



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-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 August 19, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To recover unpaid rent
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Landlord and Tenants 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 did not seek unpaid rent at the hearing.

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

The Tenants confirmed receipt of the hearing package and Landlord’s evidence and did not raise an issue with service.

The Landlord confirmed receipt of the Tenants’ evidence. The Landlord raised an issue about not being able to view two of the videos provided by the Tenants; however, I was also unable to view these videos and therefore this was a non-issue.

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 monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to keep the security or pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Replacement lights	\$59.09
2	Baseboards and labour	\$604.80
3	Flooring	\$30.86
4	Install floor, screen, light	\$2,150.40
5	Paint supplies baseboards	\$112.94
6	Paint for baseboards	\$106.30
7	Flooring	\$462.84
8	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$3,627.23</b>

A written tenancy agreement was submitted as evidence. The tenancy started April 01, 2021, and was for a fixed term ending March 31, 2022. Rent was \$1,750.00 per month. The Tenants paid a \$875.00 security deposit. The parties agreed the Tenants paid a \$875.00 pet damage deposit.

The Tenants testified that they moved out of the rental unit August 08, 2021. The Landlord testified that the Tenants moved out August 07, 2021.

The parties agreed the Tenants provided their forwarding address to the Landlord August 06, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security or pet damage deposits.

The Landlord testified as follows in relation to a move-in inspection. The Landlord asked the Tenants numerous times to do a move-in inspection. The Landlord did an inspection prior to the Tenants picking up the keys for the rental unit. The Landlord told the Tenants a Condition Inspection Report (the "CIR") was completed and asked when the Tenants could meet to go over it. The Landlord left a copy of the CIR at the Tenants' door for them. The Tenants said they would return the CIR to the Landlord but never did. The Landlord did not give the Tenants a final opportunity to do a move-in inspection on the RTB form. The CIR in evidence was completed without the Tenants.

The Tenants testified as follows in relation to a move-in inspection. The CIR in the Landlord's evidence was completed by the Landlord without the Tenants. The parties did not do a move-in inspection together. The Tenants did their own move-in inspection and their own CIR; however, the CIR was not submitted as evidence. The Landlord never asked for a CIR from the Tenants. The Tenants were not given two opportunities to do a move-in inspection. The Landlord did not speak to the Tenants about the CIR after April 07, 2021.

The Landlord testified as follows in relation to a move-out inspection. The parties did a move-out inspection August 07, 2021. The parties completed the CIR in evidence and both parties signed the CIR. On page 5 of the CIR in relation to repairs to complete, the Landlord wrote "none" and the Tenants added to this at move-out. The CIR was provided to the Tenants by registered mail September 11, 2021.

The Tenants testified as follows in relation to a move-out inspection. The Landlord was outside the rental unit during the inspection and the Tenants did the inspection without the Landlord. The CIR was completed by the Landlord and left for the Tenants to comment on. The Tenants did sign the CIR. The Tenants agree the Landlord provided the CIR by registered mail September 11, 2021.

**#1 Replacement lights \$59.09**

The Tenants agreed to pay this amount.

**#2 Baseboards and labour \$604.80**

Items #2 to #7 all relate to a fire that occurred in the rental unit, other than the screen and light issue noted in item #4.

The Landlord testified as follows in relation to the fire. The Tenants caused a fire in the rental unit which left a big burn mark on the laminate floor in the bedroom. It was not possible to replace only the burned flooring, the flooring in the entire room had to be replaced. The room is 15 feet by 15 feet.

The Landlord testified that the contractor who replaced the flooring could not re-use the baseboards because they had been torn up when they were removed and therefore new baseboards had to be installed.

The Tenants agreed they caused a fire in the rental unit and are responsible for the reasonable costs associated with this. The issues for the Tenants were the costs claimed by the Landlord. The Tenants testified that they agreed to pay \$1,320.00 for the flooring damage because this was the amount originally quoted by the Landlord in a text message at page 16 of their materials. The Tenants denied that they caused damage to the baseboards.

In reply, the Landlord testified that the \$1,320.00 quote was only for replacing the flooring and that this is basically what is claimed for the flooring replacement. The Landlord submitted that the cost claimed works out to be about \$1.50 per square foot.

**#3 Flooring \$30.86**

The Landlord testified that the contractor who replaced the flooring had to purchase an additional box of flooring because they ran out and that this is the cost of the additional box.

The Tenants testified that they got a professional quote for replacing the laminate flooring and it was for \$1.50 per square foot.

***#4 Install floor, screen, light \$2,150.40***

The Landlord testified that this item relates to the cost of removing the bedroom flooring when it was replaced. The Landlord testified that the baseboards had to be removed in order to remove the flooring.

In relation to the screen, the Landlord testified that the Tenants damaged the screen door in the rental unit such that it was bent out of shape and had a hole in it at the end of the tenancy. The Landlord referred to a video in evidence showing the screen was not damaged at the start of the tenancy. The Landlord testified that the pet damage deposit was kept for the screen damage.

The Tenants testified that there was a piece of the screen coming off at the start of the tenancy and through wear and tear it ripped further. The Tenants suggested that a gutter repair person who attended the property might have caused the damage to the screen. The Tenants disputed that their dog damaged the screen door.

In relation to the light, the Landlord testified that the light fixture came with three lights on one base and therefore the missing light could not be replaced, the whole fixture had to be replaced.

The Tenants disputed having to pay for installation of the light and submitted that the whole fixture did not have to be replaced.

***#5 Paint supplies baseboards \$112.94***

***#6 Paint for baseboards \$106.30***

The Landlord testified that the new baseboards had to be painted and the Landlord did this themselves to save money. The Landlord testified that items #5 and #6 relate to them painting the baseboards as well as a wall behind the baseboards because some paint came off when the contractor was removing the baseboards.

The Tenants questioned why they should pay for damage caused by the contractor.

***#7 Flooring \$462.84***

The Landlord testified that this is the cost of replacing the flooring in the bedroom due to the fire and referred to an invoice in evidence.

The parties submitted supporting evidence which will be referred to below as necessary.

### 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.

Section 24 of the *Act* states:

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) **the landlord has complied with section 23 (3) [2 opportunities for inspection]**, and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) **does not comply with section 23 (3) [2 opportunities for inspection]**,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 23(3) of the *Act* states:

(3) The landlord must offer the tenant at least 2 opportunities, **as prescribed**, for the inspection.

Section 17 of the *Regulations* states:

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant **by providing the tenant with a notice in the approved form.**

Based on the testimony of both parties, I find the parties did not do a move-in inspection together. The Landlord acknowledged they did not give the Tenants a final opportunity to do a move-in inspection on the RTB form. Given this, the Tenants could not have extinguished their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*. Further, the Landlord did extinguish their rights in relation to the security and pet damage deposits pursuant to section 24 of the *Act*.

Section 38(1) of the *Act* states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept that the Tenants moved out of the rental unit August 07, 2021 because this is noted as the move-out inspection date on the CIR.

I accept that the Tenants provided their forwarding address to the Landlord August 06, 2021 because the parties agreed on this.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from August 07, 2021 to repay the deposits or file a claim with the RTB against them. However, because the Landlord had extinguished their right to claim against the deposits for damage to the rental unit, the Landlord had to either claim against the deposits for something other than damage or return the deposits. At the hearing, the Landlord only claimed against the deposits for damage to the rental unit. The Landlord was not permitted to claim against the deposits for damage to the rental unit because their right to do so had been extinguished. Therefore, the Landlord had to return the deposits. Given the Landlord did not return the deposits, the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* states:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Pursuant to section 38(6) of the *Act*, the Landlord must pay the Tenants double the security and pet damage deposits which totals \$3,500.00. No interest is owed on the deposits.

The Landlord is still entitled to seek compensation from the Tenants and I consider that now.



## ***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 32 of the *Act* states:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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
- (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.

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 Replacement lights \$59.09***

The Tenants agreed to pay this amount and therefore the Landlord is awarded this.

***#2 Baseboards and labour \$604.80***

***#5 Paint supplies baseboards \$112.94***

***#6 Paint for baseboards \$106.30***

I am not satisfied based on the evidence provided that the Landlord is entitled to these amounts. Baseboards can be removed without damaging them. If the contractor damaged the baseboards when they removed them, this is not the responsibility of the Tenants. Nor is it the responsibility of the Tenants to pay for painting damage caused to the wall by the contractor. These claims are dismissed without leave to re-apply.

**#3 Flooring \$30.86**

**#4 Install floor, screen, light \$2,150.40**

**#7 Flooring \$462.84**

There is no issue that the Tenants caused a fire in the rental unit which damaged the floor. I accept based on the photos and video of the damage that the flooring in the entire room had to be replaced and I find it reasonable that the Landlord did this. I accept based on the invoices and receipts that the Landlord paid \$462.84 and \$30.86 for the laminate flooring. I also accept that the Landlord paid \$1,320.00 plus taxes, for a total of \$1,478.40, for installation of the flooring. The Tenants point to the text message from the Landlord stating that the flooring would cost \$1,320.00 to replace as showing that the Landlord is claiming more than necessary. The text messages are clear that the Landlord purchased flooring which cost just under \$500.00 and that the quote to install it was \$1,320.00, which is what the Landlord is claiming. I find the amount claimed by the Landlord reasonable and award the Landlord this amount which I find to total \$1,972.10.

Based on the invoice submitted by the Landlord, I find both the dining room and bedroom screens were replaced at the end of the tenancy and that this cost \$380.00 plus tax. I am satisfied based on the video submitted by the Tenants that both screen doors were undamaged at move-in. I accept based on the photo of the bedroom screen that it was damaged at move-out. I do not accept that the dining room screen was damaged. The Landlord stated that the screen was bent; however, the screen is not in the track in the picture and therefore I am not satisfied it was in fact damaged. I accept that the Landlord had to replace the bedroom screen. I award the Landlord \$212.80 for replacement of one screen as this is half the amount sought.

There is no issue that the Tenants caused damage to the light fixture in the kitchen as the Tenants agreed they did this. I accept based on the photo provided by the Landlord that the entire light fixture needed to be replaced because I accept that the Landlord could not simply replace one light on the three-light fixture. I accept based on the invoice submitted by the Landlord that replacing the light fixture cost \$60.00 plus taxes and I award the Landlord this amount being \$67.20.

**#8 Filing fee \$100.00**

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	Replacement lights	\$59.09
2	Baseboards and labour	-
3, 4 and 7	Flooring	\$1,972.10
4	Install screen, light	\$280.00
5	Paint supplies baseboards	-
6	Paint for baseboards	-
8	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,411.19</b>

The Landlord is entitled to \$2,411.19. However, the Landlord must return \$3,500.00 to the Tenants and therefore the \$2,411.19 is deducted from the \$3,500.00. Given this, the Landlord must return \$1,088.81 to the Tenants and the Tenants are issued a Monetary Order in this amount.

### **Conclusion**

The Landlord must return \$1,088.81 to the Tenants and the Tenants are issued a Monetary Order in this amount. This Order must be served on the Landlord and, 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: April 07, 2022

---

Residential Tenancy Branch