



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 549 Dansey Avenue Investments Ltd. c/  
o and [tenant name suppressed to protect privacy]

## **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 tenant applied for:

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

Both parties attended the hearing. The tenant was assisted by translator KL. 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 the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenant's 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 landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on March 12, 2019 and ended on February 28, 2021. Monthly rent was \$1,300.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 and an electronic key (fob) deposit of \$50.00 (the deposits) were collected. The landlord holds the deposits in the total amount of \$700.00 in trust. The tenancy agreement was submitted into evidence.

The landlord confirmed receipt of the tenant's forwarding address on February 28, 2021. The tenant affirmed she served her forwarding address in writing when the tenancy ended. This application was submitted on March 11, 2021.

Both parties signed the condition inspection report (the report) when the tenancy started. The report indicates the rental unit was in good condition when the tenancy started. The parties inspect the rental unit when the tenancy ended and the landlord signed the report. The tenant did not sign the report and stated she does not agree with the move-out report.

The landlord affirmed the rental building was built in the 1960s, the carpet was replaced in April 2018 and the 600 square feet, one-bedroom rental unit was painted before the tenancy started. The landlord submitted into evidence an invoice dated April 19, 2018 for the rental unit's carpet replacement.

The landlord is claiming for \$2,105.33 for carpet replacement. The landlord stated the tenant damaged the carpet and there were burn marks and stains in the bedroom and

living room when the tenancy ended. The landlord submitted into evidence seven photographs taken on March 09, 2021 showing carpet damage in the living room and bedroom. The landlord submitted an estimate dated March 02, 2021 for the carpet replacement in the amount of \$2,105.33 and testified he paid this amount. The tenant said the carpet was damaged when the tenancy started and she did not damage it.

The landlord is claiming for \$420.00 for cleaning expenses because the rental unit was not clean when the tenancy ended. The landlord hired four cleaners to clean the kitchen cabinets and cupboards, the bathroom cabinets, the range hood, remove food left in the fridge and clean the walls. The landlord submitted into evidence eleven photographs taken on March 09, 2021 showing dirty kitchen cabinets, bathroom cabinets, walls and a range hood. The landlord affirmed the rental unit was not used between the day the tenancy ended and the day the photographs were taken and that the carpet contractor entered the rental unit on March 02, 2021.

The landlord submitted an estimate dated March 10, 2021:

The home is 650 SF with 1 bedroom and 1 bathroom. It is quite dirty with grease on the floors and kitchen surfaces. We are also cleaning the deck and railings which are quite dirty. You will be having the walls painted so no need to touch those.

My estimate is it would take a team of 4 professionally trained maids approximately 100 minutes to complete the one-time deep cleaning service. This translates into an estimated cost of \$400 + GST

The landlord stated he paid \$420.00 for the cleaning service. The tenant testified she cleaned the rental unit when the tenancy ended.

The landlord is claiming for \$375.00 for 'repairs/paint/drapes'. The landlord said he may have provided the tenant instructions to remove the stove and the fridge and clean behind and underneath these appliances. The landlord submitted into evidence photographs of the area behind the stove and the fridge dirty. The tenant affirmed she did not receive instructions to remove the stove and the fridge and clean behind and underneath these appliances.

The landlord stated the tenant damaged the hall closet door. The tenant testified she did not damage the hall closet door.

The landlord said the tenant damaged the kitchen cabinets doors. The landlord does not know when the kitchen cabinets were installed. The tenant affirmed she did not damage the kitchen cabinet doors and they were very old.

The landlord stated the tenant did not clean the drapes when the tenancy ended. The tenant testified she cleaned the drapes when the tenancy ended.

The landlord submitted a \$375.00 invoice specifying several services:

- light covers & fridge & stove moved for cleaning: one hour of service, cost \$35.00
- Hall closet door repair: three hours of service, cost \$105.00
- Kitchen cabinets repair & paint: five hours of service, cost \$175.00
- Drapes rewashed & hung: 1,7 hour of service, cost \$60.00

The landlord submitted into evidence a monetary order worksheet dated March 11, 2021 indicating a claim in the total amount of \$2,900.33. The landlord said the tenant has a credit of \$71.00 because she overpaid rent.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(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.

### Carpet replacement

Regulation 21 states:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the testimony of the tenant does not outweigh the evidentiary value of the signed move-in report. Based on the move-in report, I find the carpet was in good condition when the tenancy started.

Section 32(3) of the Act states: “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 detailed testimony provided by the landlord and the estimate dated March 02, 2021, two days after the tenancy ended, I find the tenant breached section 32(3) of the Act by not replacing the carpet that was damaged during the tenancy and the landlord suffered a loss of \$2,105.33 because of the tenant’s failure to comply with the Act.

Based on the landlord’s testimony and the invoice dated April 19, 2018, I find the carpet was about 3 years old when the tenancy ended.

Residential Tenancy Branch Policy Guideline 40 sets the useful life of carpets at 10 years and states that the arbitrator may consider the age of the item at the time of replacement when calculating the tenant’s responsibility for the cost of replacement:

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

As such, considering the carpet was replaced after 30% of its useful life, I award the landlord compensation in the amount of \$1,473.73 (70% of \$2,105.33) for carpet replacement.

### 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 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), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

In the case before me, both parties have provided conflicting testimony regarding the rental unit's cleaning condition when the tenancy ended.

The landlord submitted into evidence eleven photographs taken nine days after the tenancy ended. I find these photographs do not prove, on a balance of probabilities, the rental unit's cleaning condition when the tenancy ended, as they were taken nine days after the tenancy ended and the carpet contractor entered the rental unit between the day the tenancy ended and the day the photographs were taken.

The March 10, 2021 cleaning estimate email does not indicate when the cleaning contractor inspected the rental unit.

As the tenant does not agree with the move-out report, I find this document does not have evidentiary weight.

Thus, I find the landlord has failed to prove, on a balance of probabilities, that he suffered a loss due to the tenant's non-compliance with the Act.

As such, I dismiss the landlord's claim for cleaning expenses.

#### Fridge and Stove removal

Residential Tenancy Branch Policy Guideline 1 states:

If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

I find the landlord's testimony about providing the tenant with instructions to remove the refrigerator and stove and clean behind and underneath these appliances was vague. As such, based on the tenant's convincing testimony, I find the landlord did not provide the tenant with instructions to remove the refrigerator and stove and clean behind and underneath these appliances and that these appliances are on rollers. Thus, in the case before me, the tenant is not responsible for removing the refrigerator and stove to clean behind and underneath these appliances.

I find the landlord has failed to prove, on a balance of probabilities, that he suffered a loss due to the tenant's non-compliance with the Act.

As such, I dismiss the landlord's claim for the fridge and stove removal.

#### Hall closet door repair

Both parties have provided conflicting testimony regarding the hall closet door damage. The landlord did not provide any documentary evidence to support his claim. The landlord did not call any witnesses.

Thus, I find the landlord has failed to prove, on a balance of probabilities, that he suffered a loss or damage due to the tenant's non-compliance with the Act.

As such, I dismiss the landlord's claim for the hall closet door repair.

Kitchen cabinets repair

Based on the testimony offered by both parties, I find the kitchen cabinets were installed in the 1960s.

Residential Tenancy Branch Policy Guideline 40 states the useful life of kitchen cabinets is 25 years.

I find it is not reasonable to grant the compensation the landlord is seeking due to the kitchen cabinets being well beyond their useful life.

As such, I dismiss the landlord's claim for kitchen cabinets repair.

Painting

The landlord did not provide testimony or present any documentary evidence to support his claim for compensation for painting expenses.

I note the landlord submitted photographs showing dirty walls and presented these photographs as evidence for his claim for compensation for cleaning expenses. Furthermore, these photographs were taken nine days after the tenancy ended and the carpet contractor entered the rental unit between the day the tenancy ended and the day the photographs were taken.

Thus, I find the landlord has failed to prove, on a balance of probabilities, that he suffered a loss or damage due to the tenant's non-compliance with the Act.

As such, I dismiss the landlord's claim for painting expenses.

Windows coverings (drapes)

Residential Tenancy Branch Policy Guideline 1 states:

INTERNAL WINDOW COVERINGS

1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
2. The landlord is not expected to clean the internal window coverings during the tenancy unless something unusual happens, like a water leak, which is not caused by the tenant.



3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.

In the case before me, both parties have provided conflicting testimony regarding the rental unit's windows coverings cleaning condition when the tenancy ended. The landlord did not provide any documentary evidence to support his claim. The landlord did not call any witnesses.

Thus, I find the landlord has failed to prove, on a balance of probabilities, that he suffered a loss or damage due to the tenant's non-compliance with the Act.

As such, I dismiss the landlord's claim for windows coverings cleaning expenses.

### Deposits

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 deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address on February 28, 2021 and brought an application for dispute resolution on March 11, 2021, within the timeframe of section 38(1) of the Act.

Residential Tenancy Branch Policy Guideline 17 states:

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.

The landlord is authorized to retain the \$700.00 deposits in partial satisfaction of the monetary award.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement, thus the value of the security deposit accepted by the landlord was unlawful. The landlord cannot collect a fob deposit.

#### Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Item	Amount \$
Carpet replacement	1,473.73
Filing fee	100.00
Minus deposits	700.00 (subtract)
Minus credit	71.00 (subtract)
<b>Total:</b>	<b>802.72</b>

#### Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$700.00 deposits and grant the landlord a monetary order in the amount of \$802.72.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 11, 2021

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Residential Tenancy Branch