



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ZEN HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDL-S, FFL (Landlord)  
                                 MNSDS-DR, FFT (Tenant)

### **Introduction**

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed their application September 07, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To keep the security deposit
- For reimbursement for the filing fee

The Tenant filed their application September 16, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of the security deposit
- For reimbursement for the filing fee

A.A. and S.A. (the “Agents”) appeared at the hearing as agents for the Landlord. The Tenant appeared at the hearing and appeared for Tenant S.J. and Tenant A.W. 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 Tenant advised at the hearing that they are seeking return of double the security deposit.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Tenant confirmed receipt of the hearing package and evidence for the Landlord's Application and did not raise any issue with service.

The Agents testified that they did not receive the hearing package or evidence for the Tenant's Application. The Tenant testified that they served their materials on the Landlord by email September 24, 2021. The Tenant had submitted an email chain showing their materials were emailed to R.A. on September 24, 2021, after confirming with R.A. that they could use this method of service. The Agents confirmed R.A. could be served for the Landlord. In the circumstances, I found pursuant to section 71(2) of the *Residential Tenancy Act* (the "Act") that the Landlord was sufficiently served with the hearing package and evidence for the Tenant's Application by email on September 24, 2021. Given this, I heard the Tenant's Application.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. 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 caused by the tenant, their pets or guests to the unit or property?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?
4. Is the Tenant entitled to return of double the security deposit?
5. Is the Tenant entitled to reimbursement for the filing fee?

### **Background and Evidence**

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 01, 2020, and was for a fixed term ending August 31, 2021. Rent was \$5,300.00 per month due on the first day of each month. The Tenants paid a \$2,650.00 security deposit.

### ***Tenant's Application***

The Agents testified that the tenancy ended August 31, 2021. The Tenant testified that the Tenants moved out of the rental unit September 01, 2021.

The parties agreed the Tenants provided their forwarding address to the Landlord in writing September 01, 2021.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The parties agreed the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

A Condition Inspection Report (the "CIR") was submitted as evidence. The parties agreed the CIR is accurate as it relates to the move-in and move-out inspections.

The Tenant testified that they received the CIR at move-in although they do not know when or how. The Agents testified that the CIR was given to the Tenants in person on the date of the move-in inspection.

The parties agreed the move-out CIR was either given to the Tenants in person the day of the inspection or that the Tenants took a photo of the move-out CIR.

### ***Landlord's Application***

The Agents advised at the hearing that the Landlord is only seeking compensation for the following:

- Repair and painting of walls in the rental unit \$3,221.25
- Damaged dining room chairs \$1,135.68

### ***Repair and painting of walls \$3,221.25***

The Agents relied on photos in evidence to show there were marks on the walls, damage to the walls and holes in the walls of the rental unit at the end of the tenancy. The Agents testified that corners of doors and walls were chipped at the end of the tenancy. The Agents pointed to an estimate in evidence to show the cost of fixing the damage to the walls. The Agents testified that the rental unit was previously painted one year prior to the Tenants moving in.

The Tenant testified that it was clear at move-in that the rental unit had not been painted for a long period of time. The Tenant acknowledged there were some holes in the walls due to the Tenants and testified that they plastered and fixed the holes. The Tenant testified that they would have painted the areas they fixed if they had a paint match; however, the Landlord would not agree to this. The Tenant submitted that the Tenants did what they were required to do by fixing the holes they caused. The Tenant disputed that all of the damage shown in the photos submitted was caused by the Tenants and referred to the CIR. The Tenant submitted that I should rely on the CIR and not the photos.

In reply, the Agents testified that the photos only show damage done by the Tenants. The Agents pointed to sections of the CIR showing the Tenants caused damage to the walls of the rental unit. The Agents testified that the estimate submitted is only for the cost of fixing damage caused by the Tenants, not the cost to paint the entire rental unit.

### ***Damaged dining room chairs \$1,135.68***

The Agents testified that the Tenants left black and blue marks on the white dining room chairs in the rental unit as shown in the photos. The Agents confirmed the quote for replacing the chairs submitted is for different chairs and testified that they chose inexpensive chairs to replace the damaged chairs. The Agents testified that the chairs

in the rental unit were from 2016. The Agents referred to the CIR to show the dining room chairs were damaged.

The Tenant submitted that people sitting on the white leather chairs added up over time and the chairs were five years old. The Tenant submitted that the CIR addendum shows there were issues with the chairs at the start of the tenancy. The Tenant submitted that it is unreasonable for the Landlord to claim the full amount of replacing the chairs when there was already five years of wear and tear on the chairs.

## **Analysis**

### ***Tenant's Application***

#### ***Security deposit***

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

Based on the testimony of both parties and the CIR, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

Based on the testimony of both parties and the CIR, I find the Landlord complied with their obligations in relation to the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

I find the tenancy ended September 01, 2021, given this is the date on the move-out CIR.

Based on the testimony of both parties, I accept that the Tenants provided their forwarding address to the Landlord in writing September 01, 2021.

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 Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15

days from September 01, 2021. The Landlord's Application was filed September 07, 2021, within time. I find the Landlord complied with section 38(1) of the *Act* and therefore the Tenant is not entitled to return of double the security deposit.

In relation to the filing fee, I decline to award the Tenant the filing fee because there was no reason to file the Tenant's Application because the issue of return of the security deposit would have been dealt with on the Landlord's Application in any event and the Tenant is not entitled to return of double the security deposit.

### ***Landlord's Application***

### ***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...

***Repair and painting of walls \$3,221.25***

I accept that the rental unit was painted one year prior to the Tenants moving in because I find the Agents are in a better position to know this and I find it consistent with the issues noted on the move-in CIR in relation to walls and trim.

Based on the CIR, I accept that the Tenants caused the following damage to walls and trim in the rental unit:

- Door paint coming off in kitchen
- Patched holes and marks on the wall in the dining room
- Some damage in the master bedroom
- Damage to the walls and trim in the second bedroom

The difficulty here is that the CIR shows there was some damage to the walls and trim in the rental unit at the start of the tenancy and I cannot tell from the photos submitted what areas of the rental unit are shown in the photos such that I can confirm whether the photos show damage caused by the Tenants or damage that was there at the start of the tenancy. Further, it is difficult for me to tell from the CIR whether damage noted is reasonable wear and tear or beyond this. In the circumstances, I have considered notations on the CIR of "Fair" to be reasonable wear and tear and notations on the CIR of "Damaged" and "Poor" to be beyond reasonable wear and tear. Given this, I find the Tenants damaged the walls and trim in the master bedroom beyond reasonable wear and tear in breach of section 37 of the *Act*.

The Landlord submitted an estimate for repairs; however, it includes work which has not been shown to be the responsibility of the Tenants such as decks being cleaned and painted. Further, the estimate appears to be for work throughout the rental unit and not just for damage caused by the Tenants. I also find the estimate extremely high given I am only satisfied that the Tenants damaged the walls and trim in the master bedroom. I also note that RTB Policy Guideline 40 shows that the useful life of paint is four years

and the paint in the rental unit was two years old at the end of the tenancy. In all of the circumstances, I award the Landlord \$300.00 for damage done to the walls and trim in the master bedroom. I am satisfied based on the evidence provided that the Tenants caused at least \$300.00 worth of damage; however, I am not satisfied that the Landlord is entitled to more than this.

The Landlord is awarded \$300.00.

### ***Damaged dining room chairs \$1,135.68***

The Landlord submitted two photos of white leather chairs with staining on the seat which appears to be from people sitting on the chairs. I am not satisfied based on the evidence provided that the Tenants caused damage to the chairs that is beyond reasonable wear and tear because it appears the damage was caused by sitting on them, which is the point of chairs. Further, it was the Landlord's choice to put white leather chairs in the furnished rental unit and the type of damage shown in the photos is the type of damage the Landlord should expect on white leather chairs after more than five years of use. I am not satisfied the Tenants breached section 37 of the *Act* and dismiss this claim without leave to re-apply.

### ***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 compensation:

Item	Description	Amount
1	Repair and painting of walls	\$300.00
2	Damaged dining room chairs	-
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$400.00</b>

The Landlord can keep \$400.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining \$2,250.00 to the Tenants and the Tenants are issued a Monetary Order in this amount.



**Conclusion**

The Landlord can keep \$400.00 of the security deposit. The Landlord must return the remaining \$2,250.00 to the Tenants and the Tenants are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court 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: April 19, 2022

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Residential Tenancy Branch