tenant paid \$300 on October 10 as a portion of the rent, but never paid the remainder.

The landlord provided on their application: rent owing - \$1,900; utilities owing - \$321.88. They provided four receipts showing miscellaneous amounts owing, carried over from previous months.

In the hearing, the tenant acknowledged rent amounts and utility amounts owing. They presented that they suffered financial hardship in 2020. In the past they offered to make a payment plan with the landlord and attempted to make the offer for the landlord to keep the security deposit, but the landlord rebuffed this proposal.

An email from the tenant to the landlord dated October 9 (on which they received the notice to end tenancy) shows the tenant stating to the landlord: "I will do as much as I can to pay the additional \$1300.00 + utilities."

#### C. missed future rent

On the Application, the landlord noted they were not able to rent the property for two weeks after the tenant moved out. This is because of the damage to the walls, blinds, carpets, laminates, fridge, dishwasher. Additionally, the unit needed professional cleaning.

This claimed amount is one-half month's rent, for \$1,100. The landlord provided a copy of the following tenants' rental agreement that shows the next tenancy starting on November 14, 2020.

In response to this, the tenant replied that they spent "12 hours straight cleaning". This began on the October 31 move-out date and continued through to the following day. Their September 30 email to the landlord provides that they "will complete the move out by October 31 and will ensure that it is very clean for you and whomever the new tenant will be." They also requested 24 hours notice for any showings.

#### Analysis

Under the *Act* s. 7, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

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

A. Damage to the rental unit

On the claim for damages and cleaning, the landlord must establish that they paid an amount for repairs or cleaning. Then, I shall determine if the landlord is properly owed money by the tenants.

The *Act* s. 37 sets out that when vacating a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Again, the burden of proof rests with the landlord to show that a claim for damages or other expenses they paid is legitimate.

On these amounts provided by the landlord, I look to the evidence they have provided on the actual cost to them. I consult the *Residential Tenancy Branch Rules of Procedure* to look carefully at the landlord's evidence.

Rule 3.7 provides: "All documents to be relied on as evidence must be clear and legible." Moreover: "To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible."

The evidence which the landlord presents for this portion of their claim is not organized to a degree that I can make a fair determination on any amounts owing. I note the following in regard to the documentation presented:

- there are conflicting amounts throughout – I cannot determine the actual amount of the landlord's claim for carpet replacement with laminate – the Application shows one amount (\$2,073.87), the worksheet shows another (\$2,524.70), and the receipt amounts provided by the landlord add up to another amount (\$2,335.70). The landlord did not rectify this in the hearing

- the need for carpet replacement is not shown in the evidence – the photos provided by the landlord do not show carpet damage and indeed there is virtually no photo that shows carpet damage needing replacement – chiefly for this reason this portion of the landlord's claim is dismissed
- similarly, the need for painting throughout the whole unit is not established in the evidence – the cost of \$2,000 is not reflective of the one wall in the child's bedroom that would need painting
- also, what the landlord presented here was an *estimate* for painting and in the hearing the landlord provided that they undertook painting on their own – there is no receipt evidence for the cost of materials and the landlord did not provide an accurate record for their own time spent painting
- the damage to the dishwasher requiring its replacement is not established in the evidence – all that exists is a single photo showing the interior of the dishwasher – this does not meet the burden to prove that the cost of dishwasher replacement lies here with the tenant
- there is no strict accounting of the \$200 amount claimed for cleaning – there is no separate itemized receipt showing that the landlord actually paid this amount
- what the landlord provided for receipts showing lightbulb purchases do not add up to the amount they claimed – additionally, there is no other evidence to show the need for lightbulb replacement

While the landlord did not provide evidence that the fridge was in pristine condition at the start of the tenancy, I find the photo they provided is sufficient to show the need for replacement parts. The parts in question are conspicuous by their absence. I find it more likely than not that damage to the fridge occurred during the tenancy. I award the landlord \$100 for these parts. The landlord did not show that they made an effort to minimize this cost.

Except for the fridge replacement parts – at \$100 – I dismiss all other pieces of the landlord's claim for damages, without leave to reapply.

B. outstanding rent amounts owing

In the hearing, the tenant acknowledged the rent amount owing. They also acknowledged there is some amount of utilities owing.

The landlord did not prove the amount of utilities owing with sufficient evidence. There is no evidence to show what percentage or proportion of the utilities are the responsibility of the tenant. Then, there is no equation to show how the landlord arrived at the amount of \$321.88 as provided for in their claim. They did not present this in relation to the invoices from BC Hydro and Fortis that they presented. Because of this, I am unable to verify the exact amount of utilities owing, and make no award for this portion of the landlord's claim.

This leaves the remaining rent amount owing from the tenant. I so award this amount of \$1,900 to the landlord.

C. missed future rent

The landlord's plan to rent the unit for November was overtaken by the need to prepare it to a sufficient degree for future renters. I find the evidence shows this was due to their painting of the rental unit. There is no other detail provided to show what else was happening over the two-week period. Though the landlord provided that the carpet needed removal and new laminate installed, there is no sufficient evidence of the need for this. Certainly, I cannot make the determination that replacement of the carpet was necessitated by the actions or negligence of the tenant here.

The landlord stated that they took on the task of painting on their own. This was not the situation where they hired a painter to take care of the work involved at the cost of \$2,000. Above, I have dismissed that portion of the landlord's claim.

Similarly, I am not satisfied the need for painting to the degree presented by the landlord stems from the tenancy here. The landlord did not provide evidence of the need for repainting to the entire rental unit.

The landlord has not proven that other work on blinds, and replacement of appliances extended into the first two weeks of November 2020.

For these reasons, I make no award to the landlord for loss of rent income in the two-week period following this tenancy. I dismiss this portion of the claim without leave to reapply.

In consideration of all evidence presented by the landlord for this hearing, they have not established the burden of proof that compensation or other monetary amounts for the majority of the Application are owing to them. They did not provide sufficient or clear evidence to establish a valid monetary claim.

The landlord is entitled to recovery of the remaining amount of October rent, for \$1,900. As the landlord was moderately successful in their Application, I find they are entitled to recover \$50 of the Application the filing fee.

The *Act* s. 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 \$2,050. After setting off the \$1,000 security deposit, there is a balance of \$1,050. I am authorizing the landlord to keep the security deposit amount and award the balance of \$1,050 as compensation for the October 2020 rent amount, missing pieces from the refrigerator, and the Application filing fee.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,050. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 s. 9.1(1) of the *Act*.

Dated: April 12, 2021

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Residential Tenancy Branch