



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      Landlord: MNDCL-S, FFL  
                                 Tenants: MNSDS-DR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidentiary materials.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order for losses or damage?

Are the tenants entitled to the return of their security deposit?

Is the landlord entitled to recover the filing fee?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This fixed-term tenancy began on March 1, 2020, and was to end on February 28, 2021. Monthly rent was set at \$2,600.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,300.00, which the landlord still holds. The tenancy ended on March 31, 2020. Both parties confirmed that the tenants provided a forwarding address to the landlord on April 14, 2021. The landlord filed their application for dispute resolution 5 days later, and the tenants subsequently applied for the return of their security deposit.

The landlord is seeking compensation for the following losses associated with the tenancy. The landlord confirmed in the hearing that despite the losses as set out below and in their application, they only wished to retain the security deposit in the amount of \$1,300.00, plus \$100.00 for the filing fee.

<b>Item</b>	<b>Amount</b>
Carpet Estimate	\$2,192.78
Unpaid Utilities	351.19
Cleaning Invoice	260.00
Gardening	150.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$3,053.97</b>

The landlord testified that the tenants failed to leave the home in reasonably clean and undamaged condition. Both parties confirmed that the landlord was only able to perform a move-in inspection as the tenants were unavailable for a move-out inspection. No reports were submitted for this hearing by either party.

The landlord testified that the home was twenty years old, and prior to this tenancy was only occupied by the landlord and their family. The landlord testified that the carpet was replaced 10 years ago, and was in immaculate condition. The landlord testified that when the tenants moved out, the carpet was stained and damage to the extent that replacement was the only option. The landlord submitted photos of the stains.

The tenants do not dispute that the carpet was stained, but testified that the carpet was already stained and dirty upon move-in. The tenants testified that the carpets were full of cat hair, and the tenants had sent a text message to the landlord about the condition of the carpet upon move-in. The tenants submitted a copy of a message sent on March 1, 2020 at 12:50 p.m. noting that “there’s a large stain in the carpet of the end bedroom” and “a few stains on the master bedroom carpet as well”. The text message was sent to communicate to the landlord that the suite was not in clean condition upon move-in, and the tenant sent photos accompanying the message. The landlord responded that the carpet was thoroughly cleaned before the beginning of this tenancy, and disputes the tenants’ claims that the carpet was not clean.

The landlord also filed a monetary claim for cleaning costs, and submitted photos of the rental unit ,which the landlord states was so dirty that their socks were black. The tenants dispute this claim, and testified that they had cleaned all night and into the next morning before they had handed over the keys. The tenants testified that they could not afford professional cleaners, but that they had cleaned to the best of their skill and ability. The tenants also argued that after being dissatisfied with the cleaning upon move out, the landlord did not give them an opportunity to remedy the issue. The tenants noted that the landlord had taken issue with the cleaning of the rental unit throughout the tenancy.

The landlord is also seeking a monetary order for landscaping costs, stating that they had paid \$400.00 in cash, and therefore was not provided with a receipt. The landlord testified that they felt \$150.00 was fair for the tenants’ failure to maintain the yard. The landlord testified that the tenants also left items in the yard, which included some lumber. The tenants acknowledged that some lumber was left behind, but felt that they had done their best to maintain the yard.

Lastly, the landlord is seeking a monetary order for unpaid utilities in the amount of \$351.19. The landlord submitted a copy of the invoice in their evidentiary materials. The tenants did not dispute that they had not paid this amount.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

As the tenants do not dispute that they had failed to pay the outstanding utilities, I allow this portion of the landlord's claim.

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

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of carpet is 10 years. As the age of the carpet was 10 years, I find that the carpet has reached its useful life. Furthermore, I find that the tenants had provided evidence to support that the carpet was stained at the beginning of the tenancy. I am not satisfied that the tenants should be responsible for the replacement of the carpet, and accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

Both parties provided contrasting accounts about the cleanliness of the rental unit at the end of the tenancy. Although I accept the testimony of the tenants that they had spent hours cleaning the suite before the end of the tenancy, I find that the landlord had provided sufficient evidence to show that the home was not returned to the landlord in reasonably clean condition, which resulted in a monetary loss for the landlord. I note in making this finding the condition of the home during the tenancy is irrelevant. Furthermore, the tenants are expected to have the home cleaned by the end of the tenancy. The landlord is not obligated after the tenants have moved out to allow the tenants to return to clean the home. The *Act* specifically requires that the tenants return the home in reasonably clean condition to the landlord at the time they vacate the rental unit, which I do not find to be the case as shown by the photos submitted by the landlord. Accordingly, I allow the landlord's monetary claim for the professional cleaning.

Lastly, the landlord had filed a claim to recover some of the landscaping costs. Although the landlord had provided an explanation for why they did not have an invoice for the

services that they had paid for, the obligation still falls on the landlord to support the value of their claim, and the losses that they are applying to recover. In the absence of a detailed invoice, and in light of the fact that the landlord's claim is disputed, with the exception of some lumber left behind by the tenants, I am not satisfied that the landlord had sufficiently supported this portion of their claim.

I note that Residential Tenancy Policy Guideline provides some clarity as to who is responsible for maintaining the property:

**PROPERTY MAINTENANCE**

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
- 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.**
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
- 5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.**

Although I do note that the tenants have a duty to maintain the property to an extent, the onus is on the landlord in their monetary claim to establish how the amount claimed was obtained, and provide evidence to support the loss claimed. In this case, I find that the landlord's application falls short. Accordingly, I dismiss the landlord's claim in relation to the gardening without leave to reapply.

I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary awards. The remaining portion shall be returned to the tenants.

**Conclusion**

I allow the landlord to retain a portion of the tenants' security deposit in satisfaction of the following monetary awards. I issue a Monetary Order in the amount of \$588.81 in the tenants' favour for the return of the remainder of their deposit.

<b>Item</b>	<b>Amount</b>
Unpaid Utilities	\$351.19
Cleaning Invoice	260.00
Filing Fee	100.00
Less Security Deposit Held	-1,300.00
<b>Total Monetary Order to Tenants</b>	<b>\$588.81</b>

The tenants are provided with this Order, and the landlord must be served with a copy of 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.

The remainder of the landlord's application is dismissed 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: October 22, 2021

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Residential Tenancy Branch