



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on October 18, 2021 seeking compensation for damages to the rental unit. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 3, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other in advance; on this basis the hearing proceeded as scheduled.

### Preliminary Matter – Landlord’s use of security deposit

In their evidence, the Tenant included the separate dispute resolution decision of November 5, 2021 wherein the Adjudicator awarded double the security deposit amount, at \$1,350.

The Tenant in their evidence provided a copy of their letter sent to the Landlord, dated December 3, 2021. They pointed out to the Landlord that they had not returned the security deposit and did not apply to retain the deposit by September 15, 2021; therefore, by law the Landlord owes double the security deposit amount. They referenced the earlier dispute resolution decision and demanded payment from the Landlord by December 16, 2021. In that matter, the Tenant applied to the Small Claims Court.

The dispensation of the security deposit was concluded with the Adjudicator's decision of November 5, 2021. The Landlord is precluded from applying the security deposit for any award herein, and they have no right to retain any further amount of that deposit as per the Monetary Order of November 5, 2021. They are legally obligated to pay the amount specified in that order and withholding it at this stage is in violation of the *Act*.

Herein I make my decision without any consideration of the Landlord's right to keep any part of the security deposit. This present decision is an entirely separate claim from the Landlord; therefore, I amend the Landlord's claim to remove any consideration of any part of the security deposit amount.

### Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

Both parties provided a copy of the tenancy agreement and, in the hearing, verified the details therein. The tenancy started on March 1, 2016, and over the course of the tenancy the rent increased from \$1,250 to \$1,350.

The Tenant stated there was no move-in inspection meeting at the start of the rental unit. Additionally, construction within the rental unit continued for approximately three months after they moved in.

The tenancy ended with the final date being August 30, 2021. According to the Tenant they gave notice to the Landlord 45 days in advance. They moved out 1 week prior to this final date. In the hearing the Tenant stated they cleaned the rental unit and left the keys with the Landlord's father. The Tenant also presented there was no final condition inspection meeting with both parties at the same time to inspect the rental unit.

The Landlord presented that the Tenant was the first to move in to the rental unit after their building of the house was complete.

In their evidence the Landlord included the final notice from the Tenant, dated July 15, 2021. This stated: "We will be leaving the property on August 31, 2021." Also: "We would also request you are present on the day we move out for the check-out inspection and for us to return the keys." The Tenant in that letter also made their inquiry on the Landlord's refund of \$600 that the Tenant paid for a new dishwasher.

According to the Landlord, toward the end of the tenancy, they requested entry to take pictures for the purpose of re-renting the unit. They only found out that the Tenant had left on August 30 and made a visit separately on their own on August 31 to inspect the rental unit. The Landlord stated in a written account: ". . . their Termination of Tenancy Notice included wanting to do a final walkthrough with us, so we waited the day they moved out to be notified when they were ready." The only communication that the Landlord received after this was the Tenant informing them that they dropped the keys off with the Landlord's father; therefore, they "left with no warning."

The Landlord also provided a copy of the text message from the Tenant dated August 30, notifying the Landlord: "just wanted to let you know we are fully out of the suite, it's all cleaned and ready to go!" In that message they notified the Landlord they gave the keys to the Landlord's father.

In the hearing, the Landlord recalled their messaging they had with the Tenant on July 26, when they inquired on a suitable time to take pictures to advertise the unit online. They explained in the hearing that this was to see the condition of the rental unit. In any case, from the Landlord's viewpoint the Tenant moved out, alternately, on August 25 and/or August 30, and the Landlord did not have the opportunity to schedule a final condition inspection meeting.

According to the Tenant, the Landlord "never asked to have a condition inspection meeting"; they were never given notice with showings. They maintained the Landlord knew about their early planned move-out, prior to the August 31 end-of-tenancy date. They made this clear to the Landlord on each occasion of the Landlord's showing to new prospective tenants. Though the Landlord was taking photos, "it was never brought to [the Tenant's] attention that the photos were for the condition inspection purpose."

The Tenant provided photos in their evidence, these are "pictures of the unit that were taken after the unit had been emptied and cleaned, ready for inspection". The Tenant

dated these photos as August 30, 2021. The Landlord pointed to these photos as “not detailed”.

The Landlord provided their own photos showing the state of the rental unit, noting these are dated and timed. These purportedly show damage to the baseboards, carpet damage, a cracked mirror, markings/holes on the wall, and a damaged brace for a window screen. For comparison, the Landlord provided “initial basement photos”, showing the state of the rental unit when it was newly built prior to this tenancy.

The Landlord’s claim is as follows:

#	Items	\$ claim
1	mirror replacement	210.00
2	carpet cleaning	68.25
3	baseboard repairs	283.50
4	painting	210.00
5	painting baseboards	157.50
4	drywall repairs to walls	210.00
Total		<b>1,139.25</b>

The Landlord pointed to specific drywall damage, being 6 holes left in the wall for the tv installation. This piece “has to be cut – it’s drywall.” Also, if there is a chip off the baseboard, new baseboard must be installed, and it must be painted. The 5-year-old paint has faded.

In response to specific items, the Tenant presented as follows:

- they noted the carpets were steam-cleaned
- their own photos from August 30 show no damage to the baseboards throughout the rental unit
- there are 6 holes in the wall, and possibly 1 or 2 areas of baseboards needing attention, yet the Landlord is claiming to paint for the whole rental unit

Though not present on their original claim for damages, the Landlord added one further amount for carpet replacement in one bedroom. This is \$1,095.02. On April 18, 2022, the Landlord submitted the receipt dated October 20, 2021 for this amount. The Tenant noted they discovered this piece of the Landlord’s claim “only a few days ago [i.e., prior to the hearing]”.

### Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

Regarding the carpet, I notice the single image provided by the Landlord shows some substance stuck to the carpet surface, and a second photo shows the carpet pulled back. I find some substance stuck to the carpet, in a very single isolated area, does not warrant carpet replacement. The Landlord did not properly amend their claim in total to add the value for carpet replacement though they had 6 months to do so. In sum, the Landlord did not provide enough evidence to show proof of the need for carpet replacement for damage beyond 5 years of reasonable wear and tear.

Though I do not grant compensation for carpet replacement, the Tenant did not provide evidence they undertook carpet cleaning on their own. For this reason, I award the cost of carpet cleaning, as claimed, to the Landlord.

The cracked bathroom mirror is captured in the photo also provided by the Tenant. That is something beyond reasonable wear and tear and positively represents damage

to the rental unit. I find the Landlord has proven the cost for the replacement thereof; therefore, I award this cost to the Landlord.

From the photos, it appears that the baseboard showed wear and tear in three distinct areas which I find reasonable after 5 years of this tenancy. I find the damage is reasonable wear and tear only and the Tenant shall not bear the expense for baseboard replacement or painting. I dismiss these pieces of the Landlord's claim.

The invoice the Landlord provided for painting within the unit shows "Paint two room living room and kitchen in basement". The need for painting in separate rooms is not shown in the Landlord's photos, and the invoice is non-specific. I dismiss this piece of the Landlord's claim because I am not satisfied the damage/need for painting is established.

I grant the Landlord has established there was damage to the drywall in separate areas within the rental unit. The photos show damage beyond reasonable wear and tear; for this reason, I award the amount claimed by the Landlord here.

I find the Landlord spent an inordinate amount of time settling matters regarding this tenancy. They have denied the Tenant's rightful return of the security deposit to them, forcing the Tenant's hand in a small claims action to recover that amount. The Landlord mismanaged this tenancy from the beginning in not covering the simple steps of having Condition Inspection Reports in place, precisely for this purpose. For these reasons, I dismiss the Landlord's claim to the Application filing fee.

### Conclusion

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$488.25 as payment of the incidental damages to the rental unit. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. The Landlord must not retain this money from the security deposit they have illegally withheld to this time. Should the Tenant fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will 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 s. 9.1(1) of the *Act*.

Dated: May 16, 2022