



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, FFL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both of the tenants attended the hearing, and the landlord was represented at the hearing by her agents, ML and GK, the resident manager (hereinafter referred to as the "landlord"). As all parties were present, service of documents was confirmed. The tenants acknowledged service of the landlord's Notice of Dispute Resolution Proceedings and the landlord acknowledged service of the tenants' evidence. Both parties advised they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?  
Can the landlord recover the filing fee?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. This tenancy began on July 1, 2010 with one of the two named tenants. A second tenancy agreement was signed by the parties when the first tenant got married and both tenants were added to the tenancy agreement. At the commencement of the original tenancy, the landlord collected a security deposit in the amount of \$490.00. The landlord testified that a condition inspection report was not done with the original tenant when the tenancy began.

The landlord testified that at the end of April, the tenants verbally advised her that they would be moving out. When the landlord asked for written notification, the tenants sent the landlord an email advising of the same on April 28<sup>th</sup>.

The landlord testified that she presented the tenants with a "cleaning checklist" sometime during the last month of the tenancy. No copy of the "cleaning checklist" was provided as evidence for this hearing, however the landlord read out portions of the list which purportedly says at the bottom that on noon, the last day of the month, the suite must be vacant, and cleaned and the keys must be returned to the building manager. Further, according to the landlord, the "cleaning checklist" advises the tenant that the resident manager would inspect the suite to determine the condition of the apartment and that the resident manager would determine how much of the security deposit would be kept for damages.

When I asked the resident manager whether the tenants were invited to participate in a move-out condition inspection report meeting, the resident manager advised that the "cleaning checklist" was enough. No formal invitation to meet with the tenants was provided. The tenant was expected to be present at noon on the last day of the month to return the keys. When the tenant never showed up, the landlord made arrangements with one of the tenants to meet her at noon on June 1<sup>st</sup> for the inspection, but the tenant didn't show up until around 3:00 p.m.

The landlord testified that she went to the garage to see if the tenant left anything behind and discovered the garage was full of boxes, old papers and old furniture. The landlord told the tenant his belongings must be taken out and the landlord returned to her own unit. No photos of the garage were provided as evidence.

The landlord testified that the photos submitted provide evidence of the damage to the rental unit. There is a big blob of red paint on the bedroom door, scribbles of magenta and blue pencil or pen on the walls and pink dribble on the white walls in the hallway. The hardwood floors have small oblong stains on them like something soaking wet was sitting on the floor. The manager testified the photos provided as evidence were taken on June 1<sup>st</sup>.

The landlord testified that the keys were returned to her on June 9<sup>th</sup>, and the forwarding address was received by email on June 14<sup>th</sup>.

The tenant gave the following testimony. There was no condition inspection report done at the commencement of the tenancy. Before the tenancy ended, the tenant had cleaned the rental unit thoroughly. A mop and bucket were left in the unit so that the tenant could do any additional cleaning the landlord was displeased with.

The tenant testified that he was working on the 31<sup>st</sup> of May and that arrangements were made with the landlord that together they would inspect the unit on June 1<sup>st</sup>. When the landlord arrived, he saw people already in the unit renovating it. The resident manager spoke to the tenant and told him that he needed to keep the garage clean and when the tenant returned from the garage, the resident manager could not be found.

The tenant went to the resident manager's unit and asked her to continue with the inspection of the unit so he could get his security deposit returned to him. The tenant testified the landlord told him he could have \$80.00 of the \$490.00 security deposit returned and he refused. The landlord was unwilling to go back to the unit for the condition inspection, so he left.

In evidence, the tenant provided photos of the unit after he left. The tenant was unable to provide a date for when the photos were taken, but thinks they were made on June 1<sup>st</sup>. The landlord disputes this, advising that the glue on the kitchen floor was applied on June 9<sup>th</sup>, alleging the photo was taken on that date.

### Analysis

Sections 23 and 35 of the Act require the landlord and tenant to participate in move-in and move-out condition inspections and document them in written reports. The landlord is responsible for scheduling the inspections and provide a copy to the tenant in accordance with sections 17 and 18 of the Residential Tenancy Regulations.

Section 14 of the Regulations states that the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Section 37(2)(a) of the Act states 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.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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).** (emphasis added)

This was a tenancy that lasted almost eleven (11) years. As such, I would expect there to be wall scuffs, paint discoloration and other signs of having been lived in. I have viewed the landlord's photographs and I am of the opinion that the "damage" claimed by the landlord is reasonable wear and tear attributable to a tenancy of approximately eleven years. The tenant's legal obligation is to leave the rental unit "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

Turning next to the issue of the non-existent condition inspection report. The parties agree there was no condition inspection report done at the commencement of the

tenancy. While that is obviously detrimental to the landlord's position in proving damage to the rental unit, the landlord has also extinguished her ability to claim against the security deposit by not offering the tenant at least two opportunities for inspection both at the beginning and the end of the tenancy as required by sections 23 and 24 of the Act. In her testimony, the resident manager was clear in her testimony that she did not provide the tenants with clear, specific dates and times as opportunities for inspection at the end of the tenancy, stating that her "cleaning checklist" was sufficient. To be clear, section 23(3) of the Act states that the landlord must offer the tenant at least two opportunities, as prescribed, for a condition inspection and the landlord and tenant must sign the condition inspection report pursuant to section 23(5).

Section 21 of the Regulations state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, what damage was already there and what damage she alleges was caused by the tenants during the tenancy. Though her testimony and photos taken at the end of the tenancy bear some weight, the landlord has not met the burden of proof to show me the difference in condition between move-in and move-out.

Consequently, I find that the landlord has provided insufficient evidence to satisfy me the tenant has damaged the rental unit beyond what is to be expected as normal wear and tear. The landlord's claim for a monetary order is dismissed without leave to reapply.

The landlord's request to recover the filing fee is dismissed without leave to reapply.

The landlord continues to hold the tenant's security deposit. I order that the landlord is to return the tenant's security deposit in the amount of \$490.00. I issue a monetary order in the tenant's favour in the amount of \$490.00 pursuant to section 67 of the Act.

### Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of **\$490.00**. 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: January 13, 2022

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Residential Tenancy Branch