



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND-S, MNR-S, MNDC-S, FF

### Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for compensation for alleged damage to the rental unit by the tenants, a monetary order for unpaid rent, compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The hearing began on May 3, 2022, and the landlord, the landlord's agent, and the tenants' agent attended. After 67 minutes, the hearing was adjourned to allow additional time for both parties to complete their testimony and presentation of documentary evidence.

As a result, an Interim Decision dated May 4, 2022 was issued. The Interim Decision should be read in conjunction with this decision and is incorporated herein by reference.

On August 25, 2022, the hearing reconvened and after an additional 76 minutes, the hearing concluded. The landlord's agent, the tenant's agent and the tenants' witness attended the reconvened hearing.

The hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenants' evidence. As to the landlord's evidence, the tenant's agent confirmed receipt of most of the evidence. The

landlord said they sent both tenants their application and evidence by registered mail, with one package being returned. At that point, the landlord submitted they dropped off the packages to the tenants' witness. I accept that all parties were properly served the other's evidence in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

I have reviewed all oral, written, and other evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6, in summary form.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants for various reasons?  
Is the landlord entitled to an order allowing retention of the tenants' security deposit and pet damage deposit?  
Is the landlord entitled to recovery of the filing fee for this application?

#### Background and Evidence

This tenancy began on May 29, 2021 and ended on October 3, 2021, at 11:00 pm, according to evidence taken at the hearing. The monthly rent was \$2,500 and the tenants paid a security deposit and pet damage deposit of \$1,250 each, both of which have been retained by the landlord in pursuit of this monetary claim.

The landlords' monetary claim listed in their application was \$5,000, plus the filing fee.

The landlord's monetary claim listed in their monetary order worksheet filed as evidence is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 2 <sup>nd</sup> coat of painting	\$614.25
2. Closet repair	\$149.63
3. Cleaning	\$300.00
4. Door and frame	\$539.28
5. Door install	\$200.00
6. Light fixture	\$25.00
7. Drain plug estimate	\$229.60
8. Plumber service call	150.00
9. Electrician service call	\$150.00
<b>TOTAL</b>	<b>\$2357.76</b>

The landlord is additionally claiming \$2,500 for loss of rent.

The filed evidence included a move-in and move-out condition inspection report (Report). The Report filed by the landlord shows no signature from the tenants or their agent for the move-in portion of the document. This document also did not reflect the signature of the tenants or their agent, but the landlord filed a separate, 1-page document, page 6 of a Report, reflecting the tenant's agent's signature showing disagreement with the Report.

The parties disagreed on whether the tenants were offered an opportunity to attend and participate in a move-in inspection.

#### 2<sup>nd</sup> coat of painting –

The landlord submitted that painters went into the rental unit and proceeded to fix the dings and damage to the drywall. The landlord submitted that their original claim had to be amended as the state of the walls ultimately required 3 coats of paint. The landlord submitted that every room had excessive damage. The landlord denied altering the document because there was a revised invoice not filed, but that it was too late to file the new invoice due to the deadline having passed.

#### Closet repair –

The landlord testified that the wire rack shelves were all broken, and referred to the photographic evidence.

Cleaning –

The landlord submitted that a cleaner went around on hand and knees to take off black marks on the walls enough so that only 5 walls needed cleaning. The landlord submitted that mostly it was walls and door frames that were damaged.

Door and frame; door install –

The landlord submitted that the tenant installed some type of security measures on the door and carved chunks out of the door and frame. The landlord said everything at the rental unit was new at the start of the tenancy. However, they did not know the age of the door.

Light fixture –

The tenant agreed to the claim.

Drain plug estimate –

The landlord submitted that the vanity in the rental unit is not a standard size and it is an unusual drain hole size. As of the hearing, the landlord confirmed the drain hole plug was not replaced as it was on back order from China. The landlord submitted the sink and tap had to be replaced. The estimate was not provided.

Plumber service call –

The plumber was called as they had to establish what to do with the drain.

Electrician service call –

The electrician was called for service on the light fixture and repair of a breaker flickering.

The landlord said that both tenants were present for the inspection to mark on the Report.

The landlord submitted that the tenant CD vacated the rental unit in August 2021, leaving tenant MB in the rental unit. The landlord asserted that ultimately on August 31, 2021, MB gave their notice to vacate on September 30, 2021, and failed to vacate until late on October 3, 2021, causing the landlord to inform the next tenants that they could not move in on October 1, 2021, as planned. This caused a loss of rent revenue for October 2021, for a claim of \$2,500.

The landlord said that he has been in business for 35 years and the time consumed with this tenancy is unbelievable. The landlord said that they built a beautiful home and considering how it looked after this tenancy, he does not think he is asking that much.

### **Tenants' response –**

The tenants did not attend either hearing. They were represented by an agent/family member.

#### **2<sup>nd</sup> coat of painting –**

The agent said they did not agree to the painting claim in full, as the price was too much. The agent said that the things done were minor and the most the tenants could agree to was \$400. The agent said there was not that much damage. The agent said that the landlord altered the documents and that she talked to the painters, who said they did not do what the landlord said.

#### **Closet repair –**

The agent said that there was no damage to the gyprock and that there was only 1 plug and 1 screw missing in the bedroom closet and the shelves were not down. The agent said that she totally disagrees with the shelving claim and said the pictures look like they were from the separate carriage house on the residential property. The agent said there was no move-in inspection.

#### **Cleaning –**

The agent, who attended the move-out inspection said the rental unit was cleaned and they did not see the black marks referred to by the landlord's agent. The agent denied that baseboards needed replacing. The agent said that they will admit to some things being marked.

Door and frame; door install –

The tenant's agent said that when they moved in, tenant CD did not take pictures of the rental unit, but he said the weather stripping needed to be installed, which he offered to do. The agent said that their pictures show that the door has not been replaced and their photographs taken on February 27, 2022 shows the same door. The agent asked that if they changed the door, why was a photograph of the new door not submitted. The agent asserted the landlord only changed the weather stripping.

Drain plug estimate, plumber service call –

The agent said there is a big problem with the landlord saying they were waiting for the part to come in from China. The agent said they asked the plumber, who said they had never seen a sink that they could not fix.

Electrician service call –

The agent said that replacing a breaker is not a tenant responsibility.

**Landlord's agent's rebuttal –**

The agent said that the tenant, MB, decided they would paint the walls with paste, which ultimately required 3 coats of paint. The agent said that one of the children had painted the walls. The agent denied altering the documents for any reason other than they could not provide an updated invoice because they did not have time.

The agent said that the cleaner had already cleaned the marks at child level and scrubbed the black marks, which is why there were not black marks showing in the pictures.

The agent said they replaced the door with a used door and frame, as a new door would cost around \$1,200.

The agent said the plumber came to "jiggle" the plug drain so they could get a new plug.

To address the move-in and move-out inspections, the agent said the landlord and tenant MB attended the move-in inspection, and that the landlord's agent, the tenant's

agent, and witness, VS, attended the move-out inspection. The agent said that the inspection lasted about an hour and they went room to room.

Tenant's agent surrebuttal -

The agent said the inspection did not take an hour and by the time she and VS arrived, the agent had already placed green tape over the walls. The agent said there was no walking around and discussing the matters and the landlord's agent accused CD of breaking the cupboard.

Tenants' witness –

The witness, present at the move-out inspection, did see some damage and damage in the closet, but asserted that the closet shelf was pretty heavy and not attached properly. The witness said there were some smudges. The witness said the inspection took about half an hour and that the landlord's agent was already at the rental unit doing the inspection by herself.

The witness said that they lifted the green tape, but there was nothing obvious underneath. Nothing was mentioned about the door, according to the witness.

Unpaid rent –

The landlord's agent said they arranged for other tenants to start a tenancy on October 1, 2021, due to the tenant's notice to vacate on September 30, 2021, but they could not move-in as the tenant failed to vacate that date.

The tenant's agent said that the landlord and agent did a mid-September inspection, and the landlord was asked about any concerns.

The tenant's agent said the landlord's agent phoned the new tenants and they said they were not going to move in after all. The agent said the tenants went back to remove garbage bags and the landlord's agent took it upon herself to cancel the new tenants. The agent said the landlord gave MB permission to continue to stay in the rental unit and clean. The agent said that over the course of October, the landlord had people working on the property and they were not looking to rent the unit.

In rebuttal, the landlord's agent said that she alone attended the rental unit in mid-September to take photographs and the place was trashed.

Filed evidence relevant to the dispute included photographs from both parties, the Report, in parts, invoices, text message communication, and written responses.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove **each** of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where 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.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.



Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

As a result, tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

In this matter, I find the testimony of both parties to be clear, credible and delivered in a forthright manner. For this reason, I must consider the documentary and photographic evidence of the parties, bearing in mind the landlord has the burden of proof in this matter, on a balance of probabilities. I did not find the move-in or move-out Report particularly useful. The landlord is obligated under the Act to inspect the condition of the rental unit with the tenant upon moving in and moving out. In this case, it was unclear if the landlord and tenants conducted a move-in inspection, due to the lack of a signature of the tenants on the move-in portion of the Report and the tenants' written assertion that one was not done. Likewise, I find the evidence shows that the landlord's agent started the move-out inspection prior to the tenant's agent arriving, as can be shown by the green tape on the walls. For this reason, I did not consider the contents of the Report.

#### 2<sup>nd</sup> coat of painting –

In this case, I find the evidence shows the landlord's agent altered the invoice for painting to include extra costs, which I find invalidates the document. The agent explained that they did not file an updated invoice due to the deadline, however, they were not prohibited from filing additional evidence when new evidence becomes available up to 14 days prior to the date of the hearing. For this reason, I find an invalidated document is insufficient to prove the claim. I therefore **dismiss** the landlord's claim for painting, without leave to reapply.

#### Closet repair –

The landlord submitted a photograph showing an installed wire rack. I find the photograph did not accurately depict the condition of the shelf as described in the landlord's testimony. I was unable to determine if the shelf was broken and in reviewing the invoice, I find that the description, "red re shelving" does not describe what work

was done, for instance, re-attaching a shelf. As a result, I find the landlord submitted insufficient evidence to support this claim and I **dismiss** the claim for closet repair, without leave to reapply.

Cleaning –

I have reviewed the photographs submitted by the landlord and compared them with the photographs by the tenant's agent. Although the landlord's photographs show minor deficiencies in some items, the landlord did not provide photographs of the entire rental premises to show the rental unit was not left in its totality reasonably clean. However, the tenant's agent did supply photographs, which I find shows that the rental unit was left reasonably clean.

Additionally, I do not find the tenants to be responsible for extra cleaning for Covid purposes, as that would be considered a higher standard than reasonably clean.

For this reason, I find the landlord submitted insufficient evidence to support this claim and I **dismiss** the claim, without leave to reapply.

Door and frame; door install –

In the landlord's photograph, the door was closed and hanging properly, from my view. I find the landlord submitted insufficient evidence that the entire door required replacing as it seemed functional to me. Although the landlord claimed the door was damaged, I could not determine that it was to any extent that it required replacing. I therefore find the landlord submitted insufficient evidence to support this claim and I **dismiss** the claim, without leave to reapply.

Light fixture –

The tenant's agent agreed to this claim. I therefore **grant** the landlord a monetary award in the amount of **\$12.50**, as reflected on the amount in the invoice submitted.

Drain plug estimate, plumber service call –

I find the evidence shows that the drain plug was missing, for which the tenants should be responsible. As of the date of the hearing, the landlord has yet to incur a cost to replace the drain hole plug and there was no invoice for a plumber's service call.

Tenancy Policy Guideline 16 notes, “an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...*nominal damages* are a minimal award [that may be granted] where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.”

For this reason, I find it reasonable to award the landlord a nominal amount of **\$50** to reflect the damage by the tenants.

Electrician service call –

I find the landlord submitted insufficient evidence to support this claim. The landlord did not provide evidence as to why the tenants would be responsible for a flickering breaker panel or that a cost was incurred. For this reason, I find the landlord submitted insufficient evidence to support this claim and I **dismiss** the claim, without leave to reapply.

Loss of, or unpaid rent –

In this case, on August 31, 2021, the tenants provided written notice to end the tenancy, effective September 30, 2021. Despite their notice, the undisputed evidence is that the tenants failed to vacate until late on October 3, 2021, meaning they failed to comply with their own notice. As a result, I find it reasonable that the landlord was unable to have new tenants move in on October 1, 2021. As the tenants failed to vacate the rental unit upon the terms of their notice and they were still occupying the rental unit on October 1, 2021, the tenants were obligated to pay the monthly rent for October 2021 and did not.

For this reason, I find the landlord established a monetary claim of **\$2,500**.

I note that although the landlord asserted that the tenants were required to provide two months notice to vacate the rental unit, because of the clause in the addendum to the written tenancy agreement, the Act requires one months notice by tenants. Parties may not contract outside the Act.

As the landlord’s application has been partly successful, I grant the landlord recovery of \$100 for their filing fee.

I find that the landlord has established a total monetary claim of **\$2,662.50**, comprised of **\$12.50** for the light fixture, **\$50** in nominal costs for the drain hole plug, **\$2,500** for loss of rent revenue for October 2021, and the **\$100** fee paid for this application.

I order that the landlord retain the security deposit of \$1,250 and pet damage deposit of \$1,250 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the Act for the balance due of **\$162.50**.

The landlord is provided with a Monetary Order (Order) in the above terms and the tenants must be served with this Order if enforcement is necessary. Should the tenants fail to comply with this Order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord's application for monetary compensation is partially successful. The landlord has been granted a monetary award of \$2,662.50, ordered to retain the tenants' security deposit and pet damage deposit of \$1,250 each, and has been granted a monetary order for the balance due of \$162.50.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 21, 2022

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Residential Tenancy Branch