



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants received the Landlord’s evidence package and although the Landlord received the Tenants’ evidence package late the Landlord is ready to proceed.

### Preliminary Matter

The Landlord’s application sets out a damage claim of \$1,300.00 while the monetary order worksheet sets out a damage claim of \$1,400.23. The Landlord did not amend the application to increase the damage claim amount.

Rule 2.2 of the Rules of Procedure provides that claims are limited to what is stated in the application. As the Landlord did not amend their application to increase the damage claim amount, I find that the Landlord is limited to the claim amount of \$1,300.00 as set out in the application. The Landlord was given opportunity to amend its monetary claim to reflect the \$1,300.00 claimed.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on May 1, 2021 and ended on May 31, 2021. Tenants AB and NH had previously been tenants in the unit under a different tenancy agreement. At the outset of this previous tenancy the Parties mutually conducted a move-in inspection with a report completed and copied to the Tenants. Rent of \$2,665.00 was payable on the first day of each month. The Landlord collected \$1,300.00 as a security deposit and \$1,300.00 as a pet deposit. On June 12, 2021 the Landlord received the Tenants forwarding address and returned the full pet deposit.

The Landlord states that the Parties mutually conducted a move-out inspection with an inspection report completed and copied to the Tenants. The Tenant states that at the mutually conducted move-out report the Landlord informed the Tenants that the unit was good, that the security deposit would be returned and that the Tenants could leave. The Tenants state that the Landlord had not filled out an inspection report at the time and that on June 2, 2021 the Landlord sent them a completed move-out report noting many issues. The Tenants state that they did not agree with the move-out report. The Landlord states that the Tenants were informed at the move-out inspection that the Landlord would conduct a further inspection and that the Tenants were okay to leave before that. The Landlord states that at the time of the mutual move-out inspection the unit looked fine but that the Tenants had not done a "deep clean" of the unit. The Tenants state that had the Landlord been concerned with any deficiencies at the move-out inspection they would have stayed and could have done more cleaning.

The Landlord states that the Tenants failed to do a “deep clean” of the unit and claims \$500.00 as the cleaning costs. The Landlord provides photos. The Landlord states that the work was done by a person who was contracted to the Landlord’s business, a construction company. The Landlord did not provide an invoice for the costs paid to this person for the cleaning. The Tenant states that while they did miss a few items, such as cleaning under the fridge and inside the light fixtures, they did otherwise leave the unit very clean. The Tenant states that the deep cleaning undertaken by the Landlord should not have cost more than \$300.00. The Tenants provide an estimate for this amount and argue that the hourly rate from that estimate if applied to the cleaning time claimed by the Landlord would only amount to \$375.00.

The Landlord states that the Tenants used higher wattage light bulbs in a ceiling fixture than was allowed and as a result left the ceiling scorched in the area of the fixture. The Landlord claims \$75.00 to replace the light fixture and \$325.00 for the costs to repair the ceiling. The Landlord states that the light fixture was original to the unit built in 2017. The Landlord provides an invoice from its company but no receipt for the costs paid for the light fixture. The Landlord states that the labour costs for the ceiling repair was \$300.00 and the cost of supplies was \$25.00. The Landlord states that there are no receipts for the costs of supplies as the Landlord used extra paint that was lying around. The Tenants state that there were no damaged light fixtures at the end of the tenancy and that if the ceiling were scorched it could have been from candles used in that room.

The Landlord states that while the Tenants said they steam cleaned the carpets at the end of the tenancy and provided a receipt for the rental of the steam cleaner the Tenants still left the carpets with stains. The Landlord believes that the Tenants did not use any cleaning solution for the cleaning as the Tenants receipt does not include any cleaning solution. The Landlord states that the carpets were original to the unit built in 2017. The Tenants state alternatively that they only used dish soap in the steam cleaner or that they did use a cleaning solution purchased with the rented steam cleaner.

The Landlord states that the Tenants left two window screens with holes. The Landlord claims \$35.23 as the costs to replace the screens. The Tenant states that they only recall a tiny hole in one screen, that they did not cause that tiny hole and believe that a bird may have caused the holes in any screens.

### Analysis

Section 35(5) of the Act provides that the landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Based on the undisputed evidence that the Tenants participated for the move-out inspection and that the Landlord subsequently completed the inspection without the Tenants present I find that the move-out condition report is not a duly completed report and may not be relied upon. I further consider that by conducting a further inspection without the Tenants present the Landlord did not allow the Tenants any opportunity to rectify any cleaning or repair misses.

Section 37 of the Act provides 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 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Landlord's evidence that they are claiming costs to leave the unit with a "deep clean" I find that the Landlord applied a higher cleaning standard than required under the Act. Given the Landlord's photos I find that the unit was left reasonably clean with the exception of some minor misses. I consider that these minor misses could not reasonably account for the total cleaning cost claimed. Further as the Landlord completed the inspection without the Tenants and consequently without giving the Tenants opportunity to correct the cleaning misses, I find that the Landlord failed to take reasonable steps to mitigate any cleaning costs incurred by the Landlord. For these reasons I dismiss the Landlord's claim for cleaning costs.

As the Landlord has not provided any evidence of how the Tenants may have damaged the screens either by act or negligence and given the Tenants' evidence that they did nothing to damage the screens, I find on a balance of probabilities that the Landlord has not substantiated that the damage to the screens was caused by the Tenants. I therefore dismiss the claim for the costs to replace the screens.

Given the Tenant's inconsistent evidence of the carpet cleaning and considering the Landlord's photos I find on a balance of probabilities that the Tenants did not leave the carpet reasonably clean. Given the receipt for the carpet cleaning, I find that the Landlord is entitled to the carpet cleaning cost of **\$315.00**.

Given the Landlord's evidence and photos of damage to the ceiling I find on a balance of probabilities that the Tenants left the ceiling scorched by use of the wrong wattage light bulbs. As the Landlord has not provided a receipt for the true cost of the light fixture, I find that the Landlord has not substantiated this cost and I dismiss this claim. I also consider that the Landlord has not substantiated the total costs claimed for repairing the ceiling as the Landlord did not incur any costs for the supplies. However, as the Tenants have been found to have left this damage, I find that the Landlord has substantiated a nominal amount of **\$100.00** for the repair of the ceiling.

As the Landlord's claims have met with minimal success, I find that the Landlord is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$465.00**. Deducting this amount from the security deposit plus zero interest of **\$1,300.00** leaves **\$835.00** to be returned to the Tenants forthwith.

Conclusion

I Order the Landlord to retain **\$465.00** from the security deposit plus interest of \$1,300.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$835.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 08, 2021

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Residential Tenancy Branch