



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords November 14, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit
- For reimbursement for the filing fee

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlords’ evidence and confirmed there were no issues with service. The Landlord confirmed receipt of the Tenants’ evidence. The Landlord took issue with the timing of service of the Tenants’ evidence. The Landlord confirmed they were able to review the Tenants’ evidence and can respond to the Tenants’ evidence. I did not go into the issue of timing of service further because the point of service is to allow the other party to review and respond to the materials being relied on at the hearing and the Landlord was able to do both. There is no unfairness to the Landlords in admitting evidence they were able to review and respond to.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Oven cleaning	\$80.00
2	Drywall repair	\$180.00
3	Outdoor space	\$250.00
4	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$459.00</b>

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started February 01, 2021.

The parties agreed the tenancy ended October 31, 2021.

**#1 Oven cleaning**

The Landlords sought compensation for having to clean the oven at the end of the tenancy. The Landlord testified that the oven was left dirty at the end of the tenancy. The Landlords are claiming for the time they spent cleaning the oven.

The Landlords submitted photos of the oven.

The Tenant testified that the parties agreed the Tenants would come back to clean the oven. The Tenant testified that they did clean the oven but agreed to come back and clean it further. The Tenant testified that the Landlords did not give the Tenants a chance to clean the oven further.

In reply, the Landlord denied the parties agreed that the Tenants could come back and clean the oven further.

The Tenant could not point to supporting evidence showing the parties agreed the Tenants could come back to clean the oven further. The Tenant acknowledged they were supposed to vacate the rental unit by 1:00 p.m. on October 31, 2021. The Tenant testified that the parties agreed verbally that the Tenants could come back after 1:00 p.m. on October 31, 2021, to clean the oven further. The Tenants did submit text messages which refer to returning to the unit to finish addressing outstanding issues; however, I do not see where in these the Landlords agree to this.

## ***#2 Drywall repair***

The Landlords sought compensation for an excessive number of holes in the walls of the rental unit at move-out. The Landlord testified that the Tenants tried to fix the holes but did not fix them properly. The Landlord testified that the Tenants agreed to re-do the walls; however, they did not do so in time. The Landlords are claiming for their time spent sanding, patching and painting the walls.

The Landlords submitted photos of the wall repairs done by the Tenants.

The Tenant testified that they did the first round of sanding, patching and painting the walls. The Tenant testified that the Landlords were not happy with the work done and so the Tenants were going to fix the holes again. The Tenant testified that their father-in-law did re-do the walls. The Tenant testified that the wall repairs were not 100% perfect but were not noticeable without a light shining on them. The Tenant testified that the Tenants were going to do a third fix of the walls; however, the Landlords started fixing the walls before the Tenants had an opportunity to finish the work.

The Tenants submitted an email from their father/father-in-law about the condition of the rental unit at move-out. The Tenants submitted photos of the rental unit at move-out.

In reply, the Landlord denied there was an agreement that the Tenants could come back to fix the walls for a third time.

## ***#3 Outdoor space***

The Landlords sought compensation for having to clean the outdoor space attached to the rental unit. The Landlord testified that the outdoor space was dirty and had paint on the wall and ground. The Landlords are claiming for their time spent cleaning the outdoor space.

The Landlords submitted photos of the outdoor space showing a stain as well as paint on the wall and ground.

The Tenant testified that they swept the outdoor space, but did not pressure wash the space because they were not sure this was their responsibility. The Tenant testified that the concrete outside was never sealed and was stained because of this. The Tenant testified that they never painted anything outside, and they believe paint was on the wall and ground at the start of the tenancy.

### Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage 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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as Applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

RTB Policy Guideline 01 explains "reasonable wear and tear" as follows:

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

Reasonable wear and tear refers 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.

### **#1 Oven cleaning**

I accept based on the photos that the oven was not entirely clean at the end of the tenancy. I do not accept that the parties agreed the Tenants could come back to do further cleaning because the parties disagreed about this, and the Tenant could not point to further evidence to support their position. Further, the Tenants were to vacate

the rental unit by 1:00 p.m. and were to have cleaned the rental unit by then. There was no requirement that the Landlords allow the Tenants to stay past their vacate time to finish cleaning. I find the Tenants breached section 37 of the *Act* in relation to the oven.

I accept that the Landlords had to clean the oven given the Tenants' breach. I do not accept that the Landlords are entitled to \$80.00 for cleaning the oven. The average cost for cleaners is \$20.00 to \$25.00 per hour. The photos show that the oven was left quite clean and only required minimal further cleaning. I do not accept that the further cleaning of the oven would have taken more than one hour given the photos. I award the Landlords \$25.00 for one hour of cleaning in relation to the oven.

## ***#2 Drywall repair***

I accept that the Tenants left some damage on the walls of the rental unit from trying to fix holes at the end of the tenancy based on the photos submitted as well as the Tenant's acknowledgement that they tried to fix the holes. I also accept that the first job done by the Tenant was not acceptable because otherwise I do not see why the Tenants would agree to re-do the work. I accept that the Tenants' father/father-in-law did further work on the walls. I accept that the photos show the final job done. I accept based on the photos that the patching and painting of the walls was not done particularly well because the paint marks are clearly visible, larger and thicker than one would expect for small nail holes. I do not accept that the Landlords agreed to the Tenants coming back to fix the walls a third time for the same reasons noted above. Further, the Landlords were not required to allow the Tenants to come back to fix the walls a third time. I do accept that the Tenants breached section 37 of the *Act* in relation to some of the damage to the walls shown in the photos.

I accept that it was open to the Landlords to fix the patching and painting job done by the Tenants and their father/father-in-law. I do not accept that the Landlords are entitled to \$180.00 for the repairs because I do find some of the "damage" shown in the photos is minimal at best and is the type of "damage" that will occur over the years with people living in the rental unit and filling holes. I award the Landlords \$150.00 for this item as I find this amount compensates the Landlords for the work required as shown in the photos.

### **#3 Outdoor space**

In relation to the outdoor space, I do not accept that the space was left dirty in general because the photos do not support this. The photos only show a stain and paint marks on the concrete.

In my view, the Landlords have failed to prove a breach of section 37 of the *Act* in relation to the outdoor space. Outdoor spaces exposed to the elements will not remain in perfect condition over the years. Further, I find it difficult to conclude that the Tenants are responsible for small marks or stains because outdoor spaces are accessible to anyone, not only the Tenants and their invited guests. As well, I do not find it unreasonable to expect that tenants might spill something outside on the ground. It is not reasonable to expect outside concrete spaces to be treated in the same manner as indoor spaces. In my view, the Landlords have an unreasonable expectation of how their property will look as time passes. In the circumstances, I am not satisfied the Tenants breached section 37 of the *Act* in relation to the outdoor space and therefore am not satisfied the Landlords are entitled to compensation.

I note that, even if I had found the Tenants breached section 37 of the *Act*, I would not have awarded the Landlords compensation for this item because the issues shown in the photos are so minimal as to be insignificant considering the issues are outside on concrete.

This claim is dismissed without leave to re-apply.

### **#4 Filing fee**

Given the Landlords have been partially successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

### **Summary**

In summary, the Landlords are entitled to the following:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Oven cleaning	\$25.00
2	Drywall repair	\$150.00
3	Outdoor space	-
4	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$275.00</b>

The Landlords are issued a Monetary Order for \$275.00 pursuant to section 67 of the *Act*.

### **Conclusion**

The Landlords are issued a Monetary Order for \$275.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 13, 2022

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Residential Tenancy Branch