



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$700.00 for damages for the Landlord, retaining the security deposit to apply to the claim; and to recover the \$100.00 cost of his Application filing fee.

The Landlord and an agent for the Tenant, M.E. ("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 it. During the hearing the Agent and the Landlord were given the opportunity to provide their evidence orally and to 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these 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 Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2021, and was scheduled to run to May 31, 2022, operating on a month-to-month basis thereafter. However, they agreed that the tenancy ended on November 1, 2021, and that the Tenant gave the Landlord her forwarding address in writing on November 1, 2021. The Parties agreed that the Tenant paid the Landlord a monthly rent of \$1,425.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$700.00, and no pet damage deposit. The Landlord confirmed that he holds the security deposit in full to apply to this claim.

The Parties agreed that they conducted a condition inspection of the rental unit at move-in and produced a condition inspection report ("CIR"), of which the Landlord gave a copy to the Tenant. The Parties also agreed that they did a move-out inspection of the residential property at the end of the tenancy, and that the Agent was present for this end of tenancy inspection; however, the Landlord continued the inspection after the Agent had signed the CIR and left, which will be addressed below.

**#1     MULTIPLE ITEMS → ~~\$386.16~~ \$286.16**

The Landlord confirmed in the hearing that he had overestimated this claim by \$100.00, and that actually, he is claiming \$286.16, not \$386.16 for this claim.

In the hearing, the Landlord said that the Tenant damaged the exterior of the front door of the residential property. The Landlord said:

I had painted the door prior to the Tenant moving in. I used a paint brush, a roller, pan liner, and those totaled \$86.16, but I didn't include a receipt. That was the cost for painting the door prior to the tenancy.

The Landlord said that he has not fixed the door, because he rented the suite out immediately after the Tenant moved out. He said:

So, the [calculation] was from part of the renovations in 2020. I had repainted

that door and paid for the materials, but I haven't re-painted the door... I chose to rent it out right away. This is an estimate – the minimal cost to repaint the door, but I have to wait for an opportunity to have the suite vacant or the door off. The estimate is based on my past costs. To paint the door, you have to take off the hinges, paint one side, let it dry, flip it, do that back and forth waiting. For two to four hours of labour time it would cost \$200.00 for labour.

I asked the Landlord why he needs to repaint the door, and he said:

It was completely covered in scratches and shit, and everything. When she moved out, she used no liners or pads to prevent furniture from banging against the door when she moved out. It's littered with scratches; it was a brand new painted door at the start of the tenancy.

The Agent said:

This was a point that when we received the evidence, he submitted the walk-out inspection report and he included that there was damage to the door. I did it with him and he never pointed out the door, and there was no damage to the door that I can see.

We propped the door open and used blankets. She didn't have a lot of furniture - no table or chairs. She had a small fold-out sofa and a bed, and we did use blankets. And also, when I did the walk-out inspection, he looked at the door – see video footage - he cut off the last half in the evidence he submitted. He did not note any damage on it. It was never included as being damaged on the walk-out CIR; however, he had changed the copy of that CIR to include damage to the door. I included a copy of what I signed in his presence. No, damage to the door was not present.

On the move-out CIR submitted by the Landlord, in the "exterior" section it states that the exterior door had "Scratches & dent" and was labelled "D" for damaged. However, on the copy of the move-out CIR submitted by the Tenant and signed by the Agent, there are no notations of any kind in the "exterior" section.

I watched the Agent's videos of the move-out inspection, and it starts at the door; however, the Landlord did not note any damage to the door.

The Landlord said:

The video of the walk out shows close-ups of the door, and I point to the scratches, red paint transfer onto the door something that she owned that was red. . . .She lived in the suite and she had things like work-out equipment and tools, because she is a pipe-fitter; there was a lot of unforgiving equipment in the suite. It's not disputable.

I was being rushed, and I included in the evidence two screen shots from my phone, one of which [the Agent] texted me, saying I have to get going . . . I also show two missed phone calls, one from [the Agent] and the Tenant herself, and was being rushed. I thought I had a week to provide the Tenant with the folder that shows the door damage. On a balance of probabilities, what's more likely - that the damage was there, or I hit the door myself after they left?

## **#2     COMPLETE CLEANING → \$787.40**

The Landlord submitted a quote from a professional cleaning organization, which estimates how much it will cost to sanitize, do stain removal, do a deep cleaning of appliances – in and out, clean light fixtures, floors, and so on. This estimate came to \$787.40 with taxes. However, the Landlord did not say that he used this cleaning service at the end of the tenancy.

The Agent said:

Again, look at the walk out inspection report - no comments - and in the video he said it looked great. [The Tenant] and I both spent the day cleaning. I did the majority of the cleaning. We used glass cleaner and [brand name disinfectant], washed the floors and cupboards. We missed one cupboard.

The carpets were not cleaned and we noted on the CIR, the reason was that time constraint, as the tenancy ended quite quickly. And she had been living there for less than 12 months; therefore, she is actually not required to clean the carpets in this situation

The Parties discussed a waiver that they were discussing at the end of the tenancy; however, that is not before me as executed by both Parties.

The Agent pointed me to an email dated October 25, 2021, from the Landlord to the Tenant, which includes:

. . .

By signing RTB-8, I have already indicated my willingness to give up my right to charge for Hydro averaging or lost rent for the remainder of the tenancy. I could only seek reimbursement for those funds if you broke the lease without me agreeing to end the tenancy early. My issue is my right to seek compensation for damage above normal wear and tear, which I must protect.

. . .

The Landlord said: "I spent the money for it to be completely, totally cleaned, especially during Covid."

The Agent said: "As for cleanliness of the suite; I cleaned it prior, and he made no note of cleanliness during the inspection. I dusted and I even get in behind the toilet and wiped all around the edges. It definitely was clean."

### **#3    BEDROOM CARPET → \$683.73**

I asked the Landlord what the Tenant did to the carpet that required them to be replaced. He said:

There is a burn that is in the north/west corner of bedroom, from an iron or hair curler, or I don't know what else would be on the carpet. I noted a mark in the bedroom, but that would be the south/east corner near entry, not the north/west. That is documented in annotated picture – there is a measuring tape. That can't be fixed. It's about five inches long near a power outlet. It's not something that can be repaired. That's to replace the bedroom carpet.

I haven't replaced the carpet. I had an opportunity to get someone on a one year lease, so I rented it . . . potentially losing someone. This was an unexpected end to the tenancy; I had thought she was going stay there for a year, but things .... all kind of things happened. I couldn't let the suite not be rented immediately. I'm renting the suite for \$1450.00 now [which is \$25.00 more than the Tenant was paying]. They didn't care about the door and the carpet.

Those detailed pictures taken 48 hours after – look at the meta data. I was really nervous, because I didn't know what to expect. My partner and I were very scared; I was threatened by the Tenant. I didn't annotate everything on the condition inspection report, but the facts are that the place was not cleaned and the door was damaged and the burn in the carpet. Those are the facts.

The Agent said:

Regarding the burn on the carpet. It was noted to me when we were looking through the evidence that [the Tenant] noticed that it was present when she moved in. She didn't think it was going to be a big issue. It was a small burn. I've known [the Tenant] for over a year; I have never known her to use a curling iron or something like that. There was something else that he noted, but it didn't look five inches. It didn't affect the living there.

He made notes on the walk-out inspection. My argument would be why compensation for a second small burn, if he didn't feel an initial burn didn't warrant a new carpet at move-in? As far as what [the Tenant] said, she thought it was there when she moved in. My argument is, even if it was incurred when she moved in, it's normal wear and tear, and there was a burn on the same carpet that didn't require a carpet to be replaced. And he hasn't replaced the carpet.

I granted the Parties the opportunity to make any last statements before ending the hearing. The Landlord said:

I would like to summarize, admitting I'm not perfect, but I understand in the interest of justice the facts mean a lot and matter a lot. The Tenant did do damage to the entry door and burned the carpet in the area of the bedroom, and some other items documented in damage annotated photos. I claimed damages done by the Tenant. Those are the facts.

The Parties also commented on the reason for the tenancy ending, but these comments are not relevant to the issues before me in this proceeding. The Agent responded to the Landlord's comments in this regard, but I have omitted both comments, as they are not relevant to my consideration of the evidence. The Agent also said:

The one point I would make that on the walk-out he never noted anything to do with cleaning, and regardless of what the relationship was, she was not present on the property, and I was not behaving in any threatening manner. There were no comments about cleanliness. I would have happily come back and touched up; and I'm very particular about cleanliness.

Regardless, the amount that he incurred for cleaning costs seems over and beyond what necessary for a small one-bedroom/bathroom suite. Industry standard is \$45.00 an hour. I have kids who are super gross, and I have

someone to come in and do a deep clean of my entire apartment. It would take about two hours for my place from a third party.

[The Tenant] is a friend, and I work as a social worker, and I work with the RTB in my professional work. He was quite angry with her for her asking him to be more respectful, and getting these high costs were in response to that kind of end of it, and bad feelings on that end. It's hard for me to speak to it. Just what I witnessed. I will say that as a tenant and a previous landlord, there is normal wear and tear, and you do the best cleaning as you can, and it was not left in some state of disgust. I may have missed dust bunnies on top of the fridge, but it was not necessary to come in with an almost \$450.00 cleaning bill to do touch-ups. Normal wear and tear, and cleaning as best they can. I've never not walked into a suite and not cleaned it myself. See the videos and the CIR – he never commented on the cleanliness - and it was not in a crazy state of filth or anything like that.

### Analysis

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

#### **#1     MULTIPLE ITEMS → \$286.16**

This claim is for repairing and/or painting a door. The Landlord submitted 22 photographs of the door, many of which were close ups, such that you could not tell how large the scratch or mark was for context. Also, in the Landlord's video of the door, he shows very, very small marks and/or dirt that could possibly be washed off. Again, the Landlord uses extreme close ups of small marks and a very small dent. There was no sign of the Agent there when the Landlord was recording the door, but given the testimony and other videos of the move out with other people present, I find that this video was taken after the move-out inspection was completed. The Parties had already agreed to the condition of the residential property when they signed the move-out CIR.

The Landlord said he thought he had a week to provide a CIR; however, section 35 of the Act addresses condition inspections at the end of a tenancy. It states:

#### **Condition inspection: end of tenancy**

**35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit. .

[emphasis added]

The Landlord believed that he could continue to review the condition of the residential property after the Tenant's Agent had signed the move-out CIR. However, this is inconsistent with the Act, as a landlord may inspect and complete the CIR on his own only when a tenant fails to participate in a move-out inspection or if she has abandoned the unit, pursuant to section 35 (5) of the Act.

As such, I find that the Landlord's evidence regarding the door is not part of the condition inspection. Further, in the Agent's videos of the move-out inspection, the Parties walked right by the door and nothing was said, and nothing was put on the CIR that the Parties signed together. Based on these factors and pursuant to section 62 of the Act, I **dismiss this claim without leave to reapply**.

## **#2     COMPLETE CLEANING → \$787.40**

The Parties agreed that this is a one-bedroom, one-bathroom apartment. While watching the Parties' videos of the move-out inspection, I found the unit to be quite clean. The Landlord did not note any section of the unit as "DT" for dirty on the CIR.

Further, section 37 of the Act states that tenants must leave the rental unit "reasonably clean and undamaged". Policy Guideline #1, "Landlord & Tenant – Responsibility for



Residential Premises” (“PG #1”), helps interpret section 37 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]

In terms of cleaning the carpets, the Agent was correct in that PG #1 states the following about cleaning carpets:

### **CARPETS**

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another

occupant, has had pets which were not caged or if he or she smoked in the premises. .

[emphasis added]

As the Parties agreed that the tenancy went from June 1, 2021, to November 1, 2021, PG #1, and there is no evidence before me that the Tenant smoked or had pets, I find that this Tenant was not responsible for cleaning the carpet beyond vacuuming it.

Based on the evidence before me overall on this matter, I find that the Tenant left the residential property reasonably clean, which might be below the Landlord's standards; however, it is the standard expected of the Act and Policy Guideline. As such, I **dismiss this claim without leave to reapply**, pursuant to sections 37 and 62 of the Act.

### **#3 BEDROOM CARPET → \$683.73**

There are no notations in the CIR about the carpeting in the residential property at the end of the tenancy. The Landlord has not replaced the carpeting. Rather, he found a new tenant immediately, and despite the condition that the Landlord asserts the Tenant left the rental unit, the new tenant is paying higher rent than the Tenant did.

Further, the Agent testified that the Tenant noticed the burn to which the Landlord points as having been there when she moved in. There are no notes on the move-out CIR about carpeting issues.

The Landlord said that the fact are the facts; however, if he did not document and present his facts pursuant to this administrative tribunal process, he has not participated in an administratively fair way. We are all limited to what the Act says are the obligations and rights of the respective parties.

Based on the evidence before me overall, I find that the mark or burn on the carpet to which the Landlord refers is no more than normal wear and tear. As such, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

Given that the Landlord is unsuccessful in his Application, I decline to award him recovery of the \$100.00 Application filing fee. I Order the Landlord to return the Tenant's \$700.00 security deposit to her as soon as possible. I grant the Tenant a **Monetary Order of \$700.00** in this regard.

Conclusion

The Landlord is wholly unsuccessful in his Application, as he failed to provide sufficient evidence and authorities to establish his claims on a balance of probabilities. The Landlord's Application is dismissed wholly without leave to reapply.

The Landlord is Ordered to return the Tenant's **\$700.00 security deposit** to her as soon as possible. I grant the Tenant a **Monetary Order of \$700.00** in this regard.

This Order must be served on the Landlord by the Tenant, if necessary, 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 10, 2022

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Residential Tenancy Branch