



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 27, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit or property
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

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

The Landlord advised at the outset of the hearing that they would call witnesses during the hearing; however, the Landlord chose not to call witnesses when provided the opportunity to do so at the end of the hearing.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence and the Tenant confirmed receipt of these. The Tenant did not raise any issues with service.

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

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit or property?
2. Is the Landlord entitled to keep the security and pet damage deposits?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Living room floor	\$787.50
2	Living room floor	\$262.50
3	Deck	\$100.00
4	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$1,250.00</b>

A written tenancy agreement was submitted. The tenancy started September 01, 2020 and was a month-to-month tenancy. Rent was \$2,750.00 per month due on the first day of each month. The Tenant paid a \$1,375.00 security deposit and \$1,375.00 pet damage deposit.

The Landlord testified that the tenancy agreement changed to a fixed term of one year and rent changed to \$2,600.00 per month.

The Tenant agreed rent was \$2,750.00 at the start of the tenancy but changed to \$2,600.00 per month.

The parties agreed the Tenant moved out of the rental unit July 20, 2021.

The parties agreed on the following. The Tenant provided their forwarding address to the Landlord on the Condition Inspection Report (the "CIR") on July 20, 2021. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree to the Landlord keeping the security and pet damage deposits.

The CIR was submitted and the parties agreed the details on it in relation to the move-in and move-out inspections are accurate.

The Landlord testified that the move-in CIR was provided to the Tenant in person a couple days after the inspection. The Tenant testified that they received the move-in CIR a couple days after the inspection by email.

The Landlord testified that their agent conducted the move-out inspection with the Tenant.

The Landlord testified that they believe the move-out CIR was provided to the Tenant in person on the day of the inspection. The Tenant did not know when they first received the move-out CIR and testified that they took screen shots of it. The Tenant testified that they received the move-out CIR by registered mail with the hearing package.

The Landlord submitted registered mail receipts with Tracking Number 037 on them in relation to service of the hearing package. I looked Tracking Number 037 up on the Canada Post website which shows the package was sent August 12, 2021 and delivered to the Tenant August 25, 2021.

***#1 Living room floor***

***#2 Living room floor***

The Landlord sought compensation for repairing a scratch or gouge on the living room hardwood floor caused by the Tenant. The Landlord submitted that the scratch is beyond reasonable wear and tear and is substantial. The Landlord acknowledged the rental unit is 15 years old and did have some wear and tear; however, submitted that the scratch devalued the property and required repair. The Landlord submitted photos of the scratch. The Landlord submitted two estimates for the cost of repairing the scratch, one for \$787.50 and one for \$262.50. The Landlord explained that the repair will happen in two stages. First, the damaged hardwood will be removed and replaced with hardwood from the closet. Second, new hardwood will be installed in the closet. The Landlord testified that they looked into their options for repairing the scratch and the option reflected in the quotes was less expensive than other options. The Landlord testified that the repair has not yet been done because they have been waiting for the outcome of this hearing.

The Tenant submitted that the scratch shown in the photos is not excessive or beyond reasonable wear and tear. The Tenant testified that there were some dings in the floor in the relevant area at the start of the tenancy. The Tenant submitted that the scratch did not result from negligence and occurred in the course of living in the rental unit. The Tenant submitted that it is difficult to tell from the photos what damage the Tenant did and did not cause. The Tenant submitted that the amount of compensation sought is excessive. The Tenant submitted that I should consider that the Landlord has not done the repairs yet and whether the scratch is beyond reasonable wear and tear if it did not require immediate attention.

### ***#3 Deck***

The Landlord sought compensation for paint damage and scratches on the deck of the rental unit. The Landlord testified that the deck was fully painted without any gouges at the start of the tenancy. The Landlord testified that the Tenant had dogs which caused numerous deep scratches to the deck. The Landlord testified that they sanded and painted the deck themselves. The Landlord submitted that the amount sought is fair for their work sanding and painting as well as the purchase of materials.

The Tenant denied that the deck was in good condition and fully painted at the start of the tenancy. The Tenant testified that there was no paint on the steps at the start of the tenancy. The Tenant submitted that the damage shown in the photos is obvious wear and tear given they had dogs. The Tenant submitted that there was no protective painting on the deck which led to further wear and tear. The Tenant submitted that the rental unit had significant wear and tear at the start of the tenancy and to note it on the CIR would have been excessive and not necessary.

### ***Documentary Evidence***

The Landlord submitted the following relevant documentary evidence:

- Photos of the living room and deck
- The CIR
- Repair estimates

## Analysis

### ***Security and pet damage deposits***

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits 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 security and pet damage deposits at the end of a tenancy.

Based on the CIR and testimony of the parties, I find the Tenant did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

Based on the CIR and testimony of the parties, I find the Landlord complied with their obligations under the *Act* and *Regulations* in relation to the move-in and move-out inspections. I do note section 18 of the *Regulations* which states:

18 (1) The landlord must give the tenant a copy of the signed condition inspection report...

(b) of an inspection made under section 35 of the *Act*, promptly and in any event within 15 days after the later of

- (i) the date the condition inspection is completed, and
- (ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the *Act*...

I accept that the Tenant was provided a copy of the move-out CIR in person on the day of the inspection because I did not understand the Tenant to dispute this. I understand the Tenant to not know when they first received the move-out CIR.

In the circumstances, I find the Landlord did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

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 Tenant's forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from July 20, 2021. The Application was filed July 27, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

### ***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 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, and

The meaning of “reasonable wear and tear” is set out in Policy Guideline 1 as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

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

**#1 Living room floor**

**#2 Living room floor**

The Tenant agreed with the move-in CIR and signed it. Section 21 of the *Regulations* states:

21 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.

I accept based on the CIR that the living room floor was in good condition on move-in. I do not find the testimony of the Tenant alone to be a “preponderance of evidence to the contrary” of what is indicated in the CIR.

I accept based on the CIR and photos that there was a scratch on the hardwood floor in the living room at the end of the tenancy.

I accept the Tenant caused the scratch shown in the photos.

Based on the size of the scratch, and depth of the scratch shown in some of the photos, I accept that the scratch is beyond reasonable wear and tear and therefore find the Tenant breached section 37 of the *Act*. However, I do note that the scratch is not particularly noticeable in the photos taken from further away.

I do accept that the Landlord has to repair the scratch due to the size and depth of it and therefore I am satisfied the Landlord has suffered some loss.

I am not satisfied based on the evidence that the loss to the Landlord amounts to \$1,050.00 for the following reasons. It is one section of the flooring that is scratched. Although the scratch is lengthy and does have some depth to it, the photos from further away show that it is not particularly noticeable. The Landlord acknowledged the house is 15 years old and I understand from this that the flooring is 15 years old. Pursuant to Policy Guideline 40, the useful life of hardwood floor is 20 years and therefore this flooring only has 5 years left in its useful life. I award the Landlord \$250.00 for the scratch on the floor because I find this accounts for the nature of the damage and the useful life of the flooring.

### **#3 Deck**

I have reviewed the photos of the deck submitted by the Landlord. I am not satisfied based on the photos that the damage to the deck is beyond reasonable wear and tear. The damage shown in the photos is the type of damage the Landlord should expect to occur on an outside painted wood deck with people living in the rental unit and the deck being exposed to the elements. I am not satisfied based on the evidence that the Tenant breached section 37 of the *Act*.

I dismiss this claim without leave to re-apply.

### **#4 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:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Living room floor	\$250.00
2	Living room floor	-
3	Deck	-
4	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$350.00</b>

The Landlord is entitled to \$350.00. Pursuant to section 72(2) of the *Act*, the Landlord can keep \$350.00 of the security and pet damage deposits. The Landlord must return the remaining \$2,400.00 of the deposits to the Tenant. The Tenant is issued a Monetary Order for \$2,400.00.

### **Conclusion**

The Landlord is entitled to \$350.00 and can keep this from the security and pet damage deposits. The Landlord must return the remaining \$2,400.00 of the deposits to the Tenant who is issued a Monetary Order in this amount. If the Landlord does not return the \$2,400.00, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: February 11, 2022

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Residential Tenancy Branch