



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL-S, MNDL-S / MNSDB-DR

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”) for:

- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- a monetary order for unpaid rent and for damage to the unit in the amount of \$11,052.16 pursuant to section 67.

And the tenant’s application for:

- a monetary order for \$2,800 representing two times the amount of the security deposit and pet damage deposit, pursuant to sections 38 and 62 of the Act.

This hearing was adjourned from a prior hearing on April 19, 2021. I issued an interim decision following that hearing setting out my reasons for granting the adjournment. This decision should be read in conjunction with that interim decision.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager (“BA”). The landlord’s strata manager (“KD”) attended the hearing as a witness. He only attended the portion of the hearing where he gave testimony. Both the tenant and BA were given a full opportunity to be heard, to present affirmed testimony, to make submissions, to call witnesses, and to question KD.

The parties confirmed that they each had received the other documentary evidence and notices of dispute resolution proceeding packages. Accordingly, I find that the parties have been served with the necessary documents in accordance with the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$11,052.16; and
- 2) retain the security deposit in partial satisfaction of the monetary orders made?

Is the tenant entitled to a monetary order of \$2,800?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 1, 2019 (the tenant moved in on June 27, 2019). Monthly rent was \$1,400 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$700 and a pet damage deposit of \$700 (the "**Deposits**"). The landlord still retains the Deposits. The tenant and an agent of the landlord conducted a move-in condition inspection at the start of the tenancy. A copy of the move-in condition inspection report was submitted into evidence.

The tenant vacated the rental unit on November 15, 2021. The tenant and agents of the landlord conducted a move out condition inspection on that date. A copy of the move-out condition inspection report signed by the tenant and the landlord's agent (the "**Move-Out Report**") was submitted into evidence. The tenant alleged that Move-Out Report submitted was altered by the landlord's agents after he signed it. The BA denied this.

The parties agree that the tenant failed to pay any rent for the months of May 2020 to November 2020 (inclusive). They agree the tenant owes the landlord \$9,800 in rental arrears.

The landlord claims \$1,252.16 in compensation for damage caused to the rental unit by the tenant during the tenancy. It seeks compensation for the following:

Description	Amount
Cleaning and miscellaneous repairs	\$930.48
Broken doorknob for entry to garage	\$44.89
Repair pantry door and bedroom bi-fold door	\$276.79
<b>Total</b>	<b>\$1,252.16</b>

The Move-Out Report indicates that the pantry and bi-fold doors were missing at the start of the tenancy. It does not record any problem with the garage doorknob at the time of move-out.

The landlord submitted receipts and invoices corroborating these amounts. The invoice for the cleaning and miscellaneous repairs shows that 21 hours (at a rate of \$25 per hour) of cleaning and repairs were required to the following rooms:

- kitchen (extensive cleaning and repairs to stove)
- living room (cleaning fixtures and fan, replacing light bulb)
- dining room (clean generally)
- downstairs bathroom and bedroom (unspecified cleaning, cleaning fan, repair to wall from water damage, replace light bulb and smoke detector)

- upstairs bathroom (clean shower and toilet, replace light bulb, repair shower faucet)
- upstairs bedrooms (unspecified cleaning, remove mirror mount tape from walls, requiring sanding and priming, replacing knob on lamp)
- utility room (clean washer and vacuum dryer); and
- garage (sweep floor, wash stain from floor, replace missing light bulb)
- exterior deck (replace light bulb)

The invoice also indicated that the cleaner dusted cobwebs from the ceilings throughout the house and steam cleaned the carpets.

The invoice also charges \$379.23 for the cleaner's supplies.

The Move-Out Report indicates that cleaning and repairs were required in the kitchen (extensive cleaning, repair stove), the living room (clean fan, new lightbulbs needed), the dining room (fixtures only), the second bedroom (windows, no repairs), master bedroom (no cleaning needed), the utility room (clean washer/dry and vents), and the garage (generally).

The tenant denied that the rental unit required cleaning as indicated on the Move-Out Report. He testified that, when he signed it, the Move-Out Report did not indicate that any cleaning was required.

The tenant provided his forwarding address on the bottom of the Move-Out Report.

The Move-Out Report is made using the Residential Tenancy Branch's standard form condition inspection report (form #RTB-27). It contains the following sections:

Z. Damage to rental unit or residential property for which the tenant is responsible:

1. I, [space for tenant's name]

☐ Agree that this report fairly represents the condition of the rental unit

☐ Do not agree that this report fairly represents the condition of the rental unit

2. I, [space for tenant's name], agree to the following deductions from my security and/or pet damage deposit:

Security Deposit:	_____	Pet Damage Deposit:	_____
Date (dd/mm/yy):	_____	Signature of Tenant:	_____

At the hearing, the tenant testified that sections "Z" and "1" were not filled in at the time he signed the Move-Out Report. The copy of the Move-Out Report submitted into evidence shows that "Z" was filled in as follows:

Carpet not cleaned [illegible] by tenants [illegible] stored items need clean [illegible].

It also shows “1” to be completed using the tenant’s name and marked as having the tenant agree that the report is accurate.

BA strenuously insisted that these fields were filled out prior to the tenant signing the Move-Out Report. The tenant insisted that they were not.

The tenant submitted a video taken during the move-out inspection, where the landlord can be seen to be completing the Move-Out Report, prior to giving it to the tenant to sign. The video clearly shows that that the tenant’s name on “1” has been written (contrary to the tenant’s assertion).

Section “2” of the Move-Out Report is filled in as follows:

1. I, [tenant], agree to the following deductions from my security and/or pet damage deposit:

Security Deposit:	_\$700_	Pet Damage Deposit:	_\$700_
Date (dd/mm/yy):	_Nov 15/20	Signature of Tenant:	_[tenant’s initials]_

The tenant then wrote “dispute items” below on the Move-Out Report, initialed next to them, and drew an arrow from those words pointing at where he initialed. The tenant testified that he initialed, rather than signed, under section “2” to indicate that he did not agree to the deduction. He also testified that he wrote “dispute items” to indicate that he was not agreeing to the deduction. When asked why did not simply refuse to sign under this section, he testified that he completed the section in the manner he did to prevent the landlord from altering the Move-Out Report afterwards. He was unable to explain why he did not do something similar for sections “Z” and “1”, and instead left them blank.

The tenant submitted a video of the landlord’s agent and tenant both signing the Move-Out Report. The landlord’s agent signs it, passes it to the tenant. The tenant asks “what do you want me to do”, and the agent says “sign there please”. The tenant signs the document. The agent then looks over at the document, points to part of it and says “and there”. The tenant says “oh”, signs it and gives it back to the landlord. He does not say anything about the “dispute items” annotation, or state that he does not agree that the landlord may not retain the security deposit.

The tenant testified that following the inspection he was never provided with a copy of the Move-Out Report. BA testified that the landlord’s usual practice was to send copies of Move-Out Reports to tenants by email and by Canada Post. He testified that his assistant was responsible for doing this, and that he had trained her in this process. He was not able to state definitively whether she had done this, however, as his assistant

sadly passed away quite recently (her hospitalization was the reason for adjourning these applications in April 2021), and he has not been able to thoroughly review all of her records.

## **Analysis**

### **1. Unpaid rent**

The parties do not dispute that the tenant is \$9,800 in rental arrears. Accordingly, I order that the tenant pay the landlord this amount.

### **2. Cleaning and Repairs**

The parties disagree as to the condition of the rental unit at the end of the tenancy, and what was written on the Move-Out Report when the tenant signed it. BA testified the Move-Out Report was fully completed when the tenant signed it and that the version submitted as evidence in this proceeding had not been altered since the tenant signed it. The landlord also took the position that the Move-Out Report represented the true condition of the rental unit at the end of the tenancy.

The tenant disagreed on both these points. He alleged that the landlord's agents fraudulently altered the Move-Out Report after he signed it. He made very specific assertions as to what parts he had completed and what parts were left blank when he signed the document.

Based on my review of the videos submitted into evidence, I find that, contrary to the tenant's testimony, section "1" of the Move-Out Report was filled in at the time he signed it. Based on this, I am disinclined to find that the tenant's memory of the state of Move-In Report at the time he signed it is correct. I do not find the tenant to be credible in his testimony. As such, where the landlord's agents and the tenant's testimony differ, I prefer that of the landlord's agents.

As such, I find that the Move-Out Report entered into evidence is what the tenant signed at the end of the tenancy. Additionally, I find that the tenant agreed that the report fairly represents the condition of the rental unit (as per section "1").

However, this does not mean that the landlord is entitled to the full amount of damages for cleaning and repairs to the rental unit that it seeks. As noted above, the Move-Out Report indicates that the pantry and bi-fold doors were missing at the start of the tenancy and it does not record any problem with the garage doorknob at the time of move-out. I cannot say that the tenant breached the Act or tenancy agreement with regards to these items, so compensation to the landlord is not appropriate. As such, I find that the landlord is not entitled to recover portion of the amount claimed for these items.

Additionally, the invoice lists cleaning and repairs done to the rental unit beyond what is listed on the Move-Out Report, specifically the amount of cleaning and the repairs done in the bedrooms. The Move-Out Report does not indicate that any cleaning is needed in the master bedroom and that only the windows need cleaning in the second bedroom, but the cleaning invoice lists cleaning to all bedrooms, repairs to the wall in the upper bedroom, and replacing a lamp knob. Such work does not appear to be required by the Move-Out Report. Accordingly, I find that the landlord is not entitled to be compensated for such work.

The cleaning invoice does not provide a per room cost breakdown for supplies or for time spent cleaning. In the circumstances, I find that a 25% reduction of the cleaning invoice is appropriate. As such, I order that the tenant pay the landlord \$697.86 (75% of \$930.48).

### 3. Security Deposit

Section 38 of the Act states:

#### **Return of security deposit and pet damage deposit**

**38(1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[...]

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36

(2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord argued that the tenant agreed that the landlord could retain the Deposits, as he completed section “2” of the Move-Out Report. The tenant denied that he agreed to this. He argued that by initialing in the signature box (as opposed to signing) and by writing “dispute items” beneath it, he cannot be said to have agreed in writing that the landlord could retain the Deposits.

As such, the tenant argued he is entitled to an amount equal to double the Deposits (\$2,800) per section 38(6) of the Act.

In the alternative, the tenant argued that the landlord’s right to retain the Deposits pursuant to any agreement was extinguished pursuant to section 38(5) of the Act, as the landlord never provided him with a copy of the Move-Out Report. I will address this argument first.

I have already made an adverse credibility finding against the tenant (see above). As such, I place very little persuasive weight on his testimony. I accept BA’s testimony that it was the landlord’s usual practice to send tenants copies of a Move-Out Reports via mail and email. I accept his testimony that this was the responsibility of his recently deceased assistant. I find that, in light of her untimely death, it is not unreasonable for her not to have provided evidence on this topic. Similarly, I do not find it unreasonable that BA has not had the ability to retrieve documents which would corroborate the landlord’s business practices as they were applied to the tenant.

I found BA testimony as to the landlord’s practices believable and sensible. Based on this, on as I do not find the tenant to be a credible witness, I find that it is more likely than not that the landlord mailed and email the tenant with a copy of the Move-Out Report. As such, I do not find that the landlord’s right to claim against the Deposits or to retain them by a mutual agreement is extinguished.

I will now address the issue of whether there was a written agreement that the landlord could retain the Deposits.

I attach little significance to whether the tenant “signed” part “2” of the Move-Out Report or “initialed” it. I am unaware of any principle at law which bestows a significance to an initial (such as “I acknowledge this, but do not agree to it”) which differs from a signature. If a party wants to note their objection or disagreement, they should make this objection plain and obvious by refusing to sign altogether, or, if they are worried their signature will be fraudulently inserted afterwards, by obscuring the area for signature, crossing out the section, or explicitly writing that they do not agree.

In addition to initialing, the tenant also wrote “dispute items”. In the context of the agreement to allow the landlord to retain the Deposits, the meaning of this annotation is unclear. It is not clear that whether the tenant disputes the amount that the landlord may retain, disputes the cost of repairing the damage or cleaning would be as much as \$1,400, or instead asserts a right to dispute any further claim for damages the landlord may make against him.

Furthermore, as can be seen by the video submitted into evidence, when writing this annotation and initialing part “2”, the tenant made no indication that he disagreed with the statement that he agreed the landlord could retain the Deposits. I find that the tenant was purposefully vague as to his position whether the landlord was entitled to keep the deposit. If he disagreed, he should have made his disagreement more readily apparent. By not saying anything, and by filing out section “2” in a vague fashion, he left the landlord to guess as to his intentions.

I do not find the landlord’s conclusion that the tenant agreed to allow the landlord to retain the Deposits to be an unreasonable one.

As such, I find it would be unjust to order that the landlord compensate in an amount equal to double the Deposits. There is no need for me to determine whether there was or was not an agreement between the parties that the landlord may retain the Deposits because, if there was not, I find that the tenant’s purposefully vague actions induced the landlord to fail to comply with the Act and could have been reasonably understood to indicate that the tenant had agreed to allow the landlord to retain the Deposits.

I dismiss the tenant’s application, without leave to reapply.

Pursuant to section 72(2) of the Act, the landlord may retain the Deposits in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$9,097.86, representing the following:

Rental Arrears	\$9,800.00
Cleaning and repair cost	\$697.86
Deposits Credit	-\$1,400.00
<b>Total</b>	<b>\$9,097.86</b>

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: September 16, 2021