



# Dispute Resolution Services

Page: 1

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, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord's agent (the "agent") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The agent testified that the tenants were served with the landlord's application for dispute resolution on March 12, 2021 via registered mail. The tenants testified that they received the landlord's application for dispute resolution on March 15, 2021. I find that the tenants were served in accordance with section 89 of the *Act*.

Both parties agree that the landlord's evidence was served on the tenants in person on July 2, 2021. The tenants testified that they had time to review and respond to the landlord's evidence. Both parties agree that the tenants' evidence was served on the landlord in person on July 7, 2021. I find the landlord and tenants' evidence was served in accordance with section 88 of the *Act*.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure states that the applicant's evidence must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that while the landlord's evidence was served one day late, the tenants are not prejudiced by the consideration of late evidence because the tenants testified that they had time to review and respond to the evidence. The landlord's evidence is therefore accepted for consideration. I find that the tenants' evidence was served on the landlords more than seven days before this hearing, in accordance with Rule 3.15 of the Residential Tenancy Branch Rules of Procedure. The tenants' evidence is therefore accepted for consideration.

#### Preliminary Issue- Amendment

Tenant E.H. testified that the landlord used the shortened version of her first name on this application for dispute resolution. Pursuant to section 64 of the *Act* I amend the landlord's application to state the full legal first name of tenant E.H.

#### **Issues to be Decided**

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

#### **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 21, 2020 and ended on January 31, 2021. Monthly rent in the amount of \$1,450.00 was payable on the first day of each month. A security deposit of \$725.00 was paid by the tenants to the landlord. The landlord has not returned the tenants' security deposit to the tenants.

The tenants testified that they provided the landlord with their forwarding address via email approximately 10 days after they moved out of the subject rental property. The above email was not entered into evidence. The agent testified that the landlord received the tenant's forwarding address in writing via email but that the tenants did not send the email until shortly after the tenants were served with the landlord's application for dispute resolution. Neither party submitted written authorization for service via email.

Both parties agree that at the start of this tenancy the landlord did not ask the tenants to complete a move in condition inspection report and no move in condition inspection report was drafted by the landlord. Both parties agree that at the end of this tenancy the landlord did not ask the tenants to complete a move out condition inspection report and no move out condition inspection report was drafted by the landlord. No documentary evidence proving the move in condition of the subject rental property was entered into evidence.

The landlord testified that the following damages arose from this tenancy:

<b>Item</b>	<b>Amount</b>
Replace carpet	\$1,299.90
Replace master bedroom door	\$246.40
Cleaning	\$25.00
Fix drilling holes and painting	\$25.00
Replace light switch covers	\$12.00
<b>Total</b>	<b>\$1,608.30</b>

#### Replace carpet

The agent testified that the tenants or the tenants' son damaged the carpet in one of the bedrooms at the subject rental property. The agent testified that the carpet was four years old at the end of this tenancy and the carpet in the bedroom was in good

condition. The agent testified that when the keys were returned on January 31, 2021 the landlord did not notice the damage to the carpet, but on closer inspection, the landlord found numerous slits in the carpet straight through to the underlay. The agent testified that the slits could only be noticed when you were on your hands and knees on the carpet. The agent entered into evidence photographs of numerous pens sticking through the slits in the carpet. The agent testified that the landlord put the pens through the slits in the carpet so the damage could be visible for the photographs, otherwise they are not easily seen in a photograph.

The agent testified that the landlord only looked at the carpet that closely because the landlord wanted to know if the tenant's son, who had a lot of weightlifting equipment, had damaged the carpet from dropping weights. The agent testified that they hired a professional to inspect the carpet in the bedroom. The agent entered a letter from the professional which states:

Client showed me bedroom carpet that they thought had been damaged due to very heavy weights dropping. Not entirely sure that is the case. After careful inspection of the carpet, it appears that most of them look like clean slices in the carpet ranging from 1 inch to 3 inches approx. When I looked under the carpet - the foam underlay is a clean slice as well. Cuts were made with a sharp knife or utility blade. This was done deliberately, very clear as they are precise and go deep. Approximately 30 of them. It's a fairly high end carpet with square texture. Out carpet contractor estimated the cost to replace it....

The agent testified that the landlord believes the tenants' son, who suffers from mental health issues and who accused the landlord of being an evil devil worshiper, intentionally damaged the carpet. The agent entered into evidence two letters from witnesses to who stated that their encounters with the tenants' son led them to believe the tenants' son was unstable and aggressive. The landlord entered into evidence a quote for the replacement of the carpet in the bedroom for \$1,299.90 and is seeking this amount from the tenants.

The tenants testified that they and their son did not damage the carpet in the bedroom of the subject rental property. The tenants testified that during the tenancy they did not get on their hands and knees in the bedroom in question to inspect the carpets and that the cuts may have been there from the start of this tenancy. The tenants testified that the landlords did not tell them about the slices in the carpet until two weeks after they moved out and that the cuts may have been made in that time. The tenants testified that

the carpet was more than four years old and was in poor condition at the start of this tenancy.

The tenants entered into evidence a statement, in email form, from their son which states that he did not damage the carpet and kept his weights on thick mats to prevent damage to the carpet. The tenants entered into evidence a letter from a weight room supervisor which states that "The use of gym grade mats placed over carpeting while lifting weights will protect the carpet from any damage. It is not possible for the smooth edges of weights placed or sitting on the carpeting to cause any damage such as cuts, tears, or holes." The tenants testified that they took photographs of the subject rental property on the day they moved out. The tenants entered into evidence a black and white photograph of the bedroom carpet. No damage can be seen, though the image quality is poor.

The agent testified that it took the landlord a couple of weeks to inform the tenants about the damage to the carpet because the landlord had a house fire which was very serious and occupied the landlord's time. The agent testified that on December 23, 2020 the landlord completed an inspection of the property and at that time no damage to the carpet was found and the tenants' son's weights were not on mats. No condition inspection report for this inspection was entered into evidence. The agent entered into evidence a signed letter from the landlords' neighbour who was with the landlord and the agent during the December 23, 2021 inspection. The letter states that the weights were not on mats. The letter also states that the neighbour was present on January 31, 2021, when the keys were exchanged and that the carpet in the property was quite dirty and the bedroom carpet had deliberate slashes.

No documentary evidence proving the move in condition of the carpet was entered into evidence. No documentary evidence proving the age of the carpet was entered into evidence.

#### Replace master bedroom door

Both parties agree that the tenants damaged the master bedroom door. The landlord is claiming \$246.40 to replace the bedroom door. A receipt for same was entered into evidence. The tenants agreed to allow the landlord to deduct \$246.40 from their security deposit.

### Cleaning

The agent testified that the tenants did a decent job cleaning the subject rental property but that some places were missed such as behind the toilet, some walls, door and floors. The agent testified that it took her one hour to clean the areas missed by the tenants and the landlord is seeking \$25.00 for the extra cleaning required. No photographs of the subject rental property showing areas that required extra cleaning were entered into evidence.

The tenants testified that they cleaned the entire subject rental property, including behind the toilet, the walls, doors and floors. The tenants testified that no further cleaning was necessary.

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### Fix drilling holes and painting

The agent testified that the tenants puttied over holes in the walls and that she had to sand and paint those areas and that this took approximately one hour. The agent testified that the landlord is seeking \$25.00 for this work. No photographs of the puttied areas were entered into evidence.

The tenants testified that they did not make and fill holes with putty. The tenants testified that they did not damage the walls.

### Replace light switch covers

The agent testified that the tenants broke several light switch and electrical outlet covers. The agent entered into evidence photographs of the damaged electrical and outlet covers. The tenants testified that they were already broken when they move in. The agent testified that the landlord is seeking \$12.00 for the replacement of the broken covers. No receipts or estimates were entered into evidence.

### Security deposit

The agent testified that the landlord is seeking to retain the entirety of the tenants' security deposit due to the damage caused by the tenants. The tenants testified that

because the landlord did not complete the condition inspection reports as required by the *Act*, the landlord's right to retain any portion of the deposit is extinguished.

## **Analysis**

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Both parties agree that the tenants damaged the master bedroom door. Both parties agreed the tenants owe the landlord \$246.40 to replace the door. I find that the landlord is entitled to a monetary award in the amount of \$246.40 for the bedroom door replacement.

The landlord did not complete a move in condition inspection report and provided no documentary evidence to support the agent's testimony regarding the move in condition of the subject rental property. The tenants' testimony contradicts that of the agent. In this case, the landlord bears the burden of proof. I find that the landlord has not proved, on a balance of probabilities, that the carpet and light switch/electrical covers were undamaged at the start of this tenancy. The evidence from both parties indicates the tenants' son's weights did not damage the carpet. I find that the landlord has not proved, on a balance of probabilities that the tenants or their son damaged the carpets or the light switch/electrical covers. The above claims are therefore dismissed.

The agent testified that the subject rental property required one hour of cleaning and one hour of sanding and repainting puttied sections of the walls. The tenants disputed this testimony. The landlord did not provide any documentary proof such as photos of the dirty and damaged areas. As stated above, the landlord bears the burden of proof. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has not proved that the subject rental property required cleaning, sanding or painting. I therefore dismiss the landlord's claim for cleaning and repairing the wall(s).

### Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that 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 does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.



Sections 35 and 36 of the *Act* state that 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 does not complete a condition inspection report in accordance with the regulations and provide the tenant a copy of that report in accordance with the regulations.

Both parties agree that the landlord did not ask the tenants to complete a move in or move out condition inspection report and no such reports were drafted. Responsibility for completing the move in and out condition inspection report rests with the landlord. I find that the landlord did not complete the condition inspection reports in accordance with the Regulations, contrary to sections 23, 24, 35 and 36 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in and out inspections and inspection reports, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Both parties agree that the tenants sent the landlord their forwarding address via e-mail. The dates the forwarding address was sent by the tenants and received by the landlord are disputed. The tenants testified the email was sent in February 2021 and the agent testified that the email was received by the landlord shortly after serving the tenants with this application for dispute resolution, in mid March 2021. I find that the tenants have not proved the date on which they emailed the landlord their forwarding address or that the landlord provided the tenants with written authorization to serve the landlord via email; nonetheless, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* with the tenants' forwarding address by March 31, 2021, approximately two weeks after the tenant's received the landlord's application for dispute resolution. I make this finding based on the agent's testimony that the landlord received the forwarding address shortly after this application was served on the tenants.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*. As noted above, the landlord's right to retain the tenants' security deposit was extinguished under the *Act*; therefore, the tenants are entitled to receive double their security deposit in the amount of \$1,450.00.

Section 72(2) of the *Act* states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*.

As the landlord was successful in their claim for damages arising from the damaged bedroom door, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

### **Conclusion**

I issue a Monetary Order to the tenants under the following terms:

<b>Item</b>	<b>Amount</b>
Doubled deposit	\$1,450.00
Less cost of new door	-\$246.40
Less filing fee	-\$100.00
<b>TOTAL</b>	<b>\$1,103.60</b>

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: July 19, 2021

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Residential Tenancy Branch