



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

On March 3, 2021, the Landlord made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards that debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was originally set down for a hearing on July 20, 2021 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated July 21, 2021. This Application was then set down for a final, reconvened hearing on December 10, 2021 at 1:30 PM.

Both the Landlord and the Tenant attended the final, reconvened hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

During the original hearing, service of documents was confirmed. As such, all evidence from both parties will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on March 1, 2020 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 1, 2021. Rent was established at \$1,200.00 per month and was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was not conducted as per the *Act*. The Landlord submitted that the rental unit was built in 2012, and that at the time he purchased the property in January 2020, it was not in brand new condition. All parties also agreed that a move-out inspection report was conducted on March 1, 2021. A copy of the signed condition inspection report was submitted as documentary evidence. As well, all parties agreed that the Tenant provided his forwarding address in writing on the move-out inspection report.

The Landlord advised that he is seeking compensation in the amount of **\$40.00** because the rental unit was not cleaned, that walls were damaged, and that the Tenant was required to give up vacant possession of the rental unit on February 28, 2021 at 1:00 PM, but he did not vacate until March 1, 2021. He submitted that the Tenant still had people cleaning the rental unit on February 28, 2021, that the Tenant returned to the rental unit that night at 9:00 PM, and that it was too dark to conduct the move-out

inspection. As a result, the new tenant could not move in on time and he reduced their rent accordingly.

The Tenant advised that the Landlord texted him to schedule the move-out inspection for 5:30 PM on February 28, 2021, and he referenced the translated text message from the Landlord to support his submission. He stated that the Landlord did not bring the move-out inspection report with him and had to reschedule the inspection for the next day. As well, he cited a screenshot of the call log history between him and the Landlord on February 28 and March 1, 2021. He stated that the rental unit was being steam cleaned on February 28, 2021 between 5:00 PM and 6:30 PM, that the Landlord waited for the cleaning to be finished, and that the Tenant finally moved out between 6:00 PM and 8:30 PM. He submitted that the Landlord returned to the rental unit at 6:30 PM and that an inspection was done for an hour; however, as the Landlord did not have a copy of the move-out inspection report, and as the Tenant needed to leave to pick up his wife, the move-out inspection was re-scheduled for March 1, 2021.

The Landlord submitted that the Tenant texted stating that he would move out by 3:00 PM on February 28, 2021; however, the Landlord did not have a copy of the move-out inspection report with him. He stated that he texted the Tenant on March 1, 2021 with a notice of final opportunity to conduct an inspection for that day.

The Landlord advised that he is seeking compensation in the amount of **\$190.00** because the rental unit was not cleaned at the end of the tenancy. He submitted that the oven, the overhead vent, and the walls were greasy, that the curtains and windows were dirty, that there was hair in the carpet, and that the washroom vent was dusty. He referenced pictures submitted as documentary evidence as well as a receipt for the cost of cleaners. He stated that two cleaners cleaned the rental unit for three hours on March 2, 2021.

The Tenant advised that he believed he cleaned the rental unit and returned it to a re-rentable state. He referenced pictures submitted as documentary evidence to support the condition of the rental unit at the end of tenancy. He stated that the building is old, and that the rental unit was dirty and damaged when he moved in. He is skeptical of the legitimacy of the invoice for the cleaning service as there is a discrepancy in the amount that was charged and the amount that the Landlord is seeking compensation for. As well, it is his position that the hourly rate charged was excessive and that the size of the rental unit could not cost so much to clean.

The Landlord advised that he is seeking compensation in the amount of **\$180.00** for the cost of repairing an excessive number of nail holes in the walls. He stated that there were no nail holes at the start of the tenancy, and that he texted the Tenant to fix the holes; however, the Tenant did an unsatisfactory job fixing these issues. As well, he submitted that the Tenant left writing on the walls. He referenced pictures submitted of this damage, and an invoice of a quote to repair these issues. He acknowledged that the damage has not been repaired to date.

The Tenant advised that it was his belief that the rental unit was 15 years old and that many people have lived in it over the years. There were dents and scratches at the time of move-in, that he caused less than five nail holes, and that this would be considered normal wear and tear. He speculated that the pictures the Landlord was referring to of the move-out condition were either of the time of move-in or from another point in time.

Finally, the Landlord advised that he is seeking compensation in the amount of **\$336.00** because his new tenant informed him of a clogged toilet in the rental unit on March 9, 2021. He referenced an invoice for the plumber and noted that the plumber indicated that a hair clip was discovered in the bottom of the toilet that prevented it from flushing waste properly. He stated that his new tenant is single with short hair and he suggested that the hair clip was likely from the Tenant's wife.

The Tenant advised that the move-out inspection report indicated that the toilet was in fair condition. He stated that the toilet was tested with the Landlord at the time of the move-out inspection and that there were no issues with it. He submitted that the plumber was called about the issue on or around March 10, 2021 and the new tenant had lived in the rental unit for a considerable amount of time prior to experiencing an issue with the toilet. As there were no reported issues, prior to March 10, 2021, it is unlikely that this issue could be linked to the Tenant.

The Landlord refuted the Tenant's claim that they tested the functionality of the toilet during the move-out inspection.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that a move-in inspection report was not conducted, I am satisfied that the Landlord has not complied with the *Act*. As such, I find that the Landlord has extinguished the right to claim against the deposit.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim

against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, I am satisfied that the tenancy ended on March 1, 2021 when the move-out inspection report was completed. As such, I find that the Landlord's Application was made within 15 days of the end of tenancy. However, as the Landlord extinguished his right to claim against the deposit, the doubling provisions do apply to the security deposit in this instance. Consequently, I grant the Tenant a monetary award in the amount of **\$1,200.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the somewhat contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amount of \$40.00 because the Tenant did not leave the rental unit in a re-rentable state and overheld an extra day, rendering it not possible for the new tenant to move in on time, while there was conflicting testimony regarding times and dates to meet, I am satisfied from the evidence before me that the parties likely agreed to meet at 5:30 PM on February 28, 2021 to conduct a move-out inspection. However, as the Tenant confirmed that he was still cleaning and that he finally moved out of the rental unit near 8:30 PM, I am satisfied that the Tenant was overholding and that it was likely too late to conduct a sufficient move-out inspection. As such, I grant the Landlord a monetary award in the amount of **\$40.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$190.00 for cleaning of the rental unit, when reviewing the Landlord's pictures of specific areas with noted deficiencies, in conjunction with the fact that the Tenant was still attempting to clean the rental unit well past the time to conduct a move-out inspection report, I find it more likely than not that the Tenant did not leave the rental unit in a satisfactory condition. As such, I grant the Landlord a monetary award in the amount of **\$190.00** to rectify this issue.

With respect to the Landlord's claims for compensation in the amount of \$180.00 for the cost of repairing damage to the walls, when reviewing the Landlord's pictures of specific damage to the walls, I note some nail holes, some large scuffs, and some writing on the walls. While the Tenant claimed that the nail holes that he did create were minor in nature, I note that he did not refute the large scuffs or the writing on the walls. In assessing the evidence on a balance of probabilities, I am satisfied that the Tenant more likely than not caused some damage to the walls that was beyond reasonable wear and tear. Consequently, I grant the Landlord a monetary award in the amount of **\$180.00** for this claim.

Finally, regarding the Landlord's claims for compensation in the amount of \$336.00 for the clogged toilet repair, while the Tenant claimed that they tested the toilet at the move-out inspection, I find this testimony to be dubious as this is a very unlikely action that parties would generally undertake. However, given that this issue was reported by the new tenant more than a week after he moved in, I can reasonably infer that the new tenant likely would have used the toilet many times, so it is not clear why there was nothing reported sooner. Furthermore, as there is insufficient documentary evidence that directly points to the Tenant being negligent for this issue, I do not find that the Landlord has adequately supported this claim. As such, I dismiss this in its entirety.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Item	Amount
Rent owed for overholding	\$40.00
Cleaning	\$190.00
Wall repair	\$180.00
Recovery of Filing Fee	\$100.00
Doubling of security deposit	-\$1,200.00
<b>Total Monetary Award</b>	<b>\$690.00</b>

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$690.00** in the above terms, and the Landlord must be served with **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.

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: December 22, 2021

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Residential Tenancy Branch