



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, FFL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant AF and the landlord both attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged receipt of the landlord's Notice of Dispute Resolution Proceedings package and evidence; the landlord acknowledged service of the tenant's evidence. Neither party had concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issue

The landlord provided additional evidence to the Residential Tenancy Branch the day before the hearing and did not serve the tenant with that material at least 14 days prior

to the hearing. As the landlord's evidence was not served or uploaded in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure the landlord's late evidence was not considered in this decision.

Issue(s) to be Decided

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

Can the landlord retain the tenants' security deposit or pet damage deposit?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The following facts are agreed to:

The rental unit is the main area of a townhouse. The tenancy began in October 2018 and the landlord was represented by a property management company at the commencement of the tenancy. Rent was set at \$1,500.00 per month, payable on the first day of each month. A security deposit and pet damage deposit totalling \$1,500.00 was collected by the landlord's agent which is held by the landlord as of the date of this hearing. A condition inspection report was done with the tenants and the property manager took several photos of the rental unit on the day the condition inspection report was filled out and signed.

The tenants ended the tenancy by serving the landlord with a one month notice to end the tenancy on August 25, 2021. The landlord acknowledges receiving the notice which provides the tenants' forwarding address and an effective (move-out) date of September 30, 2021. The parties agree that the landlord and the tenants conducted a condition inspection report on September 30<sup>th</sup>.

The landlord gave the following testimony. The tenants did not sign the condition inspection report in the spot where they are to either agree to or deny the damage as

alleged by the landlord on the report. At the hearing, the landlord acknowledged the tenants put their initials on the back of the document below their statement that they disagreed with the landlord's assessment of damages. The landlord testified that he didn't provide the tenants with their copy of the condition inspection report until he provided it as evidence together with the Notice of Dispute Resolution Proceedings. The landlord testified that he sent the condition inspection report on October 18, 2021 as part of his evidence package by email.

The landlord alleges the tenants left the rental unit unclean at the end of the tenancy. He also alleges that there was damage to the walls, the bathroom, and the floor vents. Lastly, the ducts were excessively dirty, the weatherstripping was damaged and the kitchen range was scratched. Each of the issues identified were listed a monetary order worksheet and both the landlord's and tenant's submissions on the items will be addressed later in this decision.

The tenant gave the following testimony. The tenancy lasted approximately 3 years. The landlord sought 4 inspections during their tenancy, the last one in July 2021. The landlord did not notify the tenants of anything requiring their attention and the landlord did not complain about anything in either of the inspections made during the tenancy.

In June 2021, the landlord's property manager quit, and the landlord commenced self-managing the rental property. The tenants decided to leave the property after the landlord presented them with a modification to their tenancy agreement that they disagreed with.

The tenant acknowledges she received the condition inspection report as evidence from the landlord, however the copy she received was missing the notation made on the back where she denies the damage as alleged by the landlord. She had taken a picture of the condition inspection report as proof of her signing the back and provided it as evidence for this hearing.

On August 26<sup>th</sup>, the landlord provided the tenant with the inspection report done in July 2021 and told the tenants not to do any of the repairs to the rental unit themselves. During the hearing, the tenant directed my attention to the August 26<sup>th</sup> email from the landlord. The tenant submits that the landlord did not allow them to use the services of their own contractor friend to repair the damage as alleged by the landlord, thereby denying them the opportunity to save the fees charged by the professionals quoted by the landlord.

For the hearing, the tenant provided a written response and provided some testimony regarding the items listed on the landlord's monetary order worksheet and asked that she adopt the arguments presented on pages 7 to 11 of her 172-page evidence package. The tenant's testimony and written submissions are incorporated together, below.

Both the landlord's and tenant's submissions regarding each of the items of the landlord's monetary order worksheet are presented together, although testimony was taken at different times during the hearing.

1. Cleaning invoice: \$147.00

Landlord: There was dog hair left throughout the entire unit. Cleaners were hired to clean the kitchen and bathroom. The unit was not habitable, including the bathroom. There was dog hair inside the refrigerator. The unit was not up to the standard expectation for move out.

Tenant: they meticulously cleaned the entire unit before moving out and took photos of the unit on the last day of their tenancy. The kitchen and bathroom were not dirty and there is no hair or dirt inside the fridge or in the bathroom as the landlord claims.

2. Duct cleaning: \$367.45

Landlord: the ducts were filled with dirt, debris and dog hair at the end of the tenancy. The landlord provided a photo of some of the dirt seen in the ducts.

Tenant: They had vacuumed the ducts as far down as the vacuum would allow. The responsibility to clean the ducts falls upon the landlord, not the tenant.

3. Drywall repair: \$945.00

Landlord: according to the condition inspection report done at the commencement of the tenancy, there was no drywall damage. After the tenancy, there is drywall damage done by the tenants and the landlord noted it in the move-out condition inspection report.

Tenant: the rental unit had pre-existing drywall damage and points to the photos taken by the property manager in 2018 as proof of the existing damage. The landlord also did not provide the tenants with an opportunity to fix any damage allegedly done by the tenants and they were specifically told not to repair nail holes by the landlord.

4. Bathroom skylight: \$876.75

Landlord: There was excessive moisture in the ceiling from not using the bathroom fan while showering or bathing. The landlord provided a quote from a home renovation company stating the cost to repair is \$876.75.

Tenant: They used the bathroom fan every time they took a shower or bath. The bathroom has an automatic humidity indicator which turns the fan on if humidity exceeds 40%. In the skylight area, there was also pre-existing moisture damage from before they moved in.

5. Damaged Weatherstripping \$131.45

Landlord: The house was built in 1997, he purchased it in 2017 and does not know if the weatherstripping he is claiming for is original to the house. The tenants' dog scratched the weatherstripping, damaging it and it needs to be replaced.

Tenant: the weatherstripping was not new when they moved in. They allege that it was simply old and brittle and any damage to it can be attributed to regular wear and tear.

6. Front panel control on gas stove: \$318.55

Landlord: There is a deep gouge scratched on the panel of the gas stove that was not there prior to the tenancy. The stove was purchased in November 2017 and was less than a year old when the tenancy began. The landlord has not replaced the scratched panel.

Tenant: there was pre-existing damage and wear on the stove and point to the photos taken by the property manager in 2018 as proof. Any scratches on the stove were not done deliberately and were the result of regular wear and tear.

7. Floor registers (x 4): \$35.18

landlord: he does not know if the floor registers were original to the house from 1997 or if they were replaced by the previous owner. Either way, they are now damaged after being either walked on or having furniture placed on the.

Tenant: The floor registers were original to the 23-year-old house and were in poor condition at move in. The original vents were cleaned before moving out.

### Analysis

Dealing first with the landlord's claim to retain the tenant's security deposit and pet damage deposit.

The landlord and tenant conducted a move out condition inspection report at the end of the tenancy in accordance with section 35 of the *Act*. Under section 36(2) of the *Act* and 18(1) of the *Regulations*, the landlord is required to provide a copy of the condition inspection report to the tenant promptly and in any event, 15 days after the date the condition inspection report is completed and the date the landlord receives the tenant's forwarding address in writing.

The landlord acknowledges receipt of the tenants' forwarding address with their notice to end tenancy at the end of August, a month before the tenancy ended on September 30<sup>th</sup> (the same day as the condition inspection report on move out). Accordingly, the landlord's last day to serve the tenants with their copy of the condition inspection report was October 15<sup>th</sup>. The consequence for not giving the tenant a copy of the condition inspection report falls under section 36(2). The landlord's right to make an application for dispute resolution against the deposits is extinguished and the landlord must return their deposits within 15 days.

Section 38(6) states that if the security deposit and pet damage deposit are not returned within the 15 days, (the only option available to the landlord once the right to claim against the deposits is extinguished) the landlord must pay the tenant double the security deposit, pet damage deposit or both.

The landlord testified that he didn't provide the tenants with their copy of the condition inspection report until October 18<sup>th</sup> when it was emailed as part of the evidence package together with the Notice of Dispute Resolution Proceedings. In accordance with section 44 of the *Regulations*, the condition inspection report is deemed received 3 days later, on October 21, 2022.

By failing to provide the tenants with their copy of the condition inspection report within 15 days after the tenancy ended and the date the landlord was provided the tenants' forwarding address, the landlord's right to claim against both deposits was extinguished and the landlord must repay the both the tenants' security deposit and pet damage deposit, doubled. The tenants are entitled to a monetary order in the amount of \$3,000.00.

Turning next to the landlord's claim for compensation.

1. cleaning

Section 37(2)(a) states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).** (emphasis added)

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness or move into the unit himself, that cost is the responsibility of the landlord.

I have reviewed the photographs provided by the landlord to substantiate his cleaning claim together with the tenant's photos taken at the end of the tenancy. I find that the rental unit was reasonably clean at the end of the tenancy. There is insufficient evidence before me to establish that the condition of the unit suffered from anything more than reasonable wear and tear after a 3-year long tenancy in a 27 year old house. I dismiss the landlord's claim for cleaning.

2. Duct cleaning

PG-1 states the following:

**FURNACES**

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

As the policy guideline states, the landlord is responsible for cleaning the heating ducts and servicing the furnace, not the tenant. As such, the landlord's claim for furnace cleaning is dismissed.

### 3. Drywall repair and bathroom repair (4)

I have reviewed the photos taken at the commencement of the tenancy by the property manager, the landlord's agent. I note that the condition of the walls was similarly imperfect as they appear to be in the photos provided by the landlord in his photos taken at the end of the tenancy. I also compared the photos provided by the tenants taken at the end of the tenancy and find that the tenants did not do any damage to the drywall beyond what a rational person would determine to be more than reasonable wear and tear. PG-1 describes reasonable wear and tear as a natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I find the landlord has not provided sufficient evidence to satisfy me that the wall damage he claims was caused by anything other than natural aging. I dismiss the landlord's claim for drywall repair and bathroom wall repair.

### 1. Weatherstripping

Policy Guideline PG-40 [Useful life of building elements] was created to provide guidance to parties in understanding the issues likely to be relevant in dispute resolutions. It states:

#### **Damage(s)**

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The useful life of a waterproof sealer, according to PG-40 is five years. Even if I were to find that the damage to the weatherstripping occurred due to extraordinary use by the tenants or their pets, I must consider the age of the weatherstripping in awarding



damages. While the landlord does not know the exact age of the weatherstripping, I have examined the photos of it, and I determine that the age exceeds five years. As such, I find the weatherstripping has exceeded its useful life and I dismiss the landlord's application to have it replaced at the tenant's expense.

## 2. Stove panel

Once again, I look to section 37 which states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I have examined the photos of the "deep gouge" as alleged by the landlord and I do not find the damage to be anything more than superficial. I am not satisfied the damage constitutes a failure to comply with section 37 of the *Act*. I find the scratch is reasonable wear and tear and I dismiss this portion of the landlord's claim.

## 7. Floor Vents

PG-40 does not provide a useful life for plastic floor vents, so determine the useful life of a similar item, furniture, which has a useful life of 10 years. The landlord did not know the age of the floor vents, so I determine the age of the vents to be in excess of 10 years, based on the photos provided. Likely, these are the original floor vents installed when the house was built 27 years ago. I find the vents have exceeded their useful life and I dismiss the landlord's claim seeking replacement at the tenants' expense.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

## Conclusion

Pursuant to section 38, I award a monetary order in the tenants' favour in the amount of \$3,000.00.

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: May 27, 2022

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Residential Tenancy Branch