



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$ 750.00 for damage or compensation for damage under the Act, retaining the security deposit for this claim; and to recover the \$100.00 cost of their Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on May 19 2021. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlord provided her email address in the Application and she confirmed this in the hearing. She also provided the Tenant's email address in the hearing, and confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Landlord affirmed that she was not recording the hearing.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The tenancy agreement states, and the Landlord confirmed the following details of the Parties' tenancy in the hearing. The tenancy began on March 1, 2018, with a monthly rent of \$1,950.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$975.00, and no pet damage deposit. The Landlord said that she retained the amount of the security deposit that she is claiming in this Application, and she returned the remaining **\$125.00** to the Tenant by cheque.

The Landlord said that the Tenant moved out on April 1, 2021, and provided her forwarding address in March 2021.

In her Application, the Landlord said the following about the condition of the rental unit at the end of the tenancy.

- upon move out inspection we found multiple (20) patches (holes filled) but not painted in walls;
- Both fabric shower curtains, linens and rings were gone from bathrooms;
- Glass cover missing from light fixture in hall;
- Suite was not cleaned properly;
- Carpets not shampooed;

- Key not returned;
- Curtain, rod and rings missing from patio sliders.

The Landlord submitted a monetary order worksheet with the following claims:

	Receipt/Estimate From	For	Amount
1	[Int'l furniture store]	2 fabric shower curtains, liners and rings.	\$60.00
2	[Int'l furniture store]	Curtain rod	\$100.00
3	[Int'l hardware store]	Glass light fixture	\$55.00
4	[local painter]	Painting	\$450.00
5	[professional carpet cleaner]	Carpet cleaning	\$200.00
		<b>Total monetary order claim</b>	<b>\$865.00</b>

In the hearing, the Landlord said the following.

#### **#1 SHOWER CURTAINS, LINERS, RINGS → \$60.00**

I asked the Landlord to explain this claim, and she said: "When we rented it, we put in new items, but they were gone from both bathrooms – the rods as well. We bought them originally from [an international furnishings store], and replaced them there." The Landlord also said that these items were new at the start of the tenancy.

The Landlord submitted two photographs of a shower stalls with curtain rods, but without any shower curtains, liners or rings. However, the Landlord did not submit any receipts for the purchases she made.

#### **#2 CURTAIN ROD → \$100.00**

The Landlord explained this claim, as follows:

She took this, as well. I think the issue was she didn't move out anything - she had friends doing it - so they took everything. Curtains and rods from the sliding door.

The Landlord submitted a photograph of a sliding glass door without any curtains, rod or rings. However, there are two spots on the walls where a curtain rod would have been hung.

### **#3 GLASS LIGHT FIXTURE → \$55.00**

The Landlord said that the glass light fixture was broken. She said: “I lived downstairs, and I heard glass break and it was gone when we went up there. It was new at the start of the tenancy, as well.”

The Landlord submitted a photograph of a ceiling lamp connection with just the lightbulbs, but no lampshade.

### **#4 PAINTING → \$450.00**

In answer to why she was claiming painting from the Tenant, the Landlord said:

There was a lot of places that things had been hung that we needed to get fixed back to the condition. I am not a painter; I don't know how to fill in holes.... That was the least amount I could have someone do it for. Come to my house for any amount of time.

I asked the Landlord how many rooms she had painted, and she said: “Probably, it was the living room, but the walls down the stairs were the worse, where the rod was removed from the back window. Maybe all of the rooms except for two of the bedrooms there wasn't anything to cover.”

The Landlord submitted a text from a painting company, which quoted her \$600.00 for a full day, and \$450.00 for half a day of painting.

### **#5 CARPET CLEANING → \$200.00**

In terms of the carpet cleaning, the Landlord said:

They were really bad. She had a toddler who was eating in every room – stains. I have a child; they're messy, but there was no effort at all to have it cleaned. Someone came in to do it, because I just wanted it done properly with the pandemic.

The Landlord submitted a text she received from a carpet cleaning company, which quoted her \$189.00 (plus tax).

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

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* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "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 claiming compensation to provide evidence to establish that compensation is due."

Rule 6.6 sets out the burden of proof facing an applicant in this administrative hearing.

## **Rule 6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the Landlord's affirmed, undisputed evidence before me, I find on a balance of probabilities that she has met her burden of proof. I, therefore, award the Landlord with **\$750.00** for what she seeks in her Application, pursuant to sections 32, 37, and 67 of the Act. Given her success in this matter, I also award the Landlord with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's remaining security deposit of \$850.00 in complete satisfaction of the Landlord's monetary award. I authorize the Landlord to retain \$850.00 of the Tenant's security deposit and I note that the Landlord said she already returned the balance of \$125.00 to the Tenant by cheque.

### Conclusion

The Landlord is successful in her Application, as she provided sufficient, undisputed evidence to meet her burden of proof on a balance of probabilities. The Landlord is awarded **\$750.00** in compensation from broken, missing, and damaged areas of the residential property, pursuant to sections 32, 37 and 67 of the Act.

The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant. The Landlord is authorized to retain \$850.00 of the Tenant's security deposit in complete satisfaction of the monetary awards. The Landlord said that she has already returned the remaining amount of the security deposit to the Tenant by cheque.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 18, 2021

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Residential Tenancy Branch