



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDL-S, FFL

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security deposit in satisfaction of the monetary order requested, pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord SS and tenants AM and CA attended the hearing. Landlord SS represented landlord ON. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

The tenants confirmed receipt of the landlords' packages in December 2020 containing the notice of hearing and the evidence (the materials). The packages did not include a copy of the tenancy agreement and the condition inspection report (the report). I accepted the landlord's testimony that the tenants were served with the materials in accordance with section 89(1)(d) of the Act. The landlords' copy of the tenancy agreement and the report were not served and are excluded, per Rule of Procedure 3.14.

The landlord confirmed receipt of the tenants' evidence packages on March 15, 2021. I accepted the tenants' testimony that the landlords were served with the response evidence in accordance with section 88(c) of the Act.

Preliminary Issue – Correction of tenant AM's name

At the outset of the hearing tenant AM corrected the spelling of her first and last name. Pursuant to section 64(3)(a) of the Act, I have amended the landlords' application.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenants' security deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed the periodic tenancy started on June 17, 2018 and ended on November 30, 2020. Monthly rent was \$2,460.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were collected. The tenancy agreement was submitted into evidence by the tenants.

The landlord stated the parties conducted a move in condition inspection on June 16, 2018, but the landlord did not sign the report and a move out condition inspection was scheduled for 1:00 P.M. on November 30, 2020 but the tenants did not attend. The landlord did not offer two move out inspection dates because he re-rented the rental unit on December 01, 2020.

The tenants affirmed both parties conducted a move in condition inspection on June 16, 2018 but did not sign the report and a move out inspection was not scheduled. The tenants said they completed and signed the move in condition report by themselves weeks after the tenancy started.

The tenants submitted into evidence a condition inspection report signed only by the tenant. The tenants testified the landlord provided the information in blue ink and the tenants provided the information in black ink.

The report indicates in black ink letters the tenants authorized the landlord on June 16, 2018 to withhold the security deposit in the amount of \$1,100.00 and the security deposit in the amount of \$1,100.00. The tenants' testimony conflicted with the report as they testified they did not authorize the deposits to be withheld and are seeking the return of their deposits.

The tenants provided their forwarding addresses in writing on October 31, 2020. The landlords returned the \$1,100.00 pet damage deposit and \$750.00 from the security deposit on December 14, 2020, retaining \$350.00. This application was filed on December 11, 2020.

The landlord affirmed when the tenancy started the rental unit's carpet was professionally cleaned and when the tenancy ended the tenants vacuumed the rental unit carpet but did not professionally clean it. The landlord stated he paid \$227.42 (receipt submitted into evidence) for professionally cleaning the carpet and is claiming for this amount. The tenants testified they hired a carpet cleaning company but they did not attend the rental unit. Both parties agreed the tenants had pets during the tenancy.

The landlord said the rental unit did not have mould when the tenancy started, the tenants did not report mould during the tenancy and when the tenancy ended there was mould.

The tenants affirmed they did not notify the landlord about mould in the living room, closet and around the kitchen windows during the tenancy because when the tenancy started the rental unit already had mould and they assumed the landlord was aware of this issue.

The landlord paid \$23.50 for a mould cleaning spray and paid a cleaner 4 hours at the hourly rate of \$25.00 to remove the mould from the 2 bedroom 900 square feet rental unit. The landlord submitted into evidence receipts for the cleaning labour in the amount of \$100.00 and for the spray. The landlords are claiming for \$123.50 for the mould cleaning labour and material.

The landlord submitted into evidence a monetary order worksheet. The landlord is claiming for an authorization to retain the balance of the security deposit in the amount of \$350.92.

## Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Rule of Procedure 7.4 requires the party to present the evidence:

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The landlord submitted 57 files into evidence. Per Rule of Procedure 7.4 I'm only considering the files presented during the hearing.

### Security Deposit

Section 23(4) of the Act requires the landlord to complete a condition inspection report in accordance with the regulations. Section 18 of the Residential Tenancy Regulation requires the landlord to give the tenant a copy of the signed condition inspection report.

As the landlords did not sign the report, I find the landlords did not comply with section 23(4) of the Act. Thus, the landlords extinguished their right to claim against the security deposit, per section 24(2)(c) of the Act:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
(a) does not comply with section 23 (3) [2 opportunities for inspection],  
(b) having complied with section 23 (3), does not participate on either occasion, or  
**(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

**(emphasis added)**

Although the tenants recorded on the condition inspection report authorization for the landlord to retain both deposits, I find they did this in error as they did this on June 16, 2018 which was prior to the start of the tenancy.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The forwarding address was provided in writing on October 31, 2020 and the tenancy ended on November 30, 2020. The landlords returned the pet damage deposit and \$750.00 from the security deposit on December 14, 2020 and retained the amount of \$350.00.

In accordance with section 38(6)(b) of the Act, as the landlords extinguished their right to claim against the security deposit and did not return the full amount of the security deposit within the timeframe of section 38(1) of the Act, the landlords must pay the tenants double the amount of the security deposit they retained.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is  $\$525.00$  ( $\$800 - \$275 = \$525$ ).

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$1,450.00 (double the security deposit of \$1,100.00 minus the \$750.00 returned).

### Carpet cleaning

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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

Residential Tenancy Branch Policy Guideline 1 states the tenant is responsible for cleaning the carpet at the end of the tenancy:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)<sup>2</sup>, or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

### **CARPETS**

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.

2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.

3. **The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.** Where the tenant has deliberately or carelessly stained

the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

**(emphasis added)**

Based on both parties testimony and the carpet cleaning receipt, I find the tenants did not steam clean the rental unit's carpet at the end of a tenancy that lasted over one year, the landlord steam cleaned the carpet and incurred a loss of \$227.42.

As such, I award the landlord \$227.42 in compensation for this loss.

#### Mould cleaning

As previously addressed in this decision (topic 'Security Deposit'), the landlords did comply with section 23(4) of the Act. The report does not prove the rental unit's conditions.

Subsections (2) and (3) of Section 32 of the Act state:

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the landlord's undisputed testimony and the labour and spray receipts, I am satisfied, on a balance of probabilities, the tenants did not comply with section 32(3) and 32(3) of the Act by failing to remove mould during the tenancy and the landlords suffered a loss of \$123.50 to remove mould.

As such, I award the landlord the amount of \$123.50.

#### Filing fee and summary

As the landlords were successful in this application, the landlords are entitled to recover the \$100.00 filing fee.

The tenants are awarded a monetary award of \$1,450.00.

The landlords are awarded:

Item	Amount \$
Carpet cleaning	227.42
Mould cleaning	123.50
Filing fee	100.00
<b>Subtotal</b>	<b>450.92</b>

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.
2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

In summary:

Award for the tenants	\$1,450.00
Award for the landlords	\$450.92
<b>Final award for the tenants</b>	<b>\$999.08</b>

### Conclusion

Pursuant to section 38 of the Act, I grant the tenants a monetary order in the amount of \$999.08.

The tenants are provided with this order in the above terms and the landlords must be served with **this order**. Should the landlords 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: April 09, 2021

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Residential Tenancy Branch