



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL, MNRL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on December 08, 2020 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit
- To recover unpaid rent
- To keep the security deposit
- For reimbursement for the filing fee

The Application originally named the Tenant and Tenant I.B. (the “Tenants”).

The Landlords and Tenant appeared at the hearing. The Tenant did not appear for Tenant I.B. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlords filed an amendment December 18, 2020 changing the amount of compensation sought from \$10,472.00 to \$17,522.59.

The Landlords filed an amendment January 06, 2021 changing the amount of compensation sought to \$21,422.59 for damage and \$3,900.00 for unpaid rent.

The Landlords filed an amendment March 15, 2021 changing the amount of compensation sought to \$13,364.20 for damage and \$3,900.00 for unpaid rent.

The Landlords filed further amendments which I do not find necessary to detail here given the subject matter of the amendments.

The Landlords confirmed the correct rental unit address which is reflected on the front page of this decision.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package, amendments and Landlords' evidence.

The Tenant confirmed receipt of the hearing package, amendments and Landlords' evidence.

In relation to Tenant I.B., the Landlords testified as follows in relation to service. The hearing package and evidence were served on Tenant I.B. December 16, 2020 by registered mail to the rental unit as Tenant I.B. still lived at the rental unit. Tracking Number 1 relates to this package.

The Landlords submitted documentary evidence with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered December 18, 2020.

The Landlords testified that amendments and evidence were served on Tenant I.B. January 06, 2021 by text message and email. I have looked through the evidence submitted and there is no text message or email sent to Tenant I.B. January 06, 2021 with amendments and evidence attached.

The Landlords testified that amendments and evidence were served on Tenant I.B. March 15, 2021 by text message. I have looked through the evidence submitted and there is no text message sent to Tenant I.B. March 15, 2021 with amendments and evidence attached.

I note that the Landlords applied for substituted service and were permitted to serve the Tenants by text message; however, the Landlords were ordered in the decision to provide proof of service in relation to the text messages.

I am satisfied Tenant I.B. was served with the hearing package and some evidence on December 16, 2020 in accordance with the *Residential Tenancy Act* (the "Act"). However, the original Dispute Notice indicated that the Landlords were seeking \$10,472.00 for damage to the rental unit. Further, the Dispute Notice lists different amounts sought for different claims compared to the most current Monetary Order Worksheet which outlines what the Landlords sought at the hearing.

The Landlords were required to prove service of the amendments and further evidence and were ordered to provide proof of service. The Landlords did not comply with the order to provide proof of service of the amendments and further evidence and therefore I am not satisfied the amendments and further evidence were served on Tenant I.B. as required by rules 4.6 and 3.14 of the Rules.

I have considered the amended claim as it relates to the Tenant because the Tenant appeared at the hearing and acknowledged receipt of all relevant documents.

I am not satisfied Tenant I.B. was aware of the amended claim or the further evidence submitted and therefore I have removed Tenant I.B. from the Application as I find it would be unfair to consider the amended claim against Tenant I.B. when I am not satisfied Tenant I.B. was aware of it.

I note that the Tenants were co-tenants and therefore are jointly and severally liable for any amount awarded to the Landlords as stated in Policy Guideline 13 at page 1:

There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

| Item | Description             | Amount             |
|------|-------------------------|--------------------|
| 1    | Repairs & Cleaning      | \$6,216.00         |
| 2    | Unpaid rent for January | \$3,900.00         |
| 3    | FOB replacement         | \$150.00           |
| 4    | Towels and bed sheets   | \$638.80           |
| 5    | Couch replacement       | \$6,359.40         |
| 6    | Filing fee              | \$100.00           |
|      | <b>TOTAL</b>            | <b>\$17,364.20</b> |

A written tenancy agreement was submitted. The tenancy started September 01, 2020 and was for a fixed term ending March 30, 2021. Rent was \$3,900.00 due on the first day of each month. The Tenants paid a \$1,950.00 security deposit.

The Landlords testified that the Tenants moved out of the rental unit February 02, 2021. The Tenant testified that the Tenants moved out of the rental unit by January 31, 2021 or February 01, 2021.

The parties agreed a forwarding address for the Tenants was provided on the Condition Inspection Report (CIR) on February 02, 2021. The CIR was submitted.

The CIR shows the parties did a move-in inspection August 31, 2020.

The CIR shows the parties did a move-out inspection February 02, 2021.

**#1 Repairs & Cleaning \$6,216.00**

The Landlords sought \$6,216.00 for repairs and cleaning outlined in an invoice in evidence. The Landlords relied on photos and a letter submitted to show the repairs and cleaning required at the end of the tenancy.

Landlord J.C. testified about the Tenants having parties and damaging the carpet with cigarette burns and wine spills. Landlord J.C. testified that the damaged carpet had to be removed and was replaced with laminate which was less expensive. Landlord J.C. testified that baseboards were scuffed and a deep clean of the unit had to be done. Landlord J.C. testified that the floor was sticky and the unit smelled of smoke at the end

of the tenancy. Landlord J.C. testified that the Tenants had the walls painted at the end of the tenancy; however, the painter did not remove the art from the walls and so the walls had to be re-painted. Landlord J.C. testified that the rental unit had last been painted three years prior.

The Tenant testified as follows. He agrees the master bedroom carpet had to be replaced. He does not agree that the carpet in the second bedroom had to be replaced. He disagrees that the whole unit required drywall repairs and painting. He agrees paintings were not removed from the wall when the unit was repainted by the Tenants; however, they had a professional painter do the painting and the painter matched the paint color. He believes that damage to the walls occurred when the carpets were removed, and this is why the unit needed repainting. When the Tenants left the rental unit, the drywall repairs had been done and it had been professionally painted. The amount claimed for cleaning is very expensive. He had cleaners clean the rental unit. The balcony was dirty when the Tenants moved in. The oven did need to be cleaned at the end of the tenancy and the unit may have needed further cleaning, but the amount claimed is not reasonable.

The Tenant agreed to pay the \$1,680.00 and \$375.00 listed on the invoice for replacing the carpet and moulding.

***#2 Unpaid rent for January \$3,900.00***

The parties agreed the Tenants did not pay January rent. The Tenant testified that the Tenants did not pay January rent because they were served with an eviction notice that they did not agree with.

***#3 FOB replacement \$150.00***

Landlord J.C. testified as follows. The Tenants lost a FOB during the tenancy. The Landlords ordered a replacement FOB, but the Tenants refused to pay for it because they said they never received it.

The Tenant agreed Tenant I.B. lost a FOB during the tenancy and said he does not know if Tenant I.B. received a replacement.

**#4 Towels and bed sheets \$638.80**

Landlord J.C. testified that sheets were provided to the Tenants and were damaged. Landlord J.C. testified that some of the linens provided to the Tenants were brand new and some were older.

The Tenant denied that he damaged towels or sheets. The Tenant could not comment on whether towels and sheets used by Tenant I.B. were damaged.

**#5 Couch replacement \$6,359.40**

Landlord J.C. testified that the Tenants damaged the couch and relied on the photos in evidence. Landlord J.C. testified that the couch was two or three years old.

The Tenant agreed the couch had to be replaced due to damage. The Tenant testified that Landlord J.C. previously said he paid less than the amount sought for the couch and previously said the couch was four years old.

Analysis

**Security deposit**

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the CIR, I am satisfied that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlords have claimed for unpaid rent.

Based on the CIR, I find the tenancy ended February 02, 2021 with the move-out inspection.

Based on the CIR and testimony of the parties, I find the Tenants provided a forwarding address in writing on the CIR on February 02, 2021.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants' forwarding address in writing to repay the security deposit or claim against it. The Application was filed December 08, 2020, prior to the end of the tenancy and therefore within time. I find the Landlords complied with section 38(1) of the *Act*.

### ***Compensation***

Section 7 of the *Act* states:

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

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### **#1 Repairs & Cleaning \$6,216.00**

Section 37 of the *Act* states:

(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...

The invoice for cleaning and repairs includes the following:

- Replacement of carpet and moulding (\$1,680.00 + \$375.00)
- Repair of walls and painting \$2,500.00
- Cleaning \$1,365.00

The Tenant agreed to pay the \$1,680.00 and \$375.00 listed on the invoice for replacing the carpet and moulding and therefore the Landlords are awarded these amounts.

In relation to repairing the walls and painting, I do not find that the CIR supports the Landlords' position about the condition of the walls at the end of the tenancy. I would expect to see damage to the walls noted on the CIR as the move-out inspection was the opportunity for the parties to note issues with the rental unit on February 02, 2021, the date the tenancy ended. The photos submitted do not support that the walls required repair and painting, other than one photo that shows a large dent in the wall due to a doorknob. I find the documentary evidence unclear as to whether there was a dent in the wall at the end of the tenancy. In the absence of further evidence, I am not satisfied the walls needed to be repaired or painted at the end of the tenancy and therefore do not award the Landlords the amount sought.

In relation to cleaning, the CIR notes that areas of the rental unit were dirty at move-out. There is a photo of the oven in evidence showing it required cleaning. A letter in evidence from J.J. dated March 12, 2021 confirms that the rental unit required cleaning. The Tenant acknowledged the oven required cleaning and acknowledged that the rental unit may have required some further cleaning at move-out. I am satisfied some further



cleaning was required and therefore the Tenants breached section 37 of the *Act* in this regard.

The Tenant disputed that \$1,365.00 worth of cleaning was required. I find \$1,365.00 for cleaning to be a high amount. The usual rate for cleaners is around \$25.00 per hour. The amount sought would be for almost 55 hours of cleaning. I do not find that the CIR or the photos submitted support that the rental unit required 55 hours of cleaning at the end of the tenancy. I would expect to see extensive and compelling evidence showing that 55 hours of cleaning was required; however, the Landlords have not submitted compelling evidence that this was the case. Further, the Tenants were not required to clean the rental unit to the standard of the Landlords. The Tenants were required to leave the rental unit reasonably clean.

I note that the photos mostly show that the couch and carpets were dirty, both of which were replaced and therefore should not have contributed to the cleaning costs.

In the absence of further evidence, I can only be satisfied that the Landlords are entitled to \$100.00 for cleaning. This represents four hours of cleaning. I find this amount reasonable in the absence of further evidence showing that the rental unit required more than four hours of additional cleaning to bring it up to the standard of reasonably clean.

In total, the Landlords are awarded \$2,155.00 for repairs and cleaning.

## **#2 Unpaid rent for January \$3,900.00**

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The parties agreed the Tenants did not pay January rent. The reason for not paying January rent provided by the Tenant is not a basis under the *Act* to withhold rent. If the Tenants did not agree with an eviction notice issued, the Tenants could have disputed it; however, they were not entitled to withhold rent based on this.

I am satisfied the Tenants owe the Landlords \$3,900.00 for January rent and award the Landlords this amount.

**#3 FOB replacement \$150.00**

Section 7(1) of the *Regulations* states:

7 (1) A landlord may charge any of the following non-refundable fees:

(a) direct cost of replacing keys or other access devices;

I am satisfied based on the CIR that at least one FOB was not returned at the end of the tenancy. I am also satisfied Tenant I.B. lost a FOB during the tenancy as the parties agreed on this. I accept the testimony of Landlord J.C. that the Landlords ordered a replacement FOB as I did not understand the Tenant to dispute this. I accept that the replacement FOB cost \$150.00 as the ledger submitted shows this. I am satisfied the Landlords are entitled to \$150.00 for the cost of replacing the FOB lost by Tenant I.B.

**#4 Towels and bed sheets \$638.80**

The parties disagreed about whether the Tenant damaged bedding and towels. The only documentary evidence submitted to support that bedding and towels were damaged is the March 12, 2021 letter from J.J. I do not find a letter about damage to bedding and towels from a third party who was not involved in the tenancy or inspections particularly compelling when damage to bedding and towels is not noted on the CIR or documented in photos. I am not satisfied based on the evidence that the Tenant damaged the bedding or towels he used.

I am satisfied Tenant I.B. damaged some of the bedding and towels based on the testimony of Landlord J.C. which is undisputed on this point given the Tenant could not speak to whether Tenant I.B. damaged bedding and towels. I am satisfied Tenant I.B. breached section 37 of the *Act* in this regard.

The Landlords have claimed \$638.80 for bedding and towels based on an online order. I decline to award the Landlords this amount and award them \$200.00 for the following reasons. I am not satisfied all bedding and towels were damaged as claimed. The online order submitted does not make sense as the numbers and amounts noted do not add up. There is insufficient evidence before me showing that the bedding and towels provided to the Tenants that were damaged were worth \$638.80. It is not reasonable

for landlords to expect bedding and towels provided to tenants to last over multiple tenancies and landlords should expect to have to replace such items between tenancies.

I award the Landlords \$200.00 as I am satisfied Tenant I.B. damaged some bedding and towels; however, I am not satisfied there is sufficient evidence to support that the amount of the loss exceeded \$200.00.

#### **#5 Couch replacement \$6,359.40**

I am satisfied the Tenants damaged the couch such that it had to be replaced as the Tenant acknowledged this. I find the Tenants breached section 37 of the *Act* in this regard.

The Tenant took issue with the amount claimed for a replacement couch. I am not satisfied the Landlords are entitled to \$6,359.40 for the following reasons. There is insufficient evidence about the age of the couch, or the cost of the couch, provided to the Tenants with the rental unit. The \$6,359.40 claimed is the highest quote provided and does not account for the age of the couch.

I note that the Landlords submitted text messages showing they were willing to accept \$4,000.00 for the couch replacement. I find this amount reasonable given the quotes provided, the photos of the couch submitted and the fact that the couch was not brand new at the start of the tenancy. I award the Landlords \$4,000.00 for the couch.

#### **#6 Filing fee \$100.00**

Given the Landlords were partially successful in the Application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

#### **Summary**

In summary, the Landlords are entitled to the following:

| Item | Description             | Amount     |
|------|-------------------------|------------|
| 1    | Repairs & Cleaning      | \$2,155.00 |
| 2    | Unpaid rent for January | \$3,900.00 |
| 3    | FOB replacement         | \$150.00   |
| 4    | Towels and bed sheets   | \$200.00   |

|   |                   |                    |
|---|-------------------|--------------------|
| 5 | Couch replacement | \$4,000.00         |
| 6 | Filing fee        | \$100.00           |
|   | <b>TOTAL</b>      | <b>\$10,505.00</b> |

The Landlords can keep the \$1,950.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for the remaining \$8,555.00 pursuant to section 67 of the *Act*.

### Conclusion

The Landlords are entitled to \$10,505.00. The Landlords can keep the security deposit. The Landlords are issued a Monetary Order for the remaining \$8,555.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: April 28, 2021

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Residential Tenancy Branch