



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award?

Are the landlords entitled to recover the filing fee from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began on June 1, 2012 and ended February 28, 2021. The monthly rent was \$2,025.40 payable on the first of each month. There was a security deposit of \$875.00 for this tenancy which has been returned to the tenants in accordance with the Act. No condition inspection report was prepared at any time for this tenancy.

The landlords submit that the flooring of the rental unit was in pristine condition at the start of the tenancy and damaged by the tenants. The landlord seeks a monetary award in the amount of \$1,650.00 for the cost of repairs and replacement. The landlord submitted some photographs of the suite, testified that they have been in contact with the tradesperson who originally installed the flooring who could be called as a witness and an estimate for the cost of repairs.

The landlords both testified that the tenants were provided clear notice to end the tenancy and while there was plenty of time to schedule a move-out inspection as required under the *Act* the landlords did not offer any opportunities for an inspection. The landlords also did not complete a move-out inspection report in the tenants' absence.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the absence of a proper condition inspection report completed in accordance with the Act and regulations I find insufficient evidence that the issues that form the basis for the landlords' complaint is attributable to the tenancy or the tenants. I do not find the handful of landlords' undated photographs to be of assistance in determining the

original condition of the rental unit. I find the landlord's testimony that they have contacted the tradesperson who could give testimony about the condition of the suite to be of no use as the landlords failed to call any witnesses.

I find insufficient evidence to support the landlords' position that the rental unit was damaged by the tenants. The landlords failed to prepare a condition inspection report at any time for this tenancy. The landlords' own testimony is that there was ample time during the tenancy to schedule an inspection, but the landlords took no action and did not offer the tenants any opportunity to attend an inspection.

I find the landlords' testimony and photographs to be insufficient to demonstrate that there is damage in the rental unit that is caused by the tenants. I find that the landlords have not met their evidentiary burden on a balance of probabilities. Consequently, I dismiss the landlords' application in its entirety without leave to reapply.

### Conclusion

The application is dismissed in its entirety without leave to reapply.

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 23, 2021

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Residential Tenancy Branch