



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL, FFL  
                             MNDL, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on May 17, 2022 concerning 2 applications made by the landlord, both claiming monetary compensation for damage to the rental unit or property and to recover the filing fees from the tenants for the cost of the applications.

An agent for the landlord and an agent for the tenant attended the hearing, and the tenants' agent advised that the tenants were enroute to Europe and had requested an adjournment from the landlord, but the request was ignored. The tenants' agent sought an adjournment at the hearing, submitting that the landlord was given 2 adjournments prior.

The landlord's agent did not oppose the adjournment, and I adjourned the hearing to June 8, 2022 at 1:30 p.m. and my Interim Decision was provided to the parties.

During the course of the first day of the hearing, the landlord's agent withdrew the first claim made submitting that the claims are the same except the names of the tenants are corrected in the second claim. Therefore, the application made by the landlord on October 5, 2021 is dismissed without leave to reapply. The application made by the landlord on November 12, 2021 is the subject of this hearing.

On the second day of the hearing the landlord was represented by an agent, along with an observer. One of the tenants (AJW) also attended. The parties each gave affirmed testimony and were given the opportunity to question each other. No issues with respect to the exchange of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision. It should also be noted that the tenants'

evidentiary material is contained in the dispute file that the landlord has withdrawn, and I consider that evidence to form part of this hearing.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?

Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on May 1, 2013 and expired on April 30, 2014, after which it was renewed for a tenancy starting May 1, 2017 to April 30, 2018. The tenancy then reverted to a month-to-month tenancy which ultimately ended on December 31, 2020. Rent in the amount of \$2,300.00 was payable on the 1<sup>st</sup> day of each month, which was increased to \$2,568.00 per month commencing May 1, 2017. There are no rental arrears. On April 15, 2013 the landlord collected a security deposit from the tenants in the amount of \$1,150.00, all of which has been returned to the tenants, and no pet damage deposit was collected. The security deposit was returned to the tenants along with the landlord's evidence for this hearing. The rental unit is an apartment in a strata containing about 350 units in total. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the landlords had filed an application with the Residential Tenancy Branch and a hearing was held on June 4, 2021. The tenants had been provided with a package, but the tenants claimed they didn't receive it. Another hearing was held in September, 2021 wherein the landlord was ordered to return the security deposit to the tenants and the landlord's application was dismissed with leave to reapply. This is the landlord's new application.

A move-in condition inspection report was completed at the beginning of the tenancy on May 1, 2013, and the landlord's agent assumes that the tenants were there. A move-out condition inspection was scheduled for January 22, 2021 but the tenants were delayed, and the landlord's agent had to show other units, so the move-out condition inspection report was completed in the absence of the tenants. Copies of the reports have been provided for this hearing. The landlord did not give the tenants a second opportunity to schedule the move-out portion of the report.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$11,019.21:

- \$100.00 for strata move-out fees;

The tenants knew the strata charged a move-out fee because the tenant was dealing with the concierge, and the Form K states that the tenant is to pay it. Each tenant has to book an elevator with the concierge. The tenant didn't pay it and the landlord paid it to the strata. No receipt has been provided for this hearing.

- \$210.00 for cleaning service;

When the tenants left the rental unit it was not cleaned and the landlord obtained the services of a professional cleaning company in February. The landlord has provided an Invoice #2146 from a building company (hereafter referred to as the main contractor) dated 21-01-25 showing a number of services: \$367.50 for patching and fixing wall holes; \$2,705.85 for replacing 4 windows and a bathroom mirror; \$157.50 for a baseboard heater and \$210.00 for cleaning. A second Invoice, containing the same invoice number and dated 21-01-25 has also been provided which shows additional services provided: \$3,675.00 for painting walls and doors and baseboard; \$367.50 for patching and fixing wall holes; \$2,705.85 for replacing 4 windows and a bathroom mirror; \$378.00 for Electrical (lightings, plugs, baseboard heater); \$210.00 for cleaning; and \$79.44 for material.

The landlord's agent testified that it was not possible to show the rental unit to prospective tenants due to its condition. The landlord hired another cleaning company, who charged \$346.50, and an invoice #100734 dated 03/16/2021 for a move-out clean, sticker removal, and floor detailing has also been provided for this hearing. It contains an address and unit number of the unit the services were provided to.

- \$150.00 to remove and dispose items from a locker room;

The landlord's agent testified that the tenants left 3 car tires in the locker room and the tenants were offered time to retrieve them but never the tenants never returned. An Invoice dated February 15, 2021 has been provided for this hearing which totals \$141.75 including GST. The locker room is in a common area and the tenants had a key which the landlord's agent asked the tenants to leave with the concierge. Only those who had a fob and lived in the building would have access. Only 1 storage area belongs to each unit, which is assigned, and each tenant would put their own lock on it.

- \$378.00 for repair to baseboard heater, light bulbs, plus repairs;

The Invoice #2146 also contains an amount of \$378.00 for Electrical (lightings, plugs, baseboard heater); but the landlord claims \$150.00.

- \$2,705.48 for window/mirror replacement;

Four windows and a bathroom mirror were damaged, and the landlord's agent testified that it was shocking to see the damages during the move-out condition inspection. An Invoice #107278 dated 02/18/2021 has been provided for this hearing totaling \$2,489.04. The glass company was appointed by the main contractor to deal with the windows; some the contractor would do, and others he'd appoint.

- \$367.5 for wall repairs and patching holes;

The same invoice #2146 includes the services.

- \$2,772.50 for blind replacement;

The blinds were not working properly during the move-out condition inspection and were dirty. The cost would be almost same amount for cleaning as replacement so the landlord decided to replace blinds.

- \$3,665.83 for a new oven;

The landlord replaced the dishwasher and freezer as well. The range glass inside was broken and missing a piece. Photographs of all 3 appliances have been provided for this hearing and the landlord's agent testified that the owner replaced all appliances. The building was built in 2000 and appliances were about 20 years old. An Invoice dated Feb 12, 2021 has been provided for this hearing.

- \$669.90 for plumbing.

An invoice dated 2/9/21 has been provided for this hearing for: "replaced the fill valve and flapper in both toilets; replaced the bathtub showerhead; cleared all drains; replaced the ensuite bath plug; removed the screw & debris from the garburator; resecured all loose trim on all the faucets." The landlord's agent testified that the tenants were responsible for cleaning drains during tenancy as well as the garburator.

Numerous photographs have also been provided for this hearing.

The landlord's agent also testified that the rental unit was not painted during the tenancy.

During the tenancy the rental unit was inspected by the landlord once per year, except during COVID, but the landlord's agent does not know when the last inspection took place other than at move-out.

When asked why the tenant was provided with multiple invoices from the same service provider with 3 different amounts from each hearing, all being Invoice #2146 dated January 25, 2021, the landlord's agent testified that the landlord was supposed to remove some items from the first package and didn't want to charge the tenants for painting. All invoices were provided to the tenants but the landlord didn't charge all of them to the tenants. The company also appointed a glass company to deal with the windows; some the contractor would do and other work was appointed to a subcontractor, and may have received payment in advance.

The landlord's agent had a conversation with the strata manager who said to go ahead and replace windows, and said that as long as the work was done professionally it would be okay even though windows are a part of the strata envelope and work is not permitted on the envelope without permission from the strata. The landlord has worked with them before.

The tenant also asked the landlord's agent about the Invoice dated January 25, 2021 which includes installation for windows, but the glass company invoice charged to the contractor is dated February 18, 2021, and how the main contractor would have a charge prior to the work being completed. The landlord's agent replied that they may have received payment in advance.

**The tenant** testified that when the tenancy started, it was with the tenant's current wife and her sister. In 2017 the tenant got engaged and his fiancé's sister moved out; the tenants got married and the tenant took his wife's name.

This is the 3<sup>rd</sup> Arbitration hearing. Evidence wasn't served properly for the first hearing and the landlord was given another chance with strict rules. Registered mail was not delivered, and the mail was shown to be undelivered and more time was given.

At the second hearing, the landlord gave evidence that was supposed to be given 14 days prior to the hearing. The tenant was given evidence at the last minute for a large amount, but only receive 13 pages. The landlord said they didn't think the tenants would pick it up and the cost was too much. The landlord could not prove that it was all provided, so the landlord withdrew the claim.

The landlord didn't return the security deposit to the tenants in a timely manner, and the tenant called the landlord's agent stating that the tenant would be applying for a Court order. The tenant received the security deposit and thought it was over. The tenant left Canada and his brother advised that the tenants had been served again.

Everything changed; the dollar amount in the invoices, and the tenant called vendors but no one was willing to talk about them. The tenant recorded a call with the contractor for Invoice #107278, and was told that the company doesn't do windows. The glass company only had a purchase order and quote, but no one made a purchase.

The cleaning invoices don't make sense. The contractor was supposed to be responsible for cleaning after renovations were done, not the tenant.

The tenant told the owner that the appliances were in poor condition during the tenancy and the owner asked for a place that would give a good price, and the tenant also assisted the owner with renovations. The owner was thankful for the tenant's help. It is a 20 year old building.

The plumbing invoice provided by the landlord demonstrates wear and tear, not negligence. The tenant was there for 8 years and never saw a plumber.

The tenant also testified that no apartment building has a common space for storage. The move-out condition inspection report states that the tenant was to pick up an additional fob and key set with the locker at the concierge. The keys were not in the tenants' possession. The rooms had been broken into so the tenants didn't ever use the storage space.

The tenant also testified that the tenants' evidentiary material includes the tenant calling the strata and going to Court Registries showing non-stop cases in the Courts and in Arbitration regarding faulty windows. The building envelope had an issue where a gap between the windows expands the glue and causes cracks. It took the tenant months talking to people, and the landlord company was aware of it having been to Court. It is not the tenant's responsibility. The strata is also well aware of it. Witnesses were at other hearings between the parties, but couldn't continue to attend again, but have provided statements.

Some of the photographs provided by the landlord don't even look like the rental unit that the tenants rented. The landlord company manages hundreds of buildings, and some of the invoices provided by the landlord don't say what the address was that was serviced; perhaps they were for another tenancy.

The cleaner is not a company, but a random resident. The GST registration numbers printed on the invoice are not valid.

Further, the Invoice for the second cleaner contains no unit number on the copy provided to the tenant dated February 18, 2021. The Invoice provided to the tenant by the landlord

as evidence is marked Invoice #100818, not #100734 as stated by the landlord's agent. That is the tenant's concern every time the parties go to arbitration; the evidence of the landlord changes.

There are no exceptions, to move out, the tenants call the concierge who takes the money and then books the elevator. The attendant ensures that the elevator isn't damaged. If the landlord says there was no attendant, then there is no fee. Therefore, it must have been booked if there was a fee to the landlord.

The building is over 20 years old and the blinds had never been cleaned. The tenant claims normal wear and tear, not negligence. Also, the garburator was never serviced.

The landlord also testified that the tenants were overholding by not moving out earlier, which is not true. The tenants obtained permission from the owner and the landlord's agent.

#### SUBMISSIONS OF THE LANDLORD:

The photographs speak for everything. The windows were damaged from the inside, not the outside. The building manager was brought to the unit, and his opinion was that something was hit against the windows from the inside.

The tenants received a locker room at the beginning of the lease which is mentioned on the move-in condition inspection report.

#### SUBMISSIONS OF THE TENANT:

The parties have been in this dispute for almost 2 years, and issues of evidence are constant, and the failure to provide evidence. The tenant has spoken to experts and evidence has been provided.

The tenant also asked for proof that the photographs are for the rental unit, but none has been received. The Invoices are fishy.

#### Analysis

Where a party makes a claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The first red flag for me is that the landlord did not offer the tenants a second opportunity to schedule the move-out condition inspection as required by law. The landlord's agent testified that the landlord's agent had to show other units so the inspection was done in the tenant's absence. I also think that corroborates the tenants' testimony that the landlord company has hundreds of rental units.

The landlord has not provided any evidence that the landlord has paid the \$100.00 fee to the strata for a move-out fee. Therefore, I find that the landlord has failed to establish elements 1 or 2 in the 4-part test.

The landlord has provided a number of Invoices, which do not match the Invoices that the tenant was provided with. The landlord has uploaded evidence which includes 2 Invoices from the same supplier/service provider, both with the same Invoice number and both dated 21-01-25. One includes \$3,675 for painting walls and doors and baseboard, and material for \$79.44 which is not included in the other.

The landlord has also uploaded Invoice #100734 issued on 03/16/2021 for the second cleaning which says that the move-out clean and floor detailing was completed on 02/11/2021. The tenant's testimony is that the one provided to the tenant does not contain a unit number and is dated February 18, 2021 with Invoice No. 100818. I find that to be a fatal flaw in the landlord's evidence and testimony, and I dismiss the landlord's claims of \$210.00 and \$346.50 for cleaning.

With respect to removing 3 car tires from the locker area, the tenant testified that due to previous break-ins, the tenants never used the locker area. The condition inspection reports contain a space for CAR STALL/LOCKER, and no notations appear on the move-in portion. I take it from that that the storage locker was not inspected at the beginning of the tenancy and the landlord has no idea whether or not the tires were there throughout the tenancy and prior to the beginning of the tenancy. I dismiss the landlord's claim of \$150.00 for removing the tires.

With respect to the landlord's claim of \$378.00 for repair to a baseboard heater, light bulbs and repairs, the same Invoice #2146 dated 21-01-25 contains those notations. The tenant has provided a copy of an email from a Senior Property Manager of the landlord company to the other tenant dated October 24, 2016 confirming that the



landlord will send a work order out to have the heater in the master bedroom and ensuite shower door repaired. The landlord's agent did not mention any previous repair, and I am not satisfied that the landlord has established that any damage to the electric baseboard heater was a result of the tenants' failure to comply with the *Act* or the tenancy agreement. Also, the move-out condition inspection report mentions light bulbs not working in the kitchen only, and the Invoice does not break down how much the cost was to replace bulbs in 1 light fixture. I dismiss the landlord's claim.

With respect to window and mirror replacement, I accept the undisputed testimony of the tenant that the building envelope has been an issue before the Courts, and that the vendor was called who advised that they don't do windows. The landlord's agent testified that some would be done by the vendor and some would be contracted out. The glass company advised that they had a purchase order and quote but no one made a purchase. The Invoice from the glass company is charged to the main contractor, but does not indicate what work was done, or to what address. There is nothing to tie the bill to the tenant or the rental unit. Considering that and the testimony that the building envelope has been an issue before the Courts, I am not satisfied that the landlord has established that any damage to windows was caused by the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the claim.

The Invoice of the main contractor does not break-down the difference in cost for the windows and mirror, and therefore I am not satisfied that the landlord has established an amount for the mirror. Further, the tenants had vacated some time before the move-out condition inspection report was completed, and I'm not satisfied that the landlord has established that any damage to the mirror was a result of the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss the landlord's claim for the mirror.

Since the rental unit has never been painted since the tenancy began, the interior paint in the rental unit has outlived its useful life, and the landlord bears the responsibility of re-painting, not the tenant, and I dismiss that portion of the landlord's application.

The same applies to the blinds and appliances. I refer to Residential Tenancy Policy Guideline #40 - Useful Life of Building Elements which places the useful life of blinds at 10 years and 10 years or less for appliances. The tenant testified that all were the originals in the rental unit that was built 20 years ago, and the landlord did not dispute that testimony. I dismiss the landlord's application for replacement of blinds and appliances.

The landlord also claims \$669.90 for plumbing and has provided an Invoice dated 2/9/21 and the landlord's agent testified that the tenant was responsible for cleaning drains during the tenancy and the garburator. The tenant has provided a GST/HST Registry Search showing that the GST number on the Invoice (80994659) is not validated, however the search conducted did not include the entire GST number. The amounts contained in the Invoice dated 2/9/21 are \$211.00 for parts, \$392.00 for labour, \$25.00 for "machine," \$10.00 for parking and fuel and \$31.90 for GST. The Policy Guideline shows that plumbing fixtures have a useful life of between 15 and 20 years, with the exception of sanitary systems and storm systems. I find that the landlord has failed to establish that any issues at the end of the tenancy respecting the plumbing was a result of the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the application.

As noted previously, the move-out condition inspection report was completed in the absence of the tenant on January 22, 2021. The landlord's agent testified that the tenancy ended on December 31, 2020, although the tenants over-held for about a week. That is disputed by the tenant who testified that the tenants obtained permission to stay. Regardless, the inspection was done roughly 2 weeks or more after the tenancy ended, and the landlord has not made a claim for overholding.

I also note that the landlord's agent could not answer certain questions of the tenant, such as when the last annual inspection was completed, whether or not the landlord's agent told the tenants each time that it appeared immaculate, or whether or not the landlord's agent asked to use the tenants' photographs for advertising, or that the tenant told the landlord's agent to remove them.

The tenant testified that the amounts and invoices change each time the parties have attended an Arbitration hearing, and the landlord's agent didn't dispute that. I question whether or not the landlord's agent has any idea how much of the work and the cost claimed was actually performed. The tenant also testified that some of the photographs provided by the landlord are not images of the rental unit that the tenants rented.

In the circumstances, and considering the testimony and evidence of the parties, I am not satisfied that the landlord has established any of the damages claimed, and I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the application of the landlord filed on October 5, 2021 is hereby dismissed in its entirety, as withdrawn by the landlord.

The application of the landlord filed on November 12, 2021 is hereby dismissed in its entirety 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: June 17, 2022

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Residential Tenancy Branch