



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

This hearing dealt with a landlord's application for monetary compensation against the tenants for damage to the rental unit.

Both the landlord and the tenants appeared for the hearing. The parties were affirmed.

The hearing was held over two dates and an Interim Decision was issued. The Interim Decision should be read in conjunction with this final decision.

As seen in the interim Decision, I had issued orders to the parties with respect to service of evidence. At the commencement of the reconvened hearing, I explored service of materials, as ordered. The parties confirmed they received the evidence of the other party. I noted that the tenants failed to meet their deadline for service to the landlord; however, the landlord confirmed that he did not take issue with the fact he received the tenant's evidence after the deadline. Accordingly, I admitted the evidence of both parties and have considered all of it in making this decision.

### Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation, as claimed, against the tenants for damage to the rental unit?
2. Award of the filing fee.

### Background and Evidence

The landlord testified the tenancy started on November 1, 2018 on a month to month basis. The tenant testified it began on December 15, 2018 for a fixed term of one year. I noted the tenancy agreement provided as evidence by the landlord provides for a

tenancy that was to start on November 1, 2018 on a month to month basis. The tenancy agreement was signed on October 5, 2018. The tenants acknowledged they signed a tenancy agreement but claim they did not receive a copy of it. The landlord testified he did give a copy of the agreement to the tenants.

The tenancy ended on February 28, 2021.

The monthly rent was set at \$2000.00 payable on the first day of every month. The tenants paid a security deposit of \$1000.00; however, the landlords had received authorization to retain it in partial offset to unpaid/loss of rent under a previous dispute resolution proceeding.

The landlords did not prepare move-in or move-out inspection reports. However, the landlord submitted that shortly after the tenancy started the tenants sent him a text message stating the house looked "lovely".

By way of this Application for Dispute Resolution the landlords are seeking compensation from the tenants for damage to the rental unit. Below, I have summarized the landlords' claims and the tenants' responses.

1. Broken blind -- \$91.15

The landlord testified that the living blind was broken during the tenancy. The landlord was asked to describe the nature of the damage but he did not provide me details as requested, except to state it was broken. The tenants stated that they do not recall the blind being broken except for the flap at the bottom of the vertical blind.

The landlord had submitted a printout showing the cost of a new blind but the landlord acknowledged that the blind was not repaired or replaced and that it remained with the house when they sold the rental unit after the tenancy ended. The landlord acknowledged that they did not incur a loss as a result of the broken blind.

2. Broken ceiling light -- \$133.28

The landlord testified that the bottom part of the ceiling fixture was missing at the end of the tenancy and the landlord pointed to a photograph of the ceiling fixture. The landlord submitted a printout showing the cost of a new light fixture from a home improvement store; however, the landlord stated he replaced the light fixture with the same type of light fixture he purchased from a friend. The landlord acknowledged he did not want to

invest too much money into the ceiling fixture as they were selling the house. As for how much he paid his friend, the landlord stated that he could not prove the loss but said that the usual cost for such things is a case of beer or a bottle of liquor. The landlord did not indicate how much he spent, if anything, to purchase the ceiling light from his friend.

The tenants stated that they did not recall the light fixture being broken.

### 3. Kitchen faucet -- \$270.98

The landlord testified that the kitchen faucet was tilted at the end of the tenancy. The landlord submitted a print-out for the cost of a new kitchen sink; however, the landlord stated that he did not actually replace the kitchen faucet and that he made a "mickey mouse" repair himself to make the faucet look presentable for purposes of selling the house.

The tenants described how the faucet came loose periodically during the tenancy and they would often have to tighten the nut under the faucet. The tenants considered this repair to be the result of normal wear and tear.

### 4. Bedroom flooring and baseboard replacement -- \$1438.73 + \$1463.44 + \$80.58

The landlord submitted that the three bedrooms had carpeting that was approximately 16 years old but he replaced it with vinyl plank after the tenancy ended. The landlord testified that the carpeting was left stained and smelled, especially in the boy's bedroom where a lizard was kept. The landlord stated that vinyl plank was purchased at a cost of \$1438.73 as it is less expensive than new carpeting.

The landlord installed the flooring himself as he is a flooring finisher but the landlord provided an estimate for labour of \$1463.44 that he obtained from a company that installs floors and the landlord claimed this amount for his labour.

The baseboard was also replaced when the flooring was replaced. The baseboard was purchased at a cost of \$80.58. I asked the landlord why the baseboard required replacement to which the landlord said the baseboard needed re-finishing and it was less expensive to install new baseboard than refinish the existing baseboard.

The landlord estimated that it took him 2 to 3 days to install the new flooring and baseboards.

The tenants were of the position there were no significant stains after they had the carpets cleaned. The tenants described the "lizard" as being a 2.5" gecko kept in a terrarium. The tenants noted that there was only one picture of the carpeting in the evidence provided to them yet there were three bedrooms. The tenants questioned the need to replace carpets in all three bedrooms and pointed out the carpeting was far from being new. The tenants suggest the landlords were motivated to change out the old carpeting to upgrade the flooring to sell the house.

The tenants described the existing baseboard as being very basic and in satisfactory condition at the end of the tenancy. The tenants refute that the baseboard required refinishing.

5. Broken range hood -- \$100.78

The landlord submitted that the plastic section where the control knob is located was broken, as the result of force or being hit. The damage was such that he did replace the range hood with a new one he purchased from a home improvement store at a cost of \$100.78. The landlord acknowledged the former range hood was likely original to the house, or approximately 16 years old.

The tenants acknowledged that the plastic section containing the knob had cracked and broken off. The tenants were of the position this was the result of age and wear and tear over the years. The tenants pointed out that the range hood still functioned.

6. Wall repairs and repainting -- \$232.70 +\$43.93 + \$3000.00

The landlord submitted that the tenants are responsible for numerous holes in the drywall. Some of the holes were quite large and some were small. The tenants had repaired some of the holes but the quality of the repair was unacceptable so the landlord re-did the patching and then primed and repainted the whole house. The landlord testified that he had painted the house approximately 6 months to one year prior to the start of the tenancy.

I noted that the landlord had provided receipts for purchase of the primer (\$43.93) and paint (\$232.70). The landlord also requested \$3000.00 for his labour to mud, prime and repaint the walls. I asked the landlord to provide his calculation for this amount of \$3000.00. The landlord stated that he lost work while repairing the rental unit. I asked the landlord how many days he lost and he replied that he spent about a month working

on the rental unit and that included his labour to replace the flooring. I noted that the landlord had made a separate claim for flooring labour and that I was requesting the calculation for mudding, priming and painting labour specifically. The landlord repeated himself that the claim included labour for installing flooring; however, he also stated that he claimed this amount as it is the typical going rate for this type of work based on his experience in the trades.

The tenants acknowledged that holes in the walls were caused by an autistic child that was in their care. The tenant stated he would repair holes throughout the tenancy but near the end of the tenancy he did not have the time so the tenants hired a contractor to make the repairs at the cost of \$1094.62. The tenants provided a copy of a contractor's invoice in this amount.

The tenants submitted that the walls were ready to repaint and the landlords' claim is excessive. The tenant testified that he had asked the landlord for the paint colour in anticipation of repainting the walls but the landlord stated he would be repainting the walls. The tenants did not question the landlord's statement that he would repaint as it is often customary for landlords to repaint after a long-term tenancy ends.

The landlord acknowledged he "offered" to repaint the walls but took the position the offer was made before he saw the extent of the damage and that he revoked the "offer" which he was permitted to do since the tenants did not accept the offer. The landlord provided an image of the text message exchange.

The landlord was of the position that the contractor hired by the tenants would not have had sufficient time to perform satisfactory repairs considering he only charged them \$350.00 which is about one day's worth of work.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Since the landlords' claims pertain to damage, I summarize the requirements of the Act with respect to a tenant's obligations concerning damage, as set out below.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 specifically provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear that was pre-existing or caused during the tenancy, or pre-existing damage.

#### 1. Broken blind

The landlord acknowledged he did not repair or replace the broken blind and he did not present evidence that the landlords incurred a loss as a result of the broken blind. Therefore, I find the landlords have not established an entitlement to monetary compensation for a broken blind.

#### 2. Light fixture

The landlord's photographic evidence showed a damaged light bulb and it appears there may be a bottom section missing from the light fixture; however, the landlord acknowledged that he replaced the broken light fixture with one he acquired from a friend and that he could not prove the amount, if any, expended to acquire the light

fixture from his friend. Therefore, I find the landlords' actual loss, if any, is unclear and I make no award for compensation.

### 3. Kitchen faucet

The landlord submitted that the kitchen faucet was tilted at the end of the tenancy. The tenant described how the nut holding the kitchen faucet would become loose and required re-tightening from time to time. The landlord described making a "mickey mouse" repair to make the faucet look presentable for selling the house but he did not elaborate on how he repaired the faucet. As such, I find the tenant's explanation as to the reason for the tilted faucet to be within reason in the absence of anything to the contrary. I find am unsatisfied the tenants are liable for this repair and the landlord's actual loss has not been proven. Therefore, I make no award for compensation.

### 4. Bedroom flooring and baseboard replacement

The landlords seek to recover the cost to remove the carpeting and install new vinyl plank flooring and baseboard in the bedrooms of the rental unit. There are some faint stains visible in the photographs and one more obvious stain seen in the landlord's photographs despite the tenants having cleaned the carpets at the end of the tenancy. However, the parties were in dispute as to whether the tenants are responsible for compensating the landlords the cost to install new flooring and I proceed to analyze the claims further, as seen below.

It is important to note that monetary awards are intended to be restorative and a landlord is expected to repair and maintain a property at reasonable intervals, as seen in Residential Tenancy Policy Guidelines 1 and 40. As such, where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

According to Policy Guideline 40, carpeting has an average life expectancy of 10 years. The landlord acknowledged the carpet may have been 16 years old. Upon viewing the photographs of the carpeting and the rental unit itself, it appears to be basic Berber style carpeting likely several years old. I am of the view that 16 year old carpeting is likely due, or nearing replacement, due to its age and wear and tear and that installing new vinyl plank flooring in place of old Berber carpeting is an improvement to the

property. As such, I find the landlords' request to have the tenants pay for the cost to remove the old carpeting, and purchase and install new vinyl plank flooring is unreasonable and excessive. Therefore, I deny the landlord's' request to hold the tenants liable to pay for the cost to install new flooring in the rental unit.

As for the new baseboards, the landlord had testified that the old baseboards required re-finishing; however, I do not see evidence of that in the photographs the landlords presented. Further, I note that in uploading evidence for this proceeding, the landlord described the new baseboards as being necessary because of the change in height when the carpeting was replaced with vinyl flooring. Therefore, I find the new baseboards were the result of changing the flooring from carpeting to vinyl and not the result of damage caused by the tenants. Therefore, I deny the landlords' request to recover the cost of new baseboards from the tenants.

#### 5. Range hood

The landlord submitted evidence that the range hood was broken at the end of the tenancy. The tenants acknowledged that a plastic section was broke off during the tenancy but took the position that it was the result of wear and tear and that the range hood remained functional. When I look at the photographs presented by the landlords, I note that an obvious and significant portion of the plastic section that contains the control knobs is broken and missing. It also appears to me that there were two control knobs originally and only one is visible after the break.

In my view, I find it unlikely that this large section of the range hood, and control knob, would break as it did due to reasonable wear and tear. I find it more likely that this was damage and I hold the tenants responsible for the damage.

The landlord presented evidence that he did replace the range hood and I find it reasonable that he would have to replace it considering the broken trim and missing knob.

I recognize that the amount claimed equals the full cost to purchase the new range hood. However, I find it reasonable to award the full cost to the landlords since the landlords did not charge anything to remove the old range hood, source out the new range hood, pick it up and install it. Therefore, I grant the landlords' request to recover \$100.78 from the tenants.



## 6. Wall repairs and repainting

Both parties provided consistent testimony and evidence that the tenants had patched or paid a contractor to patch the walls of holes created during the tenancy, some of which were the result of caring for a child with autism. The parties also provided consistent testimony and evidence that the patches were not painted by the tenants.

From the text message exchange between the parties, the tenants had asked the landlord for the colour of the paint so that they may paint over patches to repair dings and a hole in the drywall and the landlord responded by providing the tenants with the paint colour, suggested the tenants also purchase primer, and informed the tenants of the paint supplier they should use. It is undisputed that the tenants did not end up purchasing primer or paint or repaint the patches or walls. Rather, the tenants relied upon the landlord's text message where the landlord stated to them on September 22, 2020:

"I will freely come and paint it. I would prefer to do it myself."

The landlord argued that he revoked the above offer as the tenants did not accept it. I see that the landlord sent a text message to the tenants on March 14, 2021 to "revoke" his "message of September 22, 2020" describing it as an "invitation to treat".

It is clear to me that the tenants intended to purchase paint, and likely would have required primer to apply to raw drywall mud, to repair damage for which they took responsibility, based on their text message request for the paint colour and the landlord expected them to purchase paint and primer based on his response. While the tenants rely upon the landlord's statement that he would "freely come and paint it", I find this statement does not indicate that the landlord would be supplying the paint and primer to repair damage caused by the tenants, or a person permitted in the rental unit by the tenants. Therefore, I hold the tenants liable to pay for the primer and paint.

When the landlord stated he would "freely come and paint it. I would prefer to do it myself", I find the statement made by the landlord does not appear to require a response and the landlord does not illicit a response. Accordingly, I reject the landlord's position that the tenants did not "accept" his offer or invitation to treat. However, upon reviewing the text messages of September 22, 2020 in their entirety, I accept that the landlord made his statement based upon limited damage described by the tenants at that time, months before the tenancy ended. I see that the landlord's statement that he

would paint was made based on the tenant's description of "some dings" and a hole where the doorknob hit the wall several months before the tenancy ended. Arguably, the landlord's statement that he would paint pertained to specific and limited damages.

In any event, I find the landlord's claim of \$3000.00 for labour is not supported by sufficient evidence to verify the claim represents the landlord's loss. The landlord did not provide an estimate from another contractor to support the amount. Nor, did the landlord provide a detailed description of how much time was spent performing the mudding, priming and repainting so that the reasonableness of the claim could be evaluated.

Furthermore, I note that in preparing the claim, the landlord described this charge as being for mudding, priming and painting; yet, during the hearing the landlord repeatedly stated that the labour charge of \$3000.00 included time to replace the flooring and make other repairs. When I asked the landlord to describe how he arrived at the amount of \$3000.00 the landlords' responses varied to indicate it was to compensate him for a few days of lost wages; to a statement he took about a month to make repairs; to this being the "going rate" to repaint a house. As such, I am unclear as to how the landlord arrived at \$3000.00 and I am unable to determine its reasonableness.

Also of consideration is that Policy Guideline 40 provides that interior paint has an average life expectancy of 4 years and the rental unit was last painted approximately 3 to 3.5 years prior. Accordingly, there would surely be signs of wear and tear on the walls during that amount of time for which the tenants would not be liable and it would be unreasonable to hold the tenants liable to pay for the entire cost to repaint the whole house.

For all of the reasons and considerations provided above, I find that to hold the tenants responsible to purchase the primer and paint supplies, and the landlords shall absorb the labour to remedy any damage for which the tenant's are responsible is a more reasonable award. Therefore, I award the landlords \$276.63 from the tenants for the cost of primer and paint.

The landlords' claim had some merit and I award the landlords 50% of the filing fee paid for this Application for Dispute Resolution, or \$50.00.

***Monetary Order***

Given all of my findings and awards provided above, I find the landlords entitled to recover from the tenants, the sum calculated as follows:

Range hood	\$100.78
Wall paint and primer	276.63
Filing fee (partial)	<u>50.00</u>
Monetary Order	\$427.41

Provided to the landlord with this decision is a Monetary Order in the sum of \$427.41 to serve and enforce upon the tenants.

The balance of the landlords claims against the tenants is dismissed without leave to reapply.

**Conclusion**

The landlords had limited success in their claims against the tenants. The tenants are ordered to pay the landlords \$427.41 and the balance of the landlords claims against the tenants is dismissed without leave to reapply.

The landlords are provided a Monetary Order in the sum of \$427.41 to serve and enforce upon the tenants.

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: July 12, 2022

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Residential Tenancy Branch