



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male landlord" and "tenant HR" did not attend this hearing, which lasted approximately 58 minutes. The female landlord ("landlord"), tenant PY ("tenant") and tenant VYJ ("male tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord, the tenant, and the male tenant provided their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to them after the hearing.

The landlord stated that she had permission to represent the male landlord at this hearing. She confirmed the rental unit address.

The tenant confirmed that she had permission to represent "tenant HR," who is her daughter, at this hearing.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord, the tenant, and the male tenant all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that I could not provide legal advice to them. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that all three tenants were duly served with the landlords' application

The landlord confirmed receipt of the tenants' evidence on January 17 and 18, 2022. She said that the tenants' evidence was late, since the landlords served the tenants with their evidence in July 2021. She claimed that the tenants' evidence was not relevant. In accordance with sections 88 and 90 of the *Act*, I find that both landlords were duly served with the tenants' evidence.

I informed the landlord that I would consider the tenants' evidence at the hearing and in my decision, since the landlords received it on January 17 and 18, 2021, which is more than 7 days prior to this hearing, in accordance with Rule 3.15 of the *RTB Rules of Procedure*. I notified the landlord that I would determine the relevance of the tenants' evidence, as per Rule 7.17 of the *RTB Rules of Procedure* (as reproduced below).

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to correct the male tenant's name. Both parties consented to this amendment during this hearing.

#### Issues to be Decided

Are the landlords entitled to a monetary award for damage to the rental unit?

Are the landlords entitled to retain the tenants' security deposit?

Are the landlords entitled to recover the filing fee paid for this application?

#### Background and Evidence

The landlord and the tenant agreed to the following facts. This tenancy began with the tenant and tenant HR on April 1, 2015. The male tenant's tenancy began on January 1, 2020. This tenancy ended for all tenants on June 29, 2021. Monthly rent in the amount

of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy. The tenants provided a written forwarding address, which the landlord received on July 5, 2021, by way of registered mail. The tenants did not provide written permission for the landlords to keep any amount from their security deposit. The landlords' application to retain the tenants' security deposit was filed on July 12, 2021.

The landlord stated that an assault was caused by the male tenant, the police were called, and the male tenant left the move-out condition inspection. The male tenant denied any assault, stated that the police were not present, and confirmed that he thought it was best to leave the move-out condition inspection because things were getting "heated."

The landlords seek a monetary order of \$1,309.34 plus the \$100.00 application filing fee. During this hearing, the tenant agreed to pay \$294.00 for cleaning. The tenants dispute the remainder of the landlords' claims for \$1,015.34 and the \$100.00 filing fee.

The landlord testified regarding the following facts. This was a brand-new house. The landlords moved in on January 1, 2015, to the upper floor of the house. The tenant and her daughter moved into the basement unit, which is on the main floor, on April 1, 2015. The male tenant moved in with the tenant and her daughter, on January 1, 2020. Therefore, the rent was adjusted to \$1,500.00 per month and the security deposit was adjusted to \$750.00. In picture 21, it shows a dirty and stained kitchen. In picture 10, it shows a shelf missing above the fridge. In pictures 4, 5 and 6, there are hooks everywhere that were pulled out so strongly, that it pulled off the gyprock. The landlord only took a few pictures of this but there were so many hooks. In picture 52, it shows a broken door stopper in the second bedroom. In picture 32, it shows a bathroom cupboard with the hinges broken on the side. In picture 57, a large planter was left, the patio was dirty, the plant was dead, and the landlord had to get rid of the plant. In pictures 8 and 9, it shows the kitchen cupboard broken, which the landlord had to repair. In picture 7, it shows tape that came off. In pictures 43 and 46, it shows the dirty window sill in the master bedroom and dirty blinds. In pictures 44 and 45, it shows the window tracks are dirty. In pictures 12, 14, 15 and 16, it shows the new condition.

The landlord stated the following facts. In pictures 17 and 18, it shows the oven, which was brand new when the tenants moved in. In picture 13, it shows dirty cupboards. In pictures 11, 22 and 23, it shows underneath the fridge and the back of the fridge being

dirty. In picture 24, it shows near the dishwasher that it is dirty and was not wiped down. In pictures 60, 61, 62 and 63, it shows the condition of the washer and dryer inside, which was brand new when the tenants moved in. In picture 28, it shows a hole in the window screen. In pictures 34, 35 and 36, it shows the toilet, which is dirty inside and out, and “trashed,” but was brand new when the tenants moved in. In picture 33a, it shows a dirty and stained bathtub. In picture 33b, it shows the bathtub after cleaning, which shows chips in the bathtub. In picture 31, it shows chipping outside the tub, which is dirty. The landlords are only asking for costs related to the toilet, bathroom, and cleaning. The tenants caused more damages that the landlords are “swallowing” themselves and not asking for rent or other costs. The landlords had to have the work done in a timely fashion at a reasonable price. The tenants gave notice on June 6 to move out by the end of June 2021. The landlords agreed because they wanted to help the tenants. Even though the tenancy agreement says that one month notice is required before moving out, the landlords are not seeking rent from the tenants. The damages were so much that the landlords had to fix and paint but they are not asking for the painting cost back from the tenants. The landlords are trying to be reasonable, and only ask for the costs to replace the toilet, clean the rental unit, and fix the bathtub.

The tenant stated the following facts. There are two separate issues, one related to cleaning and one related to damages. The tenants agree that they did not clean the rental unit properly before moving out. The tenants agree to pay the landlords for their full cleaning costs of \$294.00. The tenants dispute the damage costs regarding the toilet and bathtub. The move-in inspection report done in 2015 shows that chips were obvious in the bathtub. The male landlord told the tenants not to worry about it. The tenants reported the stove having a loud rattle, and the male landlord stated not to worry and to keep using it. The kitchen faucet did not work so the male landlord installed a new faucet, 2 to 3 years ago. The plumber switched the “hot” and “cold” functions of the faucet, but the male landlord said not to worry. The tenants did not cause any “malice” to the toilet. They think that the landlords replaced it because it was faulty to begin with. There was no caulking at the base wall enclosure attached to the bathtub, so water could have got in there. The tenants told the male landlord about it, but he said not to worry. Picture 11 of the bathroom shows that it is fine. The male landlord had a casual “don’t worry attitude” towards the tenants until they moved out, when all of these damages were claimed. The tenants were surprised by the landlords’ claims for damages at the end of this tenancy.

The landlord stated the following in response to the tenant’s submissions above. The landlords did not receive any text messages regarding the toilet or any other issues that the tenant talked about. Text messages were the main method of communication

between both parties. The landlords did not receive any text messages from the tenants after the landlords went away and returned home. The tenant went through the move-in inspection report with a “fine tooth and comb.” The landlord let the tenant write that there was a chip in the bathtub on the move-in inspection report. However, all of these damages were minor at the move-in inspection. There were major damages at the move-out inspection. The landlords have the same toilets in all bathrooms at the rental unit. There were four other toilets besides the one that was damaged. However, only one toilet had a crack and chip in it. The landlord heard loud bangs during the tenancy, and called to ask if the tenant was ok, and the tenant always said that everything was ok. The tenant's daughter has emotional problems, so she may have caused the damages, because the tenant told the landlord during the tenancy, that her daughter “loses it.” The landlord does not know how or when the toilet was cracked.

The male tenant testified regarding the following facts. He married the tenant and moved into the rental unit later in 2020. He was told by the tenant when he moved in, that the male landlord will not fix anything and always said that everything was ok. The toilet was smooth but there were cosmetic defects, from when the tenant first moved into the rental unit. However, the toilet was functional and did not leak any water. Therefore, no concerns were raised to the landlords. The tenancy was for five years, so when things are used, they will not be “brand new” anymore, as claimed by the landlord.

The tenant stated the following in response to the landlord's submissions. Her daughter has special needs regarding speech and language. However, she never threw anything or hurt anything or anyone at the rental unit. She was only anxious in her own room. It is “impossible” that the damages were caused by her daughter. The issues with the toilet are not on the surface, so it cannot be caused from the outside. The tenants used a bathmat in the bathtub, which may have caused some yellowing but no damages. The male tenant fell and was using a cane, so the tenants required a bathmat, which had suction cups underneath, in the bathtub for safety.

### Analysis

### Rules

The following RTB *Rules of Procedure* state, in part:

#### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord did not properly present the landlords' evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. During this hearing, the landlord failed to properly go through the landlords' claims and the documents submitted in support of this application.

During this hearing, I repeatedly asked the landlord whether she wanted to add any information, present any further submissions, and respond to the tenants' testimony. This hearing lasted 58 minutes, so the landlord was given ample opportunity to present the landlords' application and respond to the tenants' claims.

*Damages and Cleaning*

At the outset of this hearing, I notified the landlord, that as the applicants, it was the landlords' burden of proof, on a balance of probabilities, to prove the landlords' monetary claims.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the documentary evidence and testimony of both parties.

I award the landlords \$294.00 for cleaning because the tenants agreed to pay this amount during the hearing.

I dismiss the landlords' application for damages of \$201.59 to buy a toilet, \$157.50 to install a toilet, and \$656.25 to reglaze a bathtub, totalling \$1,015.34, without leave to reapply. The tenants disputed these damages during this hearing.

The landlord did not state any of the above costs during this hearing. These costs were contained in the landlords' monetary order worksheet, that was submitted with the landlords' evidence, but not reviewed by the landlord at all during this hearing. The landlord did not review any receipts, invoices, estimates, or quotes for the above costs during this hearing. The landlord only reviewed photographs and limited information on the condition inspection reports during this hearing. The landlord did not indicate when the above work was done, if or when it was paid by the landlords, how many workers completed the work, what the rate per hour was for each worker, how long the work took, or any such details. I find that the landlords failed part 3 of the above test.

The landlords provided an invoice for \$157.50 with a balance due. It is not signed by anyone. There is no breakdown of costs for the \$150.00 in "part and labour" as indicated on the invoice. There is no indication of how long the work took, how many people completed the work, or the cost per hour and per worker. The landlords claimed to have bought the toilet themselves for \$201.59 and provided a separate receipt for same. Therefore, it is unclear what other "part" was required in the above invoice. I find that the landlords failed part 3 of the above test.

The landlords provided an invoice for \$656.25 for reglazing the bathtub, with a balance due. It is not signed by anyone. There is no breakdown of costs for labour or parts. There is no indication of how long the work took, how many people completed the work, or the cost per hour and per worker. There is no receipt for any payment made by the landlords. I find that the landlords failed part 3 of the above test.

The tenants indicated that the toilet and bathtub were in proper functioning and working order. The tenants stated that any damages were cosmetic in nature only, not related to the functions of the toilet or bathtub. The landlords did not provide sufficient documentary evidence to show that they were required to replace the toilet, rather than repair it. The landlords did not provide sufficient documentary evidence to show that



they were required to reglaze the bathtub. I find that the landlords failed to show why they had to replace the toilet or reglaze the bathtub when they were both in proper, working order. I find that the landlords failed to show how any damages were beyond reasonable wear and tear, requiring the above work to be done, as per Residential Tenancy Policy Guideline 1. I find that the landlords failed parts 1 and 2 of the above test.

I find that the landlords failed to show that the tenants caused the damages to the toilet and the bathtub. The landlord testified during this hearing that she did not know how or when the toilet cracked. The landlord testified during this hearing that a chip in the bathtub was noted on the move-in condition inspection report, completed on March 27, 2015. Therefore, some or all of these damages could have been present when the tenants moved into the rental unit. I find that the landlords failed part 2 of the above test.

As the landlords were only partially successful in this application, based only on what the tenants agreed to pay during this hearing, I find that the landlords are not entitled to recover the \$100.00 application filing fee from the tenants.

### Security Deposit

The landlords continue to hold the tenants' security deposit of \$750.00. No interest is payable on the deposit during this tenancy. I order the landlord to retain \$294.00 from the tenants' security deposit of \$750.00, in full satisfaction of the monetary award for cleaning.

I order the landlords to return the remainder of \$456.00 from the tenants' security deposit to the tenants. The tenants are provided with a monetary order for same. Although the tenants did not apply for the return of their deposit, I am required to consider it on the landlords' application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

I find that the tenants are not entitled to double the value of their security deposit since the landlords applied to retain it on July 12, 2021, which is within 15 days of the later forwarding address date being provided on July 5, 2021.

I find that the tenants did not extinguish their right to the return of their security deposit, since they were required to leave the move-out condition inspection, due to safety issues and criminal allegations made by the landlords.



The landlords did not provide any evidence at this hearing, as to whether they offered the tenants two opportunities to complete a move-out condition inspection and report, with one opportunity using the RTB-approved form, as required by section 17(2)(b) of the *Residential Tenancy Regulation*. Since there was a safety issue during the first move-out inspection date, the landlords did not indicate whether they offered a second opportunity to the tenants or their agents to attend. Although the landlords' right to retain the tenants' security deposit for damages is extinguished, due to the above, they also applied for cleaning costs.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$456.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the landlords' application is dismissed without leave to reapply.

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 27, 2022

---

Residential Tenancy Branch