



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DIVERSE PROPERTY MANAGEMENT  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S FFL

### 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) for a monetary order for \$982.00 for damages to the unit, site or property, for authorization to retain all or part of the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The hearing began on November 2, 2021. An agent for the landlord, YC (agent) and the tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires. The tenant confirmed that they had received and had the opportunity to review the landlord's documentary evidence. The agent confirmed that the landlord was not served with any documentary evidence. As the tenant was unable to provide evidence of service on the landlord, all of the tenant's documentary evidenced was excluded pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 3.5.

After 61 minutes, the hearing adjourned as additional time was necessary to consider the evidence from both parties. An Interim Decision was issued dated November 3, 2021, which should be read in conjunction with this Decision.

On March 10, 2022, the agent attended the reconvened hearing, and the tenant did not call into the hearing until 14 minutes after the 11:01 a.m. start time, as one minute is given to allow for all parties to listen to the 45-second RTB pre-recorded message about the hearing process. RTB Rules 7.1 and 7.3 apply and state:

### **7.1 Commencement of the dispute resolution hearing**

**The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.**

**7.3 Consequences of not attending the hearing**

**If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.**

[emphasis added]

Only item 1 was discussed at the first hearing and only the landlord presented their evidence. The second hearing was to begin with the tenant's response to item 1. Therefore, the tenant missed the opportunity to provide their response to items 1, 2 and 3 as the tenant did not attend the hearing until item 4 was already being presented by the landlord. Given the above, I find items 1, 2 and 3 were unopposed by the tenant pursuant to RTB Rules 7.1 and 7.3 described above. The tenant was present for items 4, 5 and 6 at the second hearing. The second portion of the hearing lasted a total of 43 minutes before concluding.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2016 and reverted to a month-to-month tenancy after December 30, 2017. The tenant's monthly rent began at \$910.00 per month and was due on the first day of each month. The parties agreed that by the end of the tenancy, monthly rent had increased to \$960.00 per month. The tenant paid a security deposit of \$455.00 at the start of the tenancy, which the landlord continues to hold. The security deposit has accrued \$0.00 in interest.

The parties agreed that the tenant vacated the rental unit on April 28, 2021. The landlord is seeking \$982.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpet cleaning (\$120.00) and suite cleaning (\$300.00)	\$420.00
2. Wall repair and paint	\$200.00
3. Cut lock from storage locker	\$40.00
4. Missing entry fob	\$100.00
5. Missing freezer part	\$42.00
6. Call out for repairs	\$80.00
7. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$982.00</b>

The parties agreed that the tenant provided notice to the landlord on March 8, 2021, that they would be vacating the rental unit on April 30, 2021. The parties agreed that the tenant provided a verbal forwarding address on April 29, 2021. The landlord filed this application on May 5, 2021, which is within the 15-day timeline provided under section 38 of the Act.

Regarding item 1, the landlord has claimed \$420.00, comprised of \$120.00 for carpet cleaning and \$300.00 for suite cleaning. The landlord submitted an invoice dated May 1, 2021, from a cleaning company that included the following details:

\$300.00 plus tax for "Move Out Cleaning; Washed blinds; vacuumed carpets; cleaned kitchen & bathroom; scrubbed tiles and grout; steam-mopped floor; Washed windows; scrubbed baseboards, doors, trim, washed walls. Cleaned light fixtures."

\$120.00 plus tax for "Deep scrubbing and cleaning carpets in bedroom and den; carpets were heavily stained."

The agent referred to 29 photos submitted in evidence. The photos show the following in no particular order:

- One of the photos show a dirty side of a stove.
- A bathroom floor photo does not show dirt as claimed in the photo description.
- A baseboard is dented, and a mark is showing.
- A close-up of blinds shows they are dirty.
- A baseboard was dirty.
- Holes were patched in the den.
- Debris behind stove.
- Dirty counter behind stove.
- Eight holes were patched in main living area.
- Seven holes were patched in laundry.
- A bag of dust/dirt from a first vacuuming.
- Large stain on bedroom carpet.
- Stain by bedroom closet.
- Stain in den (dark).
- More dust/dirt from second vacuuming.
- Dark red marks on bathroom cabinet
- Dirt on baseboards
- Dark marks on wall inside bedroom closet
- Staining on wall and baseboards including dirt and what appears to be dried pet urine.
- Dirt and debris from kitchen and bath in dustpan.
- A range hood that does not show as dirty as claimed in the photo description.
- Pet hair in the pantry.
- Patched wall in living room.
- Dirty windows outside (landlord's responsibility, which I will address later)
- A doorway photo that does not show anything obvious.
- A stain below bedroom window on carpet.
- A stain near a bedroom door.
- A stain in the den.
- Dirty water in sink from what is described as carpet cleaner water.

Regarding item 2, the landlord testified that although they spent \$500.00 to repair the walls and repaint, they are only charging the tenant \$200.00 for the large holes repaired only and is not charging the tenant for repainting.

Regarding item 3, the landlord testified that due to the tenant leaving their lock on the storage room, the landlord had to cut the lock and replace with their own lock at the cost of \$40.00.

Regarding item 4, the landlord testified that the tenant owes \$100.00 for an entry fob (Fob) that was not returned. The landlord testified that Fob 06895 was provided to the tenant when they moved in as the original Fob. The landlord stated that the tenant lost Fob 06895 and that the tenant paid for new Fob 56112. The landlord wrote on the tenancy agreement that the tenant returned Fob 56112 and was issued a new Fob 13767 on January 5, 2018. The tenant stated that Fob 56112 was returned as it stopped working. The landlord is claiming for Fob 13767 and testified it was not returned by the tenant at the end of the tenancy. The tenant testified that they did return Fob 13767. The landlord is seeking \$100.00 due to having to purchase a new entry Fob to replace Fob 13767 that was not returned by the tenant. The tenant claims they left the Fob on the counter of the rental unit as they left.

Regarding item 5, the parties reached a mutually settled agreement for this item, a missing freezer part. Although the landlord had claimed \$42.00 originally, the parties agreed on the tenant paying the landlord \$14.00. The parties reached this agreement pursuant to section 63 of the Act.

Regarding item 6, the landlord has claimed \$80.00 for the service call to install the freezer part, which is listed on the invoice submitted in evidence by the landlord. In terms of age of the fridge, the agent stated that building was 7 years old as of the end of 2022. The tenant testified that they believe the building is closer to 10-12 years old as their neighbour indicated that they had been there for 5 years before the tenant moved in, and 4 years had passed beyond that date.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

**Item 1** – I have carefully reviewed the photo evidence submitted by the landlord and although some photos were of no weight as I find they did not show what the photo was titled, I find that the majority of photos do support that the rental unit was not left in a reasonably clean condition. I have reached this finding as several photos show a lot of dirty and debris vacuumed after the tenant vacated, and the carpet cleaning water was

very dirty. Furthermore, I find the breached section 37(2)(a) of the Act, which applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean,** and undamaged except for reasonable wear and tear... [emphasis added]

I find the tenant's version of "reasonably clean" is not a reasonable standard and required additional cleaning to bring the rental unit to a reasonably clean standard. I find there was dirty baseboards with what appeared to be pet urine dried on the wall and the baseboards, in addition to a lot of dust. I have applied no weight to the outside window photo as outside windows are the landlord's responsibility to clean as per RTB Policy Guideline 1 – *Landlord & Tenant – Responsibility for Residential Premises*. Given the above, I find the landlord has met the burden of proof for carpet and suite cleaning in the total amount of **\$420.00** and I award that amount.

**Items 2 and 3** – As described above, I consider these items to be unopposed by the tenant as the tenant did not attend the hearing when these items were presented by the landlord. Therefore, I accept the landlord's undisputed testimony that the landlord only charged the tenant \$200.00 for repairs to the walls of the rental unit that exceeded normal wear and tear and that the landlord actually spent \$500.00 for repairs and paint. I find the landlord has not charged the tenant for repainting due to the length of the tenancy. I also find that the tenant neglected to remove their own lock from the storage unit, and that the tenant must pay the landlord \$40.00 as claimed to replace the tenant's lock with a new lock. Given the above, I grant the landlord **\$200.00** for item 2 and **\$40.00** for item 3, as I find the landlord has met the burden of proof as I am satisfied the tenant damaged the walls beyond normal wear and tear and failed to remove their own lock from the storage area.

**Item 4** – Regarding the missing key Fob of \$100.00, while the landlord testified the tenant failed to return Fob 13767, the tenant claims they left that Fob on the counter of the rental unit. Without photo evidence from the tenant to support that they returned the Fob on the counter, I find it is more likely than not that the landlord would not purchase a new Fob unless the Fob was not returned by the tenant. Therefore, on the balance of probabilities, I prefer the evidence from the landlord over the tenant and I find the landlord has met the burden of proof, which is only 51%, the civil standard being the balance of probabilities. Accordingly, I find the tenant breach section 37(2)(b) of the Act, which applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(2)** When a tenant vacates a rental unit, the tenant must

**(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.**

[emphasis added]

As a result of the above, I grant the landlord **\$100.00** for this item as claimed.

**Item 5** – The parties reached a mutually settled agreement for this item, the missing freezer part in the amount of \$14.00. The tenant has agreed to pay the landlord this amount. This settlement agreement was reached in accordance with section 63 of the Act. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of this portion of the landlord's claim.

**Item 6** – Regarding this item, as the parties reached a settlement on item 5, the missing freezer part, I find the landlord is entitled to the recovery of the cost of the service call. I will exercise my discretion not to apply depreciation to a service call, as I find the service call would have not been necessary, had it not been for the actions of the tenancy regarding the missing freezer part. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$80.00** as claimed as I find that depreciation does not apply based on the actions of the tenant.

**Item 7** – As the landlord's claim was mostly successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act.



Given the above, I find the landlord has established a total monetary claim of **\$954.00** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Carpet cleaning (\$120.00) and suite cleaning (\$300.00)	\$420.00
2. Wall repair and paint	\$200.00
3. Cut lock from storage locker	\$40.00
4. Missing entry fob	\$100.00
5. Missing freezer part	\$14.00 (mutual)
6. Call out for repairs	\$80.00
7. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$954.00</b>

As the landlord continues to hold the tenant's security deposit of \$455.00, pursuant to section 38 and 67 of the Act, I authorize the landlord to retain the tenant's full security deposit of \$455.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the balance owing of **\$499.00**.

**I caution** the tenant not to breach section 37 of the Act in the future.

**I ORDER** the parties to comply with their mutually settled agreement for item 5, pursuant to sections 62(3) and 63 of the Act.

#### Conclusion

The landlord's application is mostly successful.

The parties have been ordered to comply with their mutually settled agreement for item 5 as noted above.

The landlord has been authorized to retain the tenant's full security deposit of \$455.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$499.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to both parties.



The monetary order will be emailed to the landlord only for service on the tenant.

Should the landlord require enforcement of the monetary order, the tenant can be held liable for all costs related to enforcing the monetary order.

The tenant has been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 28, 2022

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Residential Tenancy Branch