Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) [NP Corp] J.N., Agent	310052041	MNDCL-S, FFL
(Tenant) G.G. and V.K.	310061816	MNSD, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- $294.00 in compensation for monetary loss or other money owed – holding the pet or security deposit; and
- recovery of the $100.00 application filing fee.

The Tenants filed a claim for:

- compensation for the return of the security deposit of $763.00; and
- recovery of the $100.00 application filing fee;

The Tenant, G.G., and an agent for the Landlord, J.N. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, J.D., was also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide

their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

In the hearing, we reviewed the service of the Parties' respective Notices of Hearing, Applications, and evidence on each other. The Agent confirmed that the Landlord had received the Tenants' documents and had found time to review them.

However, the Tenant said that they were not served with the Landlord's Notice of Hearing documents or evidence in compliance with the Rules. Rule 3.1 requires an applicant to serve each respondent, as follows:

> **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**
>
> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
>
> a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
>
> b) the Respondent Instructions for Dispute Resolution;
>
> c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
>
> d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution]. .
>
> [emphasis added]

The Landlord was provided with the Notice of Hearing package from the RTB on October 19, 2021; the Tenant said that they received the Landlord's Notice of Hearing package and evidence by registered mail on November 12, 2021, which was not compliant with the Rules.

A purpose of the Rules is to codify the rules of administrative fairness and natural justice found in the common law. Given that the hearing was held on June 3, 2022, I

find that the Tenants had nearly seven months to consider the Landlord's submissions and to prepare for this hearing; accordingly, I find that the Tenants were not prejudiced by the Landlord's late service of his Notice of Hearing documents. As such, I turn to Rule 9.1:

> **9.1 Non-compliance will not stop or nullify a proceeding**
> Failure to comply with these Rules of Procedure will not in itself stop or nullify a proceeding, a step taken, or any decision or order made in the proceeding.

Based on the rules of administrative fairness and natural justice, and pursuant to Rule 9.1, I find that the Landlord's late service of documents on the Tenantst is not fatal to the Landlord's application. As such, I continued to hear from both Parties and consider their respective evidence in making my Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Should either Party be awarded Recovery of their respective Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on November 1, 2016, ran to October 31, 2017, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenants to pay the Landlord a (final) monthly rent of $1,640.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $762.50, and no pet damage deposit. They agreed

that the Landlord returned $381.00 of the security deposit to the Tenants, and retained the remainder to apply to his claim. They agreed that the Tenants vacated the residential property on September 30, 2021, and had provided the Landlord with their forwarding address on August 26, 2021.

The Parties agreed that they conducted a condition inspection of the rental unit at the start and at the end of the tenancy, and that they produced (and submitted) a condition inspection report ("CIR") with notations from the move-in inspection and those of the move-out inspection.

LANDLORD'S CLAIM

MONETARY ORDER FOR DAMAGE OR COMPENSATION → $294.00

The Landlord submitted a monetary order worksheet with the following claims:

	Receipt/Estimate From	For	Amount
1	[maintenance company]	Repair/Preparing walls to paint	$84.00
2	[maintenance company]	Cleaning (three hours)	$78.75
3	[carpet cleaner]	Clean carpet	$131.25
		Total monetary order claim	**$294.00**

I asked the Landlord to explain his claims to me, and he said the following:

Wall Repairs

We went in and did the move-out inspection, and there were a number of holes in the walls that had been patched. I said at the start of the tenancy that he can use picture nails – tiny ones - because they cause little damage, but not any adhesive tape or screws or construction nails.

The Tenants had hung a number of things on the walls, and patched, but not sanded, so I have to paint the entire wall. But they have been good Tenants; I said I'd only charge for sanding all the patches. There were about 15 patches, and the painter was with me for the move-out inspection. I asked him how much he would charge to repair the patches, but not to paint, and he said repairing to paint ready was $84.00, including GST.

Cleaning

The kitchen wasn't cleaned properly, and I pointed that out and put it in the condition inspection report. It says counter top dirty, cabinets dirty, oven not cleaned well enough. I had to pay cleaners a minimum of three hours at $25.00 per hour. See the invoice of $78.74 for cleaners.

Carpet Cleaning

The bedroom is carpeted, and it was extremely dirty. [The Tenant] told me he had cleaned it, and he gave me a copy of the receipt. I ask for this to prove to the incoming tenant that it has been cleaned.

They were still extremely dirty. I called [the carpet cleaner] and spoke to the fellow and he confirmed that the did clean them, but he said he told [the Tenants] that the carpets should be cleaned twice. As soon as it's dry you can see the true result. The carpet cleaner recommended that [the Tenants] clean It twice, but [the Tenants] declined to do so.

After the second cleaning by our cleaners, the incoming tenant was pleased, so we paid $131.25 to clean the second time. I asked [the carpet cleaners] if they would send me a statement, but they said they couldn't do that.

When talking about the cleaning and patches, the Tenant, became argumentative and he refused to sign the move-out condition inspection report.

The Tenant responded, as follows:

I didn't need to get them professionally cleaned. I left it in better condition than when I started. I hired a professional cleaner and they did a fine job. It's interesting looking at this email exchange - they never said anything about cleaning this twice. The [carpet cleaner's] email says: 'We offer a 30 day guarantee on our services'. They could have come back and cleaned it again.

My wife and I were there for two days cleaning that apartment. It's a 40-year-old building. It was built in 1979. It was a sketchy area there. It's not realistic to get it to the stage of being good as new. We scrubbed on our hands and knees.

The issue with the painting: [The Witness] managed five buildings, and he said it

> would take two minutes to do that. [The Agent] was there with his painter friend. He was belligerent to my friend. I was polite. He pulls these figures out of thin air. He said, ‘Are you going to sign this?’ You are just pulling figures from out of your head. That isn’t the way to do this. I should say that we were there for five years He never came by to inspect that suite.

The Landlord said:

> At the time, I didn’t pull these numbers out of thin air - I asked the guy in front of me and he was there. I know how much to pay for the cleaning, because I have to pay a minimum of three hours. A minimum charge was paid. And the owner of [the maintenance company] was not my friend, he was a painter.

I asked the Landlord how he chose the cleaners and he said: “Because the alternative is to call [M.M.] who charge a fortune.”

The Tenant said: “The general condition of the suite when we moved out - it seems there’s a discrepancy - I said we left it in better condition as when we moved in.”

The Witness came into the teleconference hearing to testify at that point, and I asked him about the condition of the rental unit at the end of the tenancy. He said:

> It was in pretty good shape. They keep a nice home and had gone to lots of trouble. I recall that the Landlord commented how clean it was. So I was there because, unfortunately, [the Tenant’s] mother had taken ill and he was not in great shape, and he said he might have to do battle with the property manager.

I asked the Witness about the condition of the carpeting at the move-out inspection, and he said: “Steam cleaning? I would have said that they needed replacement. I wouldn’t have thought it was in any shape to waste money to clean it. I’m not a carpet cleaning expert.”

The Tenant asked the Witness: “As you‘ve inspected a lot of move out suites, what did you think of the condition of the walls?” The Witness answered:

> It needed a painting before you moved in, as it was not in any great shape. You put anchors in the wall and we filled them. We should have sanded it down - we could have done that. We offered to do that, but that didn’t go terribly well.

I asked the Witness about the Landlord's response to their offer to sand the walls, and he said: "I can't recall what he said. He wanted me to leave; he was swearing under his breath at me, too"

The Landlord responded to the Witness's testimony, as follows:

> We had a good relationship all along. The complaints from others in building were unwarranted; I defended the Tenants because of the noise of their child…. I find it curious that he was expecting a battle.

The Landlord said:

> Ask the Witness for the exact words of the offer to sand and clean. I ask for the exact words, because there was no offer. I wouldn't have spent $80.00, if it could be for free. There was no offer to clean it and as far as carpets needing replacement - after we cleaned it the second time, the move-in tenants said they were fine.

When I asked the Landlord for the age of the carpets, he said he did not recall when they were last replaced. He said there was no damage to the carpeting – it just needed cleaning.

The Witness said he wanted to say something else:

> The property manager knew of damage to the walls - it was up for doing it, anyway. That $80.00 charge is bunk. He was going to have to pay the painter, anyway, and maybe it's five minutes of work that I offered to do. That's rubbish that claim.

The Tenant said:

> I agree, I had a reasonable relationship with [the Agent]. But my mother was very sick and dying. I was not checking my email because I was in [another town]. He was threatening to lock the elevator - so inconsiderate - so I thought we were going to have issues when we moved out. I had my friend there, because things could be a little belligerent

The move-in CIR indicates that everything in the residential property was in good condition, and that no repairs were needed at that time. The Tenant agreed that he

signed the move-in portion of the CIR, but not the move-out portion, although he and the Witness were present for the move-out inspection with the Landlord and his painter.

The move-out portion of the CIR includes the following notations:

- Entry walls and trim had wall putty – damaged;
- Kitchen cabinets and doors, the stove components required cleaning;
- Refrigerator – required cleaning;
- Freezer – required cleaning;
- Living room walls and trim – wall putty requires sanding;
- Master bedroom – walls and trim – wall putty requires sanding;
    - Carpets extremely dirty.

In an end of tenancy section of the move-out CIR entitled "Damage to rental unit… for which the tenant is responsible", it states: "Sanding wall putty patches throughout suite $84; cleaning bedroom carpet $131.25, general cleaning, $78.75."

Neither Party signed the move-out portion of the CIR.

TENANT'S CLAIM

MONETARY ORDER FOR RETURN OF THE SECURITY DEPOSIT → $763.00

I asked the Tenant to explain his claim, and he said: "I'm seeking the return of the security deposit, and I am entitled to twice the amount, especially, because the $100.00 was withheld to pay his RTB filing fee, which is not acceptable."

The Landlord replied:

> I'm not saying this to belittle [the Tenant], but there are many times when he didn't understand that most Stratas charge both move-in and move-out fees up front when a tenant moves out. It was the Strata who charged the move-out fee – they won't unlock the elevator without the fee. I don't manage the building - just the suite. I was trying to explain that.
>
> We did get along very well, but he wasn't understanding the process, which might have added to some difficulty. It wasn't me threatening. The fact that the Witness is qualified to say the condition about what needed to be done before. It was likely painted when he moved in or it didn't require it. In the move-in condition, there was no required repairs and that everything - in detail –

everything was in good condition from the CIR that he signed. I never would have denied them sanding down the walls. There was no reason for me to pay $80.00, if they were going to do it. That offer was never made.

In holding the $100.00, if you – it was part of my claim to cover that. If you are going to rule in my favour, then we have to pay that back. There's nothing nefarious about that.

However, the Landlord did not apply to retain the Tenants' deposits to apply to any Strata fees that were incurred during the tenancy. Further, the Parties agreed that the tenancy ended on September 30, 2021, and that the Tenants provided their forwarding address to the Landlord in writing on August 26, 2021. As such, and pursuant to section 38 of the Act, the Landlord had 15 days from September 30, 2021, to apply for dispute resolution or return the Tenants deposits. The Landlord did not return the deposits, but they applied for dispute resolution on October 14, 2021, which was within 15 days required of section 38 of the Act.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each Party, as applicant, must prove:

1. That the Other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That you did what was reasonable to minimize the damage or loss.

("Test")

LANDLORD'S CLAIM

MONETARY ORDER FOR DAMAGE OR COMPENSATION → $294.00

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the

action or neglect of the tenant, other persons the tenant permits on the property, or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1, "Landlord & Tenant – Responsibility for Residential Premises" ("PG #1"), helps interpret these sections of the Act:

> 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).
>
> Reasonable wear and tear refer 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. .
>
> [emphasis added]
>
> *Wall Repairs*

As set out in Policy Guideline #16, "Compensation for Damage or Loss" ("PG #16"):

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.

I find that the Parties agreed that there were some holes in the walls of the residential property, which the Tenants had filled with putty, but not sanded down for the paint job that would follow.

The move-in CIR indicates that the residential property was in good shape at the start of the tenancy, and that no repairs were necessary. The Tenant signed, agreeing to that statement.

However, the Landlord was unable to tell me when the interior of the residential property was last painted. As noted above, the tenancy started on November 1, 2016, and it ended on September 30, 2021. The Parties agreed that the residential property was not painted during the tenancy.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

As noted above, another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the latest the residential property was painted was prior to the Tenant moving in on November 1, 2016. As such, the last time the rental unit was painted, was over five prior at the end of the tenancy; therefore, PG #1 indicates that the paint in the rental unit had zero years or zero percent of its useful life left. The CIR indicates that the walls were in good condition at the start of the tenancy, but the Landlord said in the hearing that the rental unit needed repainting at the end of the tenancy. The Tenant agreed with this, but indicated that the rental unit needed painting, regardless of the condition in which the walls were left at the end of the tenancy.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss; however, this loss is based on the depreciated value of the item and **not** on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, paint, etc., which depreciate all the time through normal wear and tear.

As a result, I find that the Agent has provided insufficient evidence that the Landlord is

entitled to compensation from the Tenant regarding the condition of the walls of the rental unit. Therefore, **I dismiss this claim without leave to reapply**.

Cleaning

As noted above, section 37 of the Act states that tenants must leave the rental unit "reasonably clean and undamaged", and PG #1 says that a tenant is not responsible for cleaning to bring the premises to a higher standard that that set out in the Act. It also states that "…an arbitrator may also determine whether or not the condition of the premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant."

The Landlord provided a CIR with the notations from the move-in and move-out inspections that the Parties conducted; however, he did not provide any photographs of the condition of the rental unit to support his claims. This would have assisted, especially given the Tenant's testimony about having cleaned the residential property, including having had the carpeting shampooed.

Further, the Agent stated, and the move-out CIR supports that the only part of the residential property that needed cleaning was the kitchen, including the counter top, cabinets, and oven. The Agent also noted that the bedroom carpeting was not sufficiently clean, but that is addressed in the carpet cleaning section below.

The Agent said that they had to pay the cleaners a minimum of three hours at $25.00 per hour; however, given the small portion of the residential property that needed cleaning, I find that three hours of cleaning time was excessive. As such, I find that paying for three hours of cleaning did not mitigate the Landlord's damages, contrary to Step 4 of the Test.

Given the size of the city in which the residential property sits, I find that the Landlord should not have had any difficulty finding someone else to clean for the number of hours needed to clean to a reasonable standard – not necessarily as high a standard as that of the Landlord. Given the consistency between the move-out CIR and the Agent's testimony, I do not totally dismiss this claim; rather, I award the Landlord one hour of cleaning time at $25.00 per hour plus tax, for a total of **$26.19** from the Tenants for this claim, pursuant to section 67 of the Act.

Carpet Cleaning

Based on the evidence before me, I find that the Tenant arranged for the bedroom carpeting to be professionally cleaned at the end of the tenancy; however, the Agent did not believe that it was clean enough, and he arranged to have it cleaned again. The Agent said it was then satisfactory to the new tenant coming in. Again, the Agent failed to direct me to any photographs he had submitted showing the condition of the carpeting before and after the second cleaning.

The Tenant and the Witness indicated that they did not think it was worthwhile to spend money shampooing this carpet, as it was in bad condition, anyway. However, the Tenant did not submit any evidence supporting this statement; although, I acknowledge that it was supported by the Witness's testimony.

The condition of the carpet in terms of age is not an issue before me, as the Landlord has not replaced the carpeting and sought compensation in that regard, nor did the Agent know the age of the carpeting in the residential property.

I find on a balance of probabilities that the Landlord has provided sufficient evidence for me to award recovery of half of the carpet cleaning cost; as the rental unit must meet reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant, as noted above in PG #1. Without evidence to the contrary, I find that the Agent has held the Tenant to a standard higher than is required pursuant by the legislation. Accordingly, and pursuant to section 67 of the Act, I award the Landlord with **$65.63** for the second cleaning of the bedroom carpeting, which allows the cost to be borne by both Parties.

TENANT'S CLAIM

MONETARY ORDER FOR RETURN OF THE SECURITY DEPOSIT → $763.00

The Landlord applied for dispute resolution, retaining the security deposit to apply to his claim. I find that this was done within 15 days of the later of the end of the tenancy and the Landlord's receipt of the Tenants' forwarding address in writing. As such, I find that the Tenants are not eligible to receive double the deposits from the Landlord.

I find that the Tenants are eligible to receive the balance of their security deposit outstanding, which is **$381.50**, although this will be set off against any monetary awards granted to the Landlord, pursuant to section 72 of the Act.

Summary and Set Off

As both Parties were partially successful in their applications, I decline to award either Party with recovery of their respective $100.00 application filing fee from the other Party.

However, I find that these claims meet the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' remaining security deposit of **$381.50** in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain **$91.82** of the Tenant's security deposit and return the remaining **$289.68** to the Tenants, as soon as possible.

	Receipt/Estimate From	For	Amount
1	[maintenance company]	Repairing walls to paint	$0.00
2	[maintenance company]	Cleaning (three hours)	$26.19
3	[carpet cleaner]	Clean carpet	$65.63
		Sub-total	**$91.82**
		Remaining security deposit	($381.50)
		Landlord's Monetary Awards	**($289.68)**

As a result, I grant the Tenants a **Monetary Order** from the Landlord of **$289.68** in this regard. This Order must be served on the Landlord by the Tenants, as soon as possible.

Conclusion

The Parties are both partially successful in their applications, as the Landlord provided sufficient evidence to be awarded **$91.82** for their claims. The Tenants are awarded recovery of their remaining **$381.50** security deposit from the Landlord. Pursuant to section 72 of the Act, I authorize the Landlord to retain $91.82 of the Tenants' security deposit, and to return the remaining **$289.68** of the security deposit to the Tenants as soon as possible.

I grant the Tenants a **Monetary Order** of **$289.68** from the Landlord for the return of their remaining security deposit. This Order must be served on the Landlord by the

Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 14, 2022

Residential Tenancy Branch