



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD (Tenants)  
                             MNDL-S, MNDCL-S, FFL (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Tenants filed the application May 25, 2021 (the “Tenants’ Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit

The Landlord filed the application June 23, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for damage
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenants advised that their application is for return of double the security deposit and not for further compensation.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

Three written tenancy agreements were submitted as evidence and the parties agreed they are accurate. The tenancy started June 15, 2019. Rent at the end of the tenancy was \$3,480.00 per month. The Tenants paid a \$2,740.00 security deposit.

### ***Tenants' Application***

The parties agreed the tenancy ended March 15, 2021.

The Tenants testified that they provided their forwarding address to the Landlord by email April 02, 2021. The Tenants testified that the Landlord responded to the email.

The Landlord testified that they did not receive the Tenants' forwarding address until they received the hearing package for the Tenants' Application on June 10, 2021.

I asked the Landlord why they received the hearing package for the Tenants' Application by email but not the forwarding address sent by email. At first, the Landlord said they do not know. The Landlord then said that the hearing package went to their

junk mail. The Landlord denied that they responded to the Tenants' email that included the forwarding address.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The parties agreed the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord testified that they did a move-in inspection with the Tenants and completed the handwritten "Damage Report" in evidence in relation to the condition of the rental unit.

The Tenants agreed the parties did a move-in inspection and signed the handwritten "Damage Report".

The Landlord testified that they did a move-out inspection and took photos of the rental unit. The Landlord testified that they did not complete a move-out Condition Inspection Report.

The Tenants agreed a move-out inspection was done and agreed no Condition Inspection Report was completed. The Tenants agreed the Landlord took photos of the rental unit at move-out.

### ***Tenants' Evidence***

The Tenants submitted the following documentary evidence:

- Tenancy agreements between the parties
- Emails between the parties

### ***Landlord's Application***

The Landlord sought the following compensation:

Item	Description	Amount
1	Sand, repair and paint hardwood floor	\$590.00
2	Remove and replace new kitchen floor	\$350.00

3	Steam clean all carpets up and downstairs	\$340.00
4	Clean whole house	\$270.00
5	Remove and replace three new window blinds	\$280.00
6	Clean, repair and paint desk and walls	\$180.00
7	Replace basement storage room ceiling tiles	\$100.00
8	Install kitchen door with new hinges	\$60.00
9	Power wash garden walkways, sundeck and stairs	\$250.00
10	Used oven	\$370.00
11	Loss of rent	\$900.00
12	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$3,790.00</b>

### ***#1 Sand, repair and paint hardwood floor***

The Landlord testified that the hardwood floor in the rental unit was damaged at the end of the tenancy as shown in the photos submitted. The Landlord testified that the floor had to be sanded down and repaired.

The Tenants testified that the rental unit was older and looked “lived in” at the start of the tenancy. The Tenants testified that there were scratches on the floor at the start of the tenancy. The Tenants took issue with the invoice in evidence and submitted that it is not a proper or official invoice.

In reply, the Landlord testified that a handyman issued the invoice and not a company.

### ***#2 Remove and replace new kitchen floor***

The Landlord testified that the kitchen floor was damaged at the end of the tenancy. The Landlord testified that the floor had cigarette burns, was scratched and had holes in it. The Landlord testified that the floor could not be repaired and had to be replaced. The Landlord testified that the floor was eight years old.

The Tenants testified that the kitchen floor had knicks and scratches on it at the start of the tenancy and appeared to be more than eight years old.

The Tenants took issue with the invoice for all items claimed.

***#3 Steam clean all carpets up and downstairs***

The Landlord testified that the carpets in the rental unit were steam cleaned at the start of the tenancy. The Landlord testified that the Tenants agreed to steam clean the carpets when they moved out which is written on the handwritten "Damage Report". The Landlord testified that the carpets required steam cleaning at the end of the tenancy.

The Tenants testified that the carpet in the basement of the rental unit was not very clean at move-in and they had to spend two days cleaning it. The Tenants testified that they cleaned the carpet to the best of their ability. The Tenants testified that there was minimal traffic in the basement of the rental unit once one of their roommates moved out.

***#4 Clean whole house***

The Landlord testified that the rental unit was dirty at the end of the tenancy as shown in the photos. The Landlord testified that it took at least four hours for the handyman to clean the rental unit. The Landlord testified that they paid \$60.00 or \$70.00 per hour for a team of handymen to clean.

The Tenants agreed the rental unit was not left clean at the end of the tenancy. The Tenants disputed the amount sought for cleaning and stated they would agree to pay \$200.00 for cleaning. The Tenants denied that the cleaning required at the end of the tenancy would have taken more than four hours.

***#5 Remove and replace three new window blinds***

The Landlord testified that three blinds in the rental unit were broken by the Tenants as shown in the photos. The Landlord testified that the blinds could not be repaired and had to be replaced.

The Tenants testified that the blinds in the rental unit were "dollar store" blinds and made of paper. The Tenants denied that the blinds required repair or replacement at the end of the tenancy and argued that any damage was reasonable wear and tear.

In reply, the Landlord testified that the blinds that were replaced were not paper blinds but new and good solid wood blinds.

In reply, the Tenants testified that the blinds the Landlord is referring to were fine and did not require repair or replacement.

***#6 Clean, repair and paint desk and walls***

The Landlord testified that there was damage to the walls in the rental unit at the end of the tenancy which had to be patched and painted due to chips and stains.

The Tenants testified that any damage to the walls was reasonable wear and tear. The Tenants testified that they raised these types of issues with the Landlord at the start of the tenancy but the Landlord dismissed them as unimportant. The Tenants testified that they repainted the walls in the rental unit at the end of the tenancy.

In reply, the Landlord testified that the rental unit had last been painted three or four years prior. The Landlord also clarified that they are seeking compensation for patching and painting walls upstairs and not in the basement, which is where the Tenants repainted.

In reply, the Tenants testified that they painted all walls that were an issue at the end of the tenancy.

***#7 Replace basement storage room ceiling tiles***

The Landlord testified that the Tenants damaged ceiling tiles in the basement storage room which had to be replaced.

The Tenants testified that they did not use the storage room and the Landlord still used this space during the tenancy. The Tenants testified that they do not see how they could have damaged the ceiling tiles and these were damaged from the start of the tenancy. The Tenants also took issue with the cost claimed for this item.

In reply, the Landlord testified that the Tenants did use the storage room.

***#8 Install kitchen door with new hinges***

The Landlord testified that the Tenants took the kitchen door off and never reinstalled it. The Landlord testified that the Tenants lost the hinges for the door. The Landlord testified that the door had to be reinstalled at the end of the tenancy.

The Tenants testified that they did move the kitchen door and purchased hinges to reinstall it but never did. The Tenants testified that the new hinges only cost \$10.00.

***#9 Power wash garden walkways, sundeck and stairs***

The Landlord testified that the walkways, sundeck and stairs had to be power washed at the end of the tenancy because they were dirty and had thick moss on them as shown in the photos.

The Tenants testified that the areas referred to were not power washed at the start of the tenancy and that power washing is not the Tenants' responsibility to do.

***#10 Used oven***

The Landlord testified that the oven in the rental unit was damaged during the tenancy such that they had to purchase a new one. The Landlord referred to the photos in evidence. The Landlord testified that the oven was 10 years old. The Landlord clarified that the new oven, which was used, was purchased during the tenancy.

The Tenants acknowledged that the Landlord installed a new oven during the tenancy but denied damaging the original oven.

***#11 Loss of rent***

The Landlord sought compensation for loss of rent due to prospective tenants wanting to rent the unit until they saw the kitchen which was dirty and smelled of marijuana due to the Tenants. The Landlord testified that the prospective tenants decided not to rent the unit due to the state of it. The Landlord testified that the neighbour of the rental unit told them the Tenants were smoking marijuana and having parties all the time such that the neighbour had to call police all the time. The Landlord could not point to documentary evidence to support their position.

The Tenants denied that they caused a problem in relation to the Landlord re-renting the unit and disputed the Landlord's claims.

### ***Landlord's Evidence***

The Landlord submitted the following documentary evidence:

- Photos
- A handwritten "Damage Report" dated June 15, 2019
- An invoice for the items claimed
- A receipt for the oven
- An email from Tenant S.B. to the Landlord with the hearing package attached
- Tenancy agreements
- Emails from the Landlord to the Tenants relating to service

### **Analysis**

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### ***Tenants' Application***

#### ***Security deposit***

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties in relation to having done move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because



extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for cleaning and loss of rent, neither of which are damage.

Based on the testimony of both parties, I accept that the tenancy ended March 15, 2021.

I am satisfied based on the evidence provided that the Tenants provided their forwarding address to the Landlord by email April 02, 2021 because the Tenants submitted a copy of this email. I do not accept that the Landlord did not receive this email because it is clear from the evidence provided that the parties communicated by email in relation to this tenancy. For example, the Tenants submitted an email they received from the Landlord about their security deposit. Further, the Landlord submitted a photo of an email they received from the Tenant with the hearing package attached. I note that the photo is of the Landlord's computer screen with the email up on it and yet it does not support the Landlord's position that this email went to their junk mail folder. The Landlord also submitted photos of emails they sent to the Tenants with their hearing materials attached. In the circumstances, I find it more likely than not that the Landlord received the Tenants' email with their forwarding address attached.

I note that email service was a permissible form of service on April 02, 2021 pursuant to section 88(j) of the *Act* and section 43(1) of the *Regulations*. Pursuant to section 44 of the *Regulations*, I find the Landlord received the Tenants' forwarding address on April 05, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from April 05, 2021. The Landlord's Application was filed June 23, 2021, outside the 15-day deadline. I find the Landlord failed to comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord must pay the Tenants double the security deposit being \$5,480.00.

The Landlord can still claim for compensation and I consider that now.

## ***Landlord's Application***

### ***Compensation***

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [[landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 of the *Act* states:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

In relation to the condition of the rental unit at the start of the tenancy, I accept that there was no damage based on the "Damage Report" because Tenant S.B. signed this document which specifically states, "This house is clean, NO damage..."

In relation to the age of the rental unit, I accept based on the photos that the rental unit was older and therefore have reduced amounts awarded to the Landlord for repairs or replacement based on Policy Guideline 40 which outlines the useful life of building elements.

In relation to the invoice, I agree that there is an issue with it given it does not show who completed the stated work; however, I do not find this issue serious enough to warrant disregarding the invoice. I find the amounts noted in the invoice to be reasonable. Given these two points, I accept that the invoice is accurate. I also note that the Tenants did not submit any documentary evidence to support that the repairs, replacements or cleaning noted in the invoice could have been done for less.

***#1 Sand, repair and paint hardwood floor***

I find based on the photos that areas of the hardwood floor were damaged at the end of the tenancy. I find that most of the damage shown in the photos is beyond reasonable wear and tear and I find the Tenants breached section 37 of the *Act* in this regard. I am satisfied based on the photos that the Landlord had to have the floor repaired. I am satisfied based on the invoice that the repairs cost \$590.00. I award the Landlord \$442.00 which I find accounts for the useful life of hardwood floors.

***#2 Remove and replace new kitchen floor***

I accept that areas of the kitchen floor were damaged at the end of the tenancy based on the photos. I find the damage shown in the photos to be beyond reasonable wear and tear and I find the Tenants breached section 37 of the *Act* in this regard. I accept based on the photos that the Landlord had to replace the floor to address the damage

and that the damage could not be repaired. I accept that the Landlord paid \$350.00 to have the floor removed and replaced based on the invoice. I award the Landlord \$262.00 which I find accounts for the useful life of kitchen floors.

### ***#3 Steam clean all carpets up and downstairs***

I accept that the carpets in the rental unit were steam cleaned at the start of the tenancy and that the parties agreed the Tenants would steam clean the carpets at the end of the tenancy based on the "Damage Report".

Further, Policy Guideline 01 states:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

I accept that areas of the carpet were dirty at the end of the tenancy based on the photos. The tenancy did last more than one year and therefore the Tenants were responsible for steam cleaning the carpet at the end of the tenancy. I am not satisfied the Tenants steam cleaned the carpet at the end of the tenancy based on the photos and therefore I am satisfied the Tenants breached section 37 of the *Act* in this regard. I am satisfied the Landlord had to have the carpets steam cleaned. I accept based on the invoice that steam cleaning the carpets cost \$340.00 and I award the Landlord this amount.

### ***#4 Clean whole house***

The only issue between the parties in relation to this item is the cost claimed. I accept that the Tenants did not leave the rental unit clean at the end of the tenancy as the Tenants acknowledged this. Further, the photos show that areas of the rental unit were left dirty. I find the \$270.00 sought by the Landlord reasonable for cleaning and award the Landlord this amount.

***#5 Remove and replace three new window blinds***

I accept that three blinds in the rental unit were broken at the end of the tenancy because this is shown in the photos. The photos show that the broken blinds are not paper blinds. I find the damage to the blinds to be beyond reasonable wear and tear and find the Tenants breached section 37 of the *Act* in this regard. I am satisfied based on the photos that the Landlord had to replace the blinds and could not repair them. I accept based on the invoice that the Landlord paid \$280.00 for this item. I award the Landlord \$210.00 which I find accounts for the useful life of blinds.

***#6 Clean, repair and paint desk and walls***

The photos only show one area of damage to a wall in the rental unit. I decline to award the Landlord the \$180.00 sought for this item because the Landlord has only proven one area of damage and because the useful life of interior paint is only four years (Policy Guideline 40, page 5) and the Landlord testified that the paint in the rental unit was three or four years old.

***#7 Replace basement storage room ceiling tiles***

I accept based on the photos that the Tenants damaged six ceiling tiles in the rental unit. I find the damage shown in the photo is beyond reasonable wear and tear and find the Tenants breached section 37 of the *Act* in this regard. I accept based on the photo that the Landlord had to replace the ceiling tiles. I accept based on the invoice that replacing the ceiling tiles cost \$100.00. I award the Landlord \$75.00 which I find accounts for the useful life of ceiling tiles.

***#8 Install kitchen door with new hinges***

I accept that the Tenants moved the kitchen door and lost the hinges because the Tenants' testimony supports this. I find the Tenants breached section 37 of the *Act* in relation to the kitchen door. I accept that the Landlord had to have the kitchen door reinstalled with new hinges. I accept based on the invoice that these repairs cost \$60.00 and I find this amount reasonable. I award the Landlord the \$60.00.

**#9 Power wash garden walkways, sundeck and stairs**

Policy Guideline 01 states:

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...

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

I find power washing to be more in line with a major project and not routine maintenance. I find the Tenants are not responsible for the costs associated with power washing.

**#10 Used oven**

I find based on the photos that the oven was in very bad shape during the tenancy which is not reflected in the "Damage Report". I am satisfied the Tenants caused the damage shown in the photos and find they breached section 32 of the *Act* in this regard. I accept that the Landlord had to replace the oven. I accept based on the receipt that the Landlord paid \$370.00 for a used oven. I award the Landlord \$277.00 which I find accounts for the useful life of an oven.

**#11 Loss of rent**

The parties disagreed about whether the Tenants caused the Landlord to lose prospective tenants. The Landlord has not submitted further evidence to support their testimony about the Tenants causing the Landlord to lose prospective tenants and therefore I am not satisfied the Landlord has proven this claim. This claim is dismissed without leave to re-apply.

**#8 Filing fee**

Given the Landlord was partially successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

### **Summary**

In summary, the Landlord is entitled to the following compensation:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Sand, repair and paint hardwood floor	\$442.00
2	Remove and replace new kitchen floor	\$262.00
3	Steam clean all carpets up and downstairs	\$340.00
4	Clean whole house	\$270.00
5	Remove and replace three new window blinds	\$210.00
6	Clean, repair and paint desk and walls	-
7	Replace basement storage room ceiling tiles	\$75.00
8	Install kitchen door with new hinges	\$60.00
9	Power wash garden walkways, sundeck and stairs	-
10	Used oven	\$277.00
11	Loss of rent	-
12	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,036.00</b>

The Landlord must pay the Tenants \$5,480.00. However, the Tenants must pay the Landlord \$2,036.00 and this is deducted from the \$5,480.00. Therefore, the Landlord must pay the Tenants \$3,444.00 and the Tenants are issued a Monetary Order pursuant to section 67 of the *Act* in this amount.

### **Conclusion**

The Tenants are issued a Monetary Order for \$3,444.00. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: December 16, 2021

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Residential Tenancy Branch