



# 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 by way of conference call in response to an Application for Dispute Resolution filed by the Landlords December 13, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Agent for the Landlords appeared at the hearing. The Tenant appeared at the hearing with K.C. to assist. 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.

The parties provided the correct rental unit address which is noted on the front page of this decision.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

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 keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Carpet cleaning	\$245.00
2	Fence removal	\$250.00
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$595.00</b>

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started October 01, 2020, and was a month-to-month tenancy. Rent was \$950.00 per month due on the first day of each month. The Tenant paid a \$950.00 security deposit.

The parties agreed the tenancy ended November 30, 2021.

The parties agreed the Tenant provided their forwarding address to the Landlords in writing October 22, 2021.

The parties agreed the Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlords keeping the security deposit.

The Agent did not know if a move-in inspection was done. The Agent testified that the Tenant was not offered two opportunities, one on the RTB form, to do a move-in inspection. The Agent testified that no Condition Inspection Report ("CIR") was completed on move-in.

The Tenant and K.C. testified that the parties did a move-in inspection, but no CIR was completed.

The parties agreed they did a move-out inspection, but no CIR was completed. The parties agreed they took videos and photos during the move-out inspection.

***#1 Carpet cleaning \$245.00***

The Landlords sought compensation for carpet cleaning. The Agent testified that the carpet was left in terrible condition at the end of the tenancy. The Agent relied on photos submitted by both parties to show the condition of the carpet at move-in and move-out. The Agent testified that the carpets were professionally cleaned prior to the Tenant moving in. The Agent testified that the Tenant could not have cleaned the carpets at move-out because the carpets were dry by noon the day after the Tenant says they cleaned them. The Agent testified that a friend who owns a carpet cleaning company is going to clean the carpets which will cost over \$300.00.

The Landlords submitted photos to support this claim. The Landlords did not provide a quote, invoice or receipt for carpet cleaning.

The Tenant and K.C. testified as follows. The carpet was not clean at move-in. The carpets were fully cleaned with a carpet cleaner at move-out. The carpets were more than 20 years old. The photos submitted show the carpet at move-in and move-out. There was a flood, caused by the Landlords, in the rental unit during the tenancy which caused damage. The Landlords and others brought dirt and sewer into the rental unit when entering to deal with a sewage backup also caused by the Landlords.

The Tenant and K.C. questioned when the Landlords' photos were taken because they showed items that were not present at move-out and different color walls than during the tenancy.

In reply, the Agent testified that there was only a tiny bit of flooding in the rental unit. The Agent also testified that the Tenant caused the sewage backup. The Agent relied on the file name of the photos to show the date they were taken.

In further reply, the Tenant and K.C. noted that some of the photos were taken two weeks after the end of the tenancy and therefore do not show the condition of the carpet

at the end of the tenancy. The Tenant and K.C. also pointed to a receipt in evidence relating to cleaning the carpet.

The Tenant submitted photos, unsigned witness statements, a carpet cleaner receipt, letters, written submissions and videos in response to this claim.

### **#2 Fence removal \$250.00**

The Landlords sought compensation for removing a fence the Tenant installed during the tenancy. The Agent testified that a handyman provided a quote for the cost of removing the fence. The Agent testified that the Tenant installed the fence with permission; however, the Tenant was told they had to remove the fence at the end of the tenancy and did not do so. The Agent testified that the discussion between the parties about putting up the fence was only verbal and not in writing. The Agent was not present for the verbal discussion between the parties about the fence. The Agent submitted that the fence is an eyesore, and nobody would agree to it remaining up after the end of the tenancy.

The Landlords submitted photos to support this claim. The Landlords did not provide a quote, invoice or receipt for fence removal.

The Tenant agreed they put up a fence during the tenancy with verbal permission from the Landlords. The Tenant and K.C. testified that there was no discussion about the Tenant removing the fence at the end of the tenancy or the fence being temporary. The Tenant and K.S. said the Landlords did not provide a written request that the fence be removed at any point.

The Tenant submitted photos and written submissions in response to this claim.

### Analysis

#### **Security deposit**

I note section 19 of the *Act* which states:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

I find the Landlords breached section 19 of the *Act* by collecting a security deposit that was equivalent to one month's rent. However, the remedy for this breach was for the Tenant to deduct \$475.00 from rent during the tenancy. I do not find that there is a further remedy for the breach at this point.

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties about move-in and move-out inspections, I find the Tenant did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlords have claimed for carpet cleaning, which is not damage.

Based on the testimony of the parties, I accept the tenancy ended November 30, 2021.

Based on the testimony of the parties, I accept the Tenant provided their forwarding address to the Landlords in writing October 22, 2021.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlords had 15 days from November 30, 2021, to repay the security deposit or file a claim against it. The Application was filed December 13, 2021, within time. I find the Landlords complied with section 38(1) of the *Act* and therefore the Tenant is not entitled to return of double the security deposit pursuant to section 38(6) of the *Act*.

## ***Compensation***

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.

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...

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.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**#1 Carpet cleaning \$245.00**

The Landlords relied on their photos to support this claim. The Landlords' photos of the rental unit carpet are undated or dated December 03 and 12, 2021. The tenancy ended November 30, 2021, and therefore the photos were taken three and 12 days after the end of the tenancy and on an unknown date. The Tenant and K.C. called into question the accuracy of the photos and when they were taken. I find I cannot rely on the Landlords' photos as compelling proof of the condition of the rental unit carpet on November 30, 2021, the day the tenancy ended, given they are not date and time stamped and were taken three to 12 days after the end of the tenancy. The Landlords should have done move-in and move-out inspections and completed a CIR which would have provided clear evidence of the condition of the carpet at move-in and move-out. Further, if the Landlords wished to rely on photos to show the condition of the rental unit on move-out, the photos should have been taken on the day of move-out and should include a date and time stamp.

The Landlords have not provided any compelling evidence of the state of the carpet at move-in as there is no CIR or photos from the Landlords from move-in.

The Agent relied on photos submitted by the Tenant to show the condition of the carpet at move-in and move-out. The Tenant submitted four photos of the carpet at move-in and numerous of the carpet at move-out. I am satisfied the Tenant rented a carpet cleaner and cleaned the carpets at move-out because the photos and receipt support this. One of the photos shows a room with pink or red carpet which had a large black stain on it at move-in. I find based on the Tenant's photos that the room or rooms with pink or red carpet were cleaned and left reasonably clean at the end of the tenancy. I accept that the grey carpet was cleaned based on the same evidence noted above. I do accept that the Tenant's photos of the grey carpet at the end of the tenancy show some staining. The issue is whether the staining was caused by the Tenant. I find I am not able to determine whether the staining shown in the move-out photos was there at move-in or caused by the Tenant because I do not have compelling evidence before me of the state of the rental unit carpet at the start of the tenancy. The only compelling evidence I have are three photos taken by the Tenant at move-in. The three photos do not show the entire rental unit. I cannot tell from some of the photos what area of the

rental unit they show. Further, the carpet in the photos is dark or in shadow such that it is very difficult for me to tell the extent of any staining. Again, the Landlords should have completed a CIR at move-in and move-out which would have clearly shown the state of the carpet in all areas of the rental unit at each point. In the absence of further compelling evidence, I am not satisfied the Tenant breached section 37 of the *Act* in relation to the carpet in the rental unit.

I also note that the Landlords did not submit a quote, invoice or receipt for carpet cleaning and therefore failed to prove the amount or value of the loss claimed.

I dismiss this claim without leave to re-apply.

### **#2 Fence removal \$250.00**

There is no issue that the Tenant installed a fence during the tenancy and left it installed at the end of the tenancy because the parties agreed on this. The issue is whether the Tenant was required to remove the fence at the end of the tenancy. The Landlords take the position that the Tenant was required to remove the fence and the Tenant takes the position that they were not required to remove the fence. The problem here is that the parties did not communicate about the fence in writing or complete any written agreement about the fence. In the absence of a written agreement or further compelling evidence of the verbal agreement between the parties, I am not satisfied the parties agreed the Tenant would remove the fence at the end of the tenancy or that the fence was temporary.

RTB Policy Guideline 01 states at pages 7 to 8:

#### **FENCES AND FIXTURES**

...

4. The tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence...

7. If the tenant leaves a fixture on the residential premises or property that the landlord has agreed he or she could erect, and the landlord no longer wishes the fixture to remain, the landlord is responsible for the cost of removal, unless there is an agreement to the contrary...



The Tenant did obtain permission to install the fence and I am not satisfied there was any discussion between the parties about the Tenant removing the fence at the end of the tenancy or the fence being temporary. Pursuant to RTB Policy Guideline 01, the Landlords are responsible for removal of the fence because I am not satisfied there was an agreement to the contrary.

I also note that the Landlords again did not submit a quote, invoice or receipt for fence removal and therefore failed to prove the amount or value of the loss claimed.

I dismiss this claim without leave to re-apply.

### ***#3 Filing fee \$100.00***

Given the Landlords have not been successful in the Application, I decline to award them reimbursement for the filing fee.

I dismiss this claim without leave to re-apply.

### ***Summary***

In summary, the Landlords are not entitled to compensation and must return the security deposit to the Tenant. No interest is owed on the security deposit because the amount of interest owed has been 0% since 2009. The Tenant is issued a Monetary Order for \$950.00, the security deposit amount.

### **Conclusion**

The Application is dismissed without leave to re-apply.

The Landlords must return the security deposit to the Tenant and the Tenant is issued a Monetary Order for \$950.00. This Order must be served on the Landlords. If the Landlords 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: August 17, 2022

---

Residential Tenancy Branch