



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BONAVIDA MANAGEMENT  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

This hearing dealt with the landlord's application, filed on August 16, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

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

The landlord's two agents ("landlord LM" and "landlord AW"), the two tenants ("male tenant" and "female tenant" and collectively "tenants"), and the tenants' two agents ("tenant NZ" and "tenant SZ") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 48 minutes.

All hearing participants confirmed their names and spelling. Landlord LM and tenant NZ provided their email addresses for me to send this decision to both parties after the hearing. Landlord LM and tenant NZ identified themselves as the primary speakers at this hearing.

Landlord LM and landlord AW confirmed that they are property managers, employed by the landlord company (landlord") named in this application, and that they had permission to speak on its behalf. Landlord LM confirmed that the landlord owns the rental unit and provided the rental unit address.

The two tenants confirmed that their sons, tenant NZ and tenant SZ, had permission to speak on their behalf at this hearing. Tenant NZ confirmed that both he and tenant SZ resided at the rental unit with the two tenants during this tenancy.

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* (“Rules”). All hearing participants 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. 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.

Tenant NZ confirmed receipt of the landlord’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord’s application. Tenant NZ confirmed that although the tenants received written evidence from the landlord on February 11, 2022, shortly before this hearing on March 1, 2022, the tenants were prepared to respond to it and proceed with this hearing.

Tenant NZ confirmed that the tenants submitted written evidence to the landlord and the RTB for this hearing. Landlord LM did not dispute or object to same. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ evidence. Landlord LM confirmed that the landlord was ready to proceed with this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to correct the spelling of the male tenant’s surname. Both parties consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

#### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Landlord LM and tenant NZ agreed to the following facts. This tenancy began on February 1, 2013 and ended on June 29, 2021. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,815.00 was payable on the first day of each month. A security deposit of \$745.00 was paid by the tenants and the landlord returned this deposit in full to the tenants. A move-in condition inspection report was completed for this tenancy.

Landlord LM confirmed that the landlord seeks a monetary order of \$1,757.28 and to recover the \$100.00 application filing fee, from the tenants. The tenants dispute the landlord's entire application.

Landlord LM testified regarding the following facts. The move-out condition inspection report was completed by the landlord on June 25, 2021. The tenants were present and "pretty much moved out," since no furniture was left. The tenants had not cleaned the rental unit yet but said they would come back to do so. The tenants never returned to clean the rental unit. The tenants refused to sign the move-out condition inspection report, which was completed with the landlord's building manager, who is now retired. The landlord provided an RTB-approved form to schedule the move-out inspection with the tenant, that would have been posted to their door on June 29, 2021, for an inspection on June 30, 2021. The landlord did not provide a copy of this form for this hearing. The landlord returned to complete a move-out condition inspection on June 30, 2021, but the tenants did not show up. The landlord seeks a monetary order of \$1,757.28 total. The landlord seeks \$728.28 to remove and replace a section of the carpet in the rental unit because after steam cleaning, there were stains that did not go away. The landlord seeks \$789.00 to replace the kitchen countertop, which was burned and stained by the tenants. The landlord seeks \$240.00 to clean the rental unit at a rate of \$20.00 per hour for 12 hours.

Landlord LM stated the following facts. The landlord's own employee completed the cleaning at the rental unit, but a pay stub was not provided, even though it could have been. The landlord provided three documents, including one quotation, one estimate, and one invoice for the carpet and countertop claims. The landlord did not provide

copies of any paid receipts for these claims. The landlord would have paid for the above work, by cheque at the end of the month to all contractors. The carpet was completed around July 15, 2021. The tenants caused severe damages beyond reasonable wear and tear, and they did not clean the rental unit before moving out. The landlord has provided photographs of same. The landlord returned the tenants' entire security deposit because the tenants said they would apply for double the value of their deposit, if the landlord did not return it. The most important issue is that the tenants refused to show up for the move-out condition inspection and the landlord had to "act fast" before new tenants moved in on July 1, 2021. The landlord had to bring the rental unit into "acceptable" condition for the new tenants. The landlord provided annual letters to the tenants about the cleaning the rental unit when inspections were completed during this tenancy. The landlord provided a guide for moving out and cleaning the rental unit to the tenants. The tenants could have "glided" out the appliances and cleaned behind them but failed to do so. The tenants only returned their keys to the landlord on June 29, 2021 but did not attend any move-out inspection.

Tenant NZ testified regarding the following facts. The tenants dispute the landlord's entire application. The landlord did an inspection of the rental unit before the tenants moved out, but the tenants were still cleaning and packing. The tenants did not sign the move-out condition inspection report because they had not moved out yet or finished cleaning. Many sections of the move-out condition inspection report were left blank by the landlord. The tenants did not receive an RTB-approved form to complete a move-out condition inspection from the landlord because they moved out on June 29, 2021. If the form was posted to the tenants' door on June 29, 2021, as claimed by the landlord, the tenants would not have received it. Three of the photographs that were provided in the landlord's evidence package were taken on June 15, 2021, approximately two weeks before the tenants moved out. The tenants cleaned everything in the rental unit before they moved out. The landlord's photographs do not show the final state of the rental unit after the tenants moved out. On June 29, 2021, the tenants returned their keys to the landlord's building manager. The landlord's building manager told the tenants that their professional cleaning was okay and did not tell the tenants that there would be any replacement or costs for the counter or carpet. The landlord replaced the counter and carpet without telling the tenants.

Tenant NZ stated the following facts. The landlord's own documents show that their quotations are from June 17, 2021 and June 23, 2021, before the tenants' tenancy ended. The tenants submitted photographs of the condition of the rental unit when they moved out and it was clean. The Residential Tenancy Policy Guideline states that if appliances are not on rollers, they are hard to move, or heavy, then the landlord has to

move them and clean behind them. This was the case at the rental unit, where some of the appliances were too heavy and the tenants could not clean behind them. The rental unit could have been dirty when the tenants moved in. There were no receipts for payments made by the landlord for any of their monetary claims. The documents could have been changed by the landlord. The tenants lived at the rental unit for 8.5 years and there were multiple inspections by the landlord during the tenancy, but no complaints were made by the landlord. The tenants were “shocked” with the costs that they were charged by the landlord after the end of their tenancy.

### Analysis

#### Legislation and Rules

The landlord, as the applicant, is required to present this application, including any evidence and claims.

The following RTB *Rules* 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’s two agents did not sufficiently present the landlord’s evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

During this hearing, the landlord’s two agents failed to properly explain and provide specific details about the landlord’s claims, amounts, and documents. This hearing lasted 48 minutes, so they had ample opportunity to present the landlord’s application. I provided them with multiple opportunities to present the landlord’s evidence and claims

and respond to the tenants' submissions. I repeatedly asked them if they had any other information to present during this hearing.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### Findings

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

It is undisputed that the landlord completed a move-out condition inspection on June 25, 2021, prior to the tenants moving out or returning the keys to the landlord on June 29, 2021. It is undisputed that the landlord failed to provide a copy of the RTB approved form for a final opportunity to schedule a move-out condition inspection, as evidence for this hearing. This form is required by section 17(2)(b) of the *Regulation*. The tenants claimed that they did not receive this form from the landlord, which the landlord claimed was posted to the tenant's door on June 29, 2021, the day the tenants moved out. Therefore, I find that the landlord failed to show that the tenants refused or failed to attend a move-out condition inspection.

The tenants disputed the landlord's entire application and claimed that they cleaned the rental unit sufficiently. The tenants claimed that they were not informed of any charges when they returned the rental unit keys back to the landlord's building manager on June 29, 2021. Landlord LM stated that the move-out condition inspection and report were completed by the landlord's building manager. However, the landlord's building manager did not attend this hearing to provide testimony regarding the above events.

I dismiss the landlord's entire application of \$1,757.28 without leave to reapply. This includes \$728.28 to replace and remove carpet, \$789.00 to replace the kitchen counter, and \$240.00 to clean. I find that the landlord failed all four parts of the above test.

The landlord did not submit any invoice or receipt for the \$240.00 for cleaning. During this hearing, landlord LM stated that the cleaning was done by the landlord's employee for 12 hours at a rate of \$20.00 per hour. Landlord LM said that she could have provided a paystub as evidence for this hearing, but the landlord failed to do so. There is no invoice to indicate if the above work was completed. There is no receipt to indicate if or when any payment was made by the landlord, or the method of such payment.

The landlord did not submit any receipt for the \$728.28 to remove and replace the carpet. The landlord provided an estimate and invoice, with balances due of \$2,913.12, to replace carpet in many different areas of the rental unit. The estimate is dated June 23, 2021, prior to the tenants vacating the rental unit. The invoice is dated July 14, 2021, after the tenants vacated the rental unit. There is no receipt to indicate if or when any payment was made by the landlord, or the method of such payment. The landlord has handwritten numbers on the above estimate and invoice, to indicate that the tenants were being charged 25% of the cost, for \$728.28, but did not explain why or how they came up with this number at this hearing.

The landlord did not submit any invoice or receipt for the \$789.00 to replace the kitchen countertop. The landlord provided a quotation, with a balance due of \$798.00. The quotation is dated June 17, 2021, prior to the tenants vacating the rental unit. There is no invoice to indicate if the above work was completed. There is no receipt to indicate if or when any payment was made by the landlord, or the method of such payment.

I find that the landlord had ample time from filing this application on August 16, 2021, to this hearing date of March 1, 2022, a period of approximately 6.5 months, to submit the above documents to support this application. The landlord submitted evidence as recently as February 2022, just weeks prior to this hearing, but failed to include the above documents. I find that landlord LM's assertion that the above work was "paid by cheque at the end of the month to all contractors" to be insufficient without documentation to substantiate same.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

The landlord's entire 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: March 01, 2022

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Residential Tenancy Branch