



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-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 \$14,642.47 for damage or compensation for damage under the Act, retaining the security deposit for this claim; and to recover the \$100.00 cost of his Application filing fee.

The Tenants and the Landlord, B.R., 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 Tenants 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 addresses 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.

Early in 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.

At the outset of the hearing, B.R., advised that he is Landlord and that the person named in the proceeding, P.M., was his assistant who arranged the hearing for the Landlord. As a result, I amended the Applicant's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

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 periodic tenancy began on November 30, 2020, with a monthly rent of \$3,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,800.00, and a pet damage deposit of \$1,800.00. The Landlord confirmed that he still holds these deposits.

The Parties agreed that the Tenants started their tenancy in unit #4 of the residential property. They were there for approximately a month, while waiting for the occupants of unit #8 to vacate the unit.

The Tenant pointed to an agreement the Parties had drafted. She explained:

This was signed March 18, [2021], after we vacated and signed the day we made the full agreement of \$5,100.00 settlement full agreement. Technically I don't disagree, but he had already had \$1,200.00 toward the payment, because from his agreement only \$800.00 was left outstanding.

The Landlord said:

I agree with everything, but all those payments have been accounted for and removed. This is about all monies that I was physically out. It's them agreeing with those payments and they are acknowledged it on their payment schedule. I

agree that it should have been minus the \$800.00 she already paid.

This agreement was as follows:

This agreement is between Landlord: [B.R.] and Tenants: [N.W. & M.W.].
Regarding rental tenancy agreement at [rental unit address]. The tenancy agreement is for \$3600 per month starting November 30, 2020 and ending August 31, 2022.

This agreement is for the purpose of ending the tenancy.

The Tenants are responsible for paying March rent in full.

Once the tenants have given the landlord confirmed date of vacancy, the landlord will then begin to advertise the unit. In the event the unit is not re-rented for the current rental fee of \$3600/month, the tenants will be responsible for the monthly shortfall for the duration of the lease.

The landlord will attempt to rent for 3 months at \$3600, in the event it does not rent, the landlord will then attempt to rent it for \$3400 per month for two more months. In the event it does not rent, the landlord will then attempt to rent it for \$3200 for the duration.

In the event the tenant agrees with the below payment schedule, and follows through, the landlord will agree to the payment schedule instead of the above agreement.

In the event the tenant falters in any payments, the agreement will become null and void and will continue directly to arbitration.

Monies held by landlord:

\$1800 [security] deposit,
\$1800 pet [damage] deposit
Total \$3600

Owing to landlord:

March Rent \$3600
April Rent \$3600
May Rent \$3600
Carpet cleaning \$236.25
Moving tenants from unit 4 to 8 at their request \$1735.30
Repainting of Unit 4 garage due to tenant smoking \$551.25
Landlords moving expenses from unit 4 to storage \$750.25.

*\$5100 agreement
settlement as
per full agreement
[handwritten]*

Total \$14,073.05

Minus \$3600 held by landlord

Total owing to landlord \$ 10,473.05

Provided there is no additional damage or expenses incurred to unit 8, this total will satisfy the debt and the landlord agrees to waive all future debt.

Payment schedule:

3 payments of \$1700 over 3 months

Starting March 2021 = \$5100.00 Full

Date of agreement: March 12, 2021

Landlord signature: [signature]

Tenant's signature: [signature (M.W.)]

Tenant's signature: [signature (N.W.)]

("March Agreement")

#1 CARPET CLEANING → \$598.50

The Landlord said:

It's part of lease that all tenants have them professionally cleaned and use my guy, and not the supermarket carpet cleaners. I pre-acknowledged that whatever he charges is all I'm going to charge you. See his invoice: [H.] Carpet cleaners invoice in the submission. Even though it says it's a "quotation", this is the invoice that he charged and I paid.

The Landlord submitted a quotation he received for this claim. He said he had the carpets cleaned and that this is how much it cost him. The Parties agreed in the hearing that this is the carpet cleaning for unit 8. The Tenant agreed to the validity of this claim.

#2 TRANSPORTING FURNITURE → \$1,735.50

The Landlord said:

They had a bunch of stuff stored in their garage, so she hired these movers who moved right across the road. I would eat that, if they stayed for the full two-year lease, and conducted business as we agreed.

The Tenant said:

To clarify, originally, when we met [the Landlord], he had two units, and told us we could have either one. We chose unit 8 – for the dogs; unit 4 faced the road and had see-through fencing, and my dogs would bark at anyone walking by. Unit 8 had been rented out as an AirBnB for December, so we could stay in unit 4 for four weeks and then move across.

But unit 4 was fully furnished so, there was nowhere to put our furniture, so that's why we moved out of our house and into storage, giving us an additional transport charge. We needed a proper hospital bed, so we had some stuff taken to unit 4, and the rest to storage. Yes, he agreed he would help us with that bill, because unit 8 was what we wanted, not unit 4.

The Tenant said she was not contesting this claim. Accordingly, I **award the Landlord** with **\$1,735.50** for transporting furniture, pursuant to section 67 of the Act.

#3 PAINTING UNIT 4 → \$210.00

The Landlord said:

The garage interior needed a little bit there. It was a brand new unit - that was a gift \$210.00 – I passed all these savings on. I just want what I'm out of pocket.

The Tenant said that she was not aware of any work that was done inside. She said they were only there for four weeks.

The Landlord submitted an invoice for the painting of the interior of the garage in unit 4. The Landlord said that it smelled of smoke, and that painting was the only way to remove the odour. He said in the hearing: "I mentioned it immediately; I was told that her son doesn't smoke, but it clearly – it was overpowering. As far as the painting - unit 4 was the garage."

The Tenant said she is not arguing it, as it is in the settlement agreement.

#4 PAINTING GARAGE INTERIOR UNIT 8 → \$341.25

The Landlord said that the same problem occurred at unit 8 that had happened in unit 4. Someone had been smoking in the garage and had left an odour. The Landlord said:

Once again, it was a brand new unit and clearly damage was done. There was smoking in the garage and in #8, and it was pretty bad. The odour still lingers in there, and I cannot get the smell out of the garage. I painted the garage, because of the smell of smoke.

The Tenant said:

[The Landlord] was there when we moved from 4 to 8. The smell wasn't brought up to us for over a week, so I don't know why that wasn't apparent. But no, I'm not arguing it, as it was in the settlement agreement.

#5 MOVING FURNITURE TO STORAGE → \$750.25

The Landlord explained this claim, as follows:

It was my stuff I had to remove. I left what [the Tenant] requested; I took what [the Tenant] wanted out. We worked it out – I'll leave you this. We boxed it all up and moved it with the truck. My wife and I also worked, but didn't charge for that.

The Landlord submitted a note stating:

Moving expense
January 2021
Unit 4 Air BnB pack and move all furnishings from [town] to storage
[C.'s] truck plus 2 men
\$750.25 cash

The Tenant said:

I'm not sure what the – moving his stuff from unit 8 or for the 4 weeks I was in unit 4? And if it is, the only thing we brought in there was the hospital bed and a little computer desk. He and his wife that did it, so I'm not sure what the invoice refers to.

The Landlord said:

Prior to your moving to unit 8, I moved all of the stuff out of there. She was going to live there for legit. It all had to be packed and moved out of there. The places were furnished, so it had to be removed. When they broke the lease, it had to come back again. I was prepared to pay for this, if it was a two-year lease.

The Tenant said she had no further comment.

#6 REPLACEMENT FURNITURE → \$2,326.37

I note this was included in the agreement that the Parties signed.

The Landlord explained this claim as follows:

That's what it cost me and in our other agreement I gave it to her cheaper. This is exactly what it cost me. I understand that her son burned it with a cigarette, they said we'll buy it, but it was expensive and I have provided a receipt for a purchase of the couch. That's what I paid. See page L10 in my 14-page submission package.

The Landlord submitted a copy of an invoice from a national home furnishings store for the amount set out above, with an April 9, 2021 purchase date.

The Tenant said:

It wasn't smoking, he does smoke weed a lot, but he uses a bong. The couch was damaged by his cat, but my son fell in love with the couch, so I made an agreement to purchase the couch. It was going to be tacked on as \$200.00 more to our rent. Money had already started to transfer back and forth in January. – This will become relevant. He sold it to me for \$2,000.00.

See previous emails from a year and a half ago – it is referenced in my evidence a screen shot – the full agreement to look at with the writing and bracket and \$5,100.00, on my evidence you'll see a zoomed in screen shot - \$300.00 March, \$200.00 April, \$300.00 in May. This was signed on March 18 after we vacated, and it was signed the day we made the full agreement of the \$5,100.00 settlement full agreement. Technically, I don't disagree, but he had already had \$1,200.00 toward the payment, because from his agreement only \$800.00 was left outstanding.

The Tenants submitted a copy of a handwritten agreement setting out that the Tenants have paid the Landlord for the couch: "\$300.00 in March, \$200.00 in April, and \$300.00 in May". This agreement also said: "\$200 Paint, \$100, Paint".

The Landlord said:

I agree with everything, but all those payments have been accounted for and

removed. It's all the monies that I was physically out. I'm agreeing with those payments, and they are acknowledged on their payment schedule. I agree that it should have been minus the \$800.00 she already paid

#7 SUITE CLEANING → \$315.00

The Landlord said that this cost is from cleaning unit #4 after the Tenants moved to unit #8. The Tenant said:

The day we moved to unit 8, [the Landlord's] wife said how amazing it had been cleaned – sparkling. And his cleaner showed up, but they did something else. Unit 8 is what he's referring to. I hired cleaners. I told the first lady, but she didn't understand, she thought it was the ensuite, but she didn't clean out the microwave or the drawers, So I agreed to pay the extra fee and I'd fight my cleaners. He did pay for #8 to be cleaned again. I don't disagree with his charge for #8, but there was no cleaning for #4

The Landlord said: "I'm going to agree. I think we're both a little foggy, but that should have been marked as unit 8, but I do remember that unit 8 wasn't clean enough. She was very upset at her cleaners."

#8 SUITE PAINTING → \$1,965.60

The Tenant said:

Before we were moving out, as a family, I have red leather dining room chairs; there was red on walls, I tried to wash it, to clean it, but the paint kept coming off, so the day before we were moving out, a dear friend who owns [C.] Painting, and he had popped by. I said 'What do I do?' We had marked a few walls. He said – 'I'll pop in tomorrow morning and touch everything up for you'. That was moving day. He came in – he said this looks like primer. I can see everywhere I've touched up. When [the Landlord] came over, I showed him, we tried to touch up, but I couldn't wash it, so [my friend] came in to do touch ups.

I fully agreed that you could see the touch ups, so I understand why he had to paint - it was obvious. My argument is on our original agreement we did the week after we moved out, he had said to me 'I've had to redo the paint, and I'll charge you \$300.00' – he added it in writing and it was initialed by [the Landlord]. And there was \$300.00 to charge for paint. The \$1,965.00 claim is new to me and is not our agreement.

The Landlord said:

All this evidence was mailed to [the Tenant]. The whole package. ... I would point out that her paint evidence is a non-starter. I have no written information from this guy; I have her opinion. She's just regurgitating what someone else told her. If a professional painter put the wrong colour – why do it?

That \$300.00 is a projection. He didn't charge me a lot. I keep saying in our agreement, 'Leave the place beautiful and I will eat all of this'.

She did not complete the payments. She wouldn't answer my phone calls, I had to go to her place of business, I can't send stuff there; I need a place of residence, which she did not give me. I had to chase them down and they stopped communicating.

The Landlord submitted an invoice from a local painting company he had used for the other painting noted above. This invoice states that it is for:

Paint interior of suite throughout. Walls in all rooms: living room, master bedroom, three bedrooms upstairs and paint all walls in stairwell. Paint garage as well as painted most baseboards throughout.

The painter charged \$44.00 an hour for 38 hours of labour and \$200.00 was charged for materials.

#9 COST TO MOVE COUCH → \$500.00

I asked the Landlord about this claim, and he said:

I had to pick up the couch and move it. Delivery was not included with the [furniture retailer]. It had to be picked up and moved. From the [furniture retailer] to the Landlord's – not on the [furniture retailer] invoice, They only sold it. I hired someone to pick it up and take it from [the store] to [the residential property].

The Tenant did not have any comments on this claim.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

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

(“Test”)

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections 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.

As set out in Policy Guideline #16 ("PG #16"), "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

#1 CARPET CLEANING → \$598.50

As the Tenant agreed to the Landlord's claim in this matter, I **award** the Landlord **\$598.50** for this claim, pursuant to section 67 of the Act.

#2 TRANSPORTING FURNITURE → \$1,735.50

As the Tenant did not contest this claim, I **award the Landlord** with **\$1,735.50** for transporting furniture, pursuant to section 67 of the Act.

#3 PAINTING UNIT 4 → \$210.00

As the Tenant said she was not disputing this, because it was agreed on in the Parties' settlement agreement, I **award the Landlord** with **\$210.00** for this claim, pursuant to section 67 of the Act.

#4 PAINTING GARAGE INTERIOR UNIT 8 → \$341.25

The Tenant did not dispute this claim, and therefore, I **award the Landlord \$341.25** from the Tenants, pursuant to section 67 of the Act.

#5 MOVING FURNITURE TO STORAGE → \$750.25

I note that this claim was included in the March Agreement, which indicates to me that the Tenants were aware of and agreed to compensate the Landlord for this cost. Based on the evidence before me on this matter, I **award the Landlord** with **\$750.25** from the Tenants, pursuant to section 67 of the Act.

#6 REPLACEMENT FURNITURE → \$2,326.37

In the hearing, the Parties agreed that the Tenants purchased a couch from the Landlord for the price the Landlord originally paid, as set out on the Landlord's purchase invoice. They also agreed that the Tenant has paid \$800.00 toward this cost. Accordingly, I find that the Tenants owe the Landlord \$1,526.37 for the remaining

amount owing on this claim.

I **award the Landlord** with **\$1,526.37** from the Tenants for the remaining amount owing on a couch they bought from the Landlord, pursuant to section 67 of the Act.

#7 SUITE CLEANING → \$315.00

The Tenant agreed with this claim; therefore, I **award the Landlord** with **\$315.00** from the Tenants for this claim, pursuant to section 67 of the Act.

#8 SUITE PAINTING → \$1,965.60

The painting invoice submitted by the Landlord shows that the entire rental unit was painted, including the garage and “most baseboards”. The Parties discussed that the Tenants’ friend had touched up a few spots in the rental unit, although, the painter’s comment was that the touch up paint seemed like primer and did not cover the spots he had touched up. The Tenant acknowledged that these spots needed to be re-painted. However, I note that the Landlord did not provide any photographs of the extent of the re-painting work needed - showing that the Tenants’ friend had “touched up” throughout the entire rental unit, including baseboards and the garage.

Rather, I find that the Landlord took the opportunity to repaint the entire unit at the Tenants’ expense. The Landlord stressed how the unit is only a year and a half old now, so I find it was highly unlikely that it needed a new paint job throughout.

The Landlord acknowledged he had estimated that the cost of this repainting would be approximately \$300.00. He also said the painter “didn’t charge me a lot”. However, I find that \$1,965.00 *is* a lot more than the \$300.00 estimate the Landlord gave the Tenants.

I find that there is an acknowledged violation of the Act, in that the Tenants did not leave the walls of the rental unit “reasonably clean and undamaged”. Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the work that the Tenants’ painter friend did with touch ups damaged the walls beyond normal wear and tear.

I find that the Landlord has established the first two steps in the Test; however, I find that he has not met the third or fourth steps of the Test, in that the amount and type of damage presented to me in this regard is inconsistent with the cost that the Landlord has applied to it. Further, given that the “damage” went from repainting viewable touch-

up spots to painting the entire rental unit, including most baseboards and the garage (which may have been counted in prior paint claim #4 above), I find that the Landlord has not proven the true value of this claim. Further, I find that the Landlord has not proven that he mitigated or minimized this claim, per Step 4 of the Test. As such, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#9 COST TO MOVE COUCH → \$500.00

I find that the Landlord has not indicated how this claim connects with any damage done by the Tenants. The Landlord purchased the couch in 2021, used it in the residential property, and therefore, benefited from the purchase. I find that this cost is more associated with the Landlord's original purchase and intended use of the couch.

If the Landlord had been required to pay to have the couch moved to the Tenants' next accommodation, then the cost would be associated with the sale of the couch to the Tenants. However, I find that the Landlord has provided insufficient evidence to establish this claim was reasonably incurred because of damage caused by the Tenants. As such, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

Summary and Set Off

The Landlord has been awarded the following claims in this proceeding.

	LANDLORD'S CLAIMS	AWARD
1	Carpet Cleaning	\$598.50
2	Transporting furniture	\$1,735.50
3	Painting Unit 4	\$210.00
4	Painting garage interior Unit 8	\$341.25
5	Move LL's furn. - storage from unit 8	\$750.25
6	Furniture replacement	\$1,526.37
7	Suite 8 Cleaning	\$315.00
8	Suite Painting	\$0.00
9	Original cost to move couch	\$0.00

	TOTAL	\$5,476.87
	Less Tenants' Security and Pet Damage Deposits	\$3,600.00
	Plus, recovery of Application filing fee	\$100.00
	MONETARY AWARD	\$1,976.87

The Landlord has provided sufficient evidence in the above noted claims to be awarded **\$5,476.87** in his Application. I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$1,800.00** security deposit and their **\$1,800.00** pet damage deposit in partial satisfaction of the Landlord's monetary awards. The Landlord is also granted recovery of his **\$100.00** Application filing fee from the Tenants, pursuant to section 72 of the Act.

I authorize the Landlord to retain **\$3,600.00** of the Tenant's deposits in partial satisfaction of the Landlord's awards.

The Landlord is granted a **Monetary Order** from the Tenants of **\$1,976.87** for the remainder of the monetary awards owing. This Order must be served on the Tenants as soon as possible.

Conclusion

The Landlord is predominantly successful in his Application. The Landlord has provided sufficient evidence to be awarded recovery of **\$5,476.87** from the Tenants. The Landlord is also awarded recovery of his **\$100.00** Application filing fee from the Tenants.

The Landlord is authorized to retain the Tenants' **\$1,800.00** security deposit and their **\$1,800.00** pet damage deposit in partial satisfaction of the Landlord's monetary awards. The Landlord is granted a Monetary Order of **\$1,976.87** from the Tenants for the remaining amount owing on the awards.

This Order must be served on the Tenants by the Landlord 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: September 06, 2022

Residential Tenancy Branch