



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-S MND-S MNDC-S FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for:

- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed; authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

Prior to the start of the hearing, the parties were informed that recording of the hearing was not allowed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to a monetary award from the tenants, to keep all or part of the security deposit to partially offset a monetary award, and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on November 1, 2020, for a monthly rent of \$2,200, with a security deposit of \$1,000 being paid by the tenants to the landlord. The rental unit was in the basement level of a home owned and occupied by the landlord, who lived in the upper level.

The parties were previously in dispute resolution on the tenants' application, with a hearing on October 19, 2021, and a Decision being issued by the other arbitrator on November 10, 2021. The tenants filed a copy of that Decision. In that Decision, the other arbitrator determined that the tenants moved out of the rental unit on June 17, 2021.

Although the other arbitrator granted the tenants a monetary award of \$2,000, double their security deposit, the landlord continues to keep the tenants' security deposit.

The landlord's monetary claim is the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Hydro costs	\$555.24
2. Blinds	\$131.11
3. Carpet	\$699.45
4. Ceiling	\$167.90
5. Labour	\$339.70
6. Filing fee	\$100.00

Evidence filed by the landlord included hydro bills, unclear copies of photographs of the rental unit taken after the tenants vacated, a receipt from Home Depot for the blind replacement, and generic, hand printed receipts for labour, carpet installation, and for

repair and painting of ceiling holes. The receipts appear to be handwritten by the landlord for personal labour and costs.

#### Hydro costs –

The landlord submitted that his hydro costs almost doubled in a year after the tenants moved in, with the tenants not conserving their usage and having extra computer equipment. The landlord submitted that the tenants kept the heat turned up and kept lights on, heat on, and windows open when they were not home.

The written tenancy agreement provided by the landlord shows that electricity was included in the monthly rent. In the landlord's copy of the written tenancy agreement, was a handwritten notation as follows: “\*hydro will be monitored/extra charges”.

The tenants submitted that hydro was included in their lease agreement and referred to their evidence. The evidence was a picture of the 2<sup>nd</sup> page of the written tenancy agreement, with electricity included, and which did not have the handwritten notation that was on the landlord's evidence. The tenant submitted that there is nothing in the written tenancy agreement about a percentage of the hydro costs and that the landlord added that statement after they signed the written tenancy agreement.

The tenant submitted that they did not abuse their electrical use, but it was possible the costs were from the landlord's use of power tools and extra lights in the yard.

#### Blinds; carpet; ceiling; labour –

The landlord submitted that after the tenancy ended, the living room blind was missing, the bedroom blind was broken, and the kitchen blind was too greasy, and as a result, all had to be replaced.

The landlord submitted that the carpets had dog urine from the tenants' dog and could not be cleaned. The landlord submitted that the damage by the tenants and their dog required that the carpet had to be replaced, and as the carpet was old, the landlord said he is only asking for half the costs.

The landlord submitted that the ceiling was damaged when the tenants moved in and out and had to be repaired. The landlord said the photographs were taken on the day the tenants moved out.

The landlord submitted that the labour costs were his time spent in picking up “new blinds and installing them and removing the broken ones, going to the dump with old carpeting and underlayment and removing the old carpeting and underlayment and dump fee”.

The landlord said that there was a move-in condition inspection, but not a move-out inspection as the tenants did not call to set up an inspection.

In response, the tenants submitted that there was only one set of blinds that was damaged, which they intended on replacing; however, the landlord locked them out of the rental unit after they had moved out and were not allowed access again. The tenants submitted that they were not allowed back into the rental unit after they started moving on June 18, 2021, even though the monthly rent was paid through June 2021. The tenants referred to their documentary evidence showing they had a cleaner booked to do a final cleaning.

The tenants submitted that they did not know what the landlord was speaking about with the marks on the ceiling.

The tenants denied owing the landlord for labour as he was planning on replacing the carpet anyway.

The tenants asserted that these issues had been dealt with in the previous dispute resolution on their application for monetary compensation in the Decision on November 10, 2021.

The tenants submitted that there were carpet stains at the start of the tenancy, as shown in the move-in video submitted in evidence. The tenants submitted that the stains appeared to be old and that the rental unit had other dogs prior to them moving in. The tenants submitted that the landlord informed them he already planned on replacing the carpet after the tenancy.

Additional evidence filed by the tenants included text messages between the parties.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where 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.

#### Hydro costs –

Under the written tenancy agreement, electricity was included in the monthly rent. I find the tenants were not responsible for hydro costs and I therefore **dismiss** the landlord's claim of \$555.24 for hydro costs, without leave to reapply.

I note that I place no weight on the landlord's version of the written tenancy agreement, as I find it more likely than not the landlord inserted a handwritten notation about hydro after the tenancy agreement was signed, as shown by the tenants' documentary evidence. Apart from that, I find the handwritten notation was vague and unenforceable.

#### Blinds; carpet; ceiling; labour –

Under section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit after the tenancy ends and it is **upon the landlord** to provide 2 opportunities for the inspection. The landlord is also obligated to complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report. In this case, I find the landlord submitted insufficient evidence that he arranged for and conducted the move-out inspection with the tenants.

In this case, I reviewed the evidence of the landlord, in which he wrote to the male tenant on June 19, 2021, stating that he was not required to do any cleaning.

In addition, in the previous dispute resolution Decision of November 10, 2021, another arbitrator found that the landlord deprived the tenants of access to the rental unit as of June 19, 2021, even though they paid rent through the end of June 2021. The other arbitrator granted the tenants monetary compensation for the loss of use of the rental unit for the 11 remaining days in June.

For this reason, I find the landlord deprived the tenants an opportunity to clean the rental unit, replace or clean the blinds, make any necessary repairs that went beyond reasonable wear and tear, shampoo and clean the carpet, and remove their belongings.

I also find the landlord's handwritten, generic receipts for the claimed expenses made by the landlord to be self-serving, unsubstantiated and therefore gave these documents no weight.

I find the landlord submitted insufficient evidence of the age of the carpets or that they needed to be replaced at all. I find insufficient evidence that any stains were attributable to the tenants' dog. There was no evidence that the tenants' dog was the only pet who ever lived in the rental unit, or that the stains were from dog urine.

The evidence of the tenants shows a text message from the landlord on June 19, 2021, informing the tenants the carpet would be replaced on June 22, 2021, which I find substantiates that the landlord pre-planned to have the carpets replaced. I note this time period was during the remainder of the month of June 2021, when the landlord deprived the tenants of the rental unit for which they had paid rent, according to the previous Decision of November 10, 2021.

For all these reasons, I find the landlord submitted insufficient evidence to support his monetary claim for blinds, carpet replacement, ceiling repair, and labour. I therefore **dismiss** all these claims, without leave to reapply.

As I have dismissed the landlord's monetary claim, I **dismiss** his request for recovery of the filing fee of \$100, without leave to reapply.

Although the landlord claimed against the tenants' security deposit, I do not order the landlord to return the tenants' security deposit, as this matter was dealt with in the previous dispute resolution Decision of November 10, 2021. The other arbitrator

granted the tenants' monetary claim for their security deposit, which they doubled to \$2,000. That monetary order remains in full force and effect.

### Conclusion

The landlord's claim for monetary compensation from the tenants is dismissed, without leave to reapply, due to insufficient evidence.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 18, 2022

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Residential Tenancy Branch