



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by agents for both the landlord and tenant. Neither party raised any issues regarding the service of the notice of hearing documents or evidence.

I note that the landlord's total asserted value of damages and losses exceeds the \$35,000.00 limit that is allowed under the *Residential Tenancy Act*. However, the landlord was aware of this limitation and sought to proceed with the claim to a limit of \$35,000.00.

I advised both parties that this decision by the landlord would then be the final decision on these matters and the landlord would be barred from pursuing any further claim resulting from these issues either through the Residential Tenancy Branch or any other tribunal or court.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; the cost of repairs and cleaning of the rental unit; and liquidated damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 3, 2021 for a 3 year and 16 day fixed term tenancy beginning on May 15, 2021 for a monthly rent of \$10,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$5,250.00 paid.

The landlord submits the tenancy ended on October 31, 2021 after the landlord found the tenant had never actually occupied the rental unit but that he had someone else

move into the rental unit who had a dog. The landlord visited the property on August 10, 2021 and found a multitude of scratches and gouges in the hardwood flooring.

On August 11, 2021 the landlord issued a One Month Notice to End Tenancy for Cause. The parties met and agreed to mutually end the tenancy at a later date to allow for the occupant to find alternate accommodation.

The landlord seeks the following compensation:

Description	Amount
Repairs and partial replacement of Hardwood floors	\$25,578.00
Barbecue cleaning	\$388.50
Liquidated Damages	\$5,512.50
Lost Revenue	\$3,521.00
Total	\$35,000.00

The landlord submitted they had originally agreed on \$9,000.00 with the tenant's agent for the floor replacement. However, the landlord submitted that at that time they had not known the full extend of the damage or the requirements that would be necessary to have the floors repaired.

In support of the landlord's claim for floor repairs and barbecue cleaning, the landlord submitted a copy of a Condition Inspection Report completed at the start and end of the tenancy. The move in condition is recorded as "Brand new unit in good condition". The report records the condition at the end of the tenancy to include "rooftop BBQ dirty need deep clean"; floor in the entry room "4 dents are extreme wear mark" and "dog scratch entire floor stain in living room and kitchen". The tenant's agent signed off and agreed that the tenant was responsible for paint; floor damage and barbecue clean up.

The landlord also provided several photographs of the condition of both the floor and the barbecue. The landlord provided an estimate for the barbecue cleaning in the amount claimed.

The landlord has submitted 3 quotes for floor repairs but advises that none of the quotes was complete. One quote missed the bedrooms and while the quote states \$9,492.00 it should have been \$10,762.50. The second quote was \$11,497.50 but they missed the stairs and it was increased to \$13,597.50.

The landlord submits that once the tenant left and they determined some of the floor required replacement they obtained the 3rd quote in the amount of \$13,398.00. As such, the landlord averaged the first two estimates of \$13,597.50 and 10,762.50 for the repairs and added the quote for the replacement for a total claim of \$25,578.00.

The landlord relies on Clause 19 of the addendum to the tenancy agreement requires the tenant to pay \$5,250.00 plus tax as liquidated damages if the tenant is required to end the tenancy prior to the end of the fixed term.

The landlord submits that despite putting the rental unit on the market in September they had been unable to rent out the unit while the floors were in the condition they were and seek compensation for partial lost revenue in order to limit their claim to the maximum allowed under the jurisdiction of the *Act*.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* stipulates that 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
- b) Give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I am satisfied from the landlord's evidence that the damage to the flooring was extensive and that they have provide sufficient evidence to establish the requirement for both the repair and then the replacement of a section of the flooring. I accept the landlord's approach to establish the value is reasonable, however, I do not accept that the amount claimed should reflect an "average" of the two costs submitted.

Rather, if the landlord can have the work completed for a lesser amount, that is all the tenant should be charge. In addition, I note that while the landlord increased the lower quote from \$9,492.00 to 10,762.50 because the quote was for 1280 square feet and not the full 1500 square feet of the rental property; the landlord has not discounted this amount by the square footage that will be replaced. As the landlord increase the square footage by 220 square feet for the increase quote, I will use the same amount to reduce the total amount the landlord is entitled to for the refinishing of the floors that are being replaced.

Therefore, I order the landlord is entitled to \$9,492.00 for refinishing and \$13,398.00 for replacement flooring or a total of \$22,890.00.

I also find the landlord has established that the tenant failed to clean the barbecue and that the quote for cleaning is reasonable. I order the landlord is entitled to \$388.50 as claimed.

I am satisfied from the landlord's evidence that clause 19 of the addendum allows to charge the amount claimed. I am also satisfied that the costs were borne by the landlord as a result of the tenant's failure to comply with the terms of the tenancy agreement which resulted in the tenancy ending prior to the end of the fixed term. I order the landlord is entitled to the \$5,512.50 claimed.

I also am satisfied that the landlord took reasonable steps to re-rent the unit but was unable to do so for at least the month following the end of this tenancy and as such has taken reasonable steps to mitigate their losses and award the landlord with the amount claimed of \$3,521.00 for lost revenue.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$32,412.00** comprised of the amounts noted above and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$5,250.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$27,162.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 16, 2022

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Residential Tenancy Branch