



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, 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 \$1,800.00 for damages for the Landlord; a monetary order of \$800.00 for unpaid rent, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and her advocate, K.C. ("Advocate"), and the Landlord 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 Tenant 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. The Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. The Advocate also provided his email address. The Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

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 August 1, 2021, with a monthly rent of \$1,200.00, due on the first day of each month. The rent was in addition to the Tenant paying the Landlord \$400.00 a month for use of an adjacent lot; however, this aspect of the rent was discontinued.

They agreed that the residential premises is an off-grid property and that the rent was reduced when the solar power failed. They said that at the end of September/early October 2021, the solar power stopped working, and they negotiated the rent down to \$800.00 per month. They agreed that the Tenant paid the Landlord a security deposit of \$800.00 and a pet damage deposit of \$200.00. The Landlord confirmed that he still holds the deposits in full to apply to the claims in his Application.

The Parties agreed that they did not conduct a move-in condition inspection, nor produce a condition inspection report ("CIR"), although, they agreed that the rental unit was freshly built at the start of the tenancy; however, the Tenant testified that there were building materials strewn on the property and feces in the composting toilet, so she asserts that it was not clean when they moved in.

The Parties agreed that the Tenant vacated the rental unit on January 21, 2022, and that she provided the Landlord with her forwarding address by email prior to vacating the unit.

The Landlord submitted a monetary order worksheet with his claims, which we reviewed consecutively during the hearing.

	<b>Receipt/Estimate From</b>	<b>For</b>	<b>Amount</b>
1	two receipts – move-in & move-out cleaning	End of tenancy cleaning	\$180.00
2	[local painting co. estimate]	Fix drywall & paint estimate	\$1,260.00
3	Landlord's time – 6+ hours	Clean yard, garbage to dump	\$220.00

4	Landlord	Missing propane tank handles	\$120.00
5	Landlord	Lost rent	\$800.00
		<b>Total monetary claim</b>	<b>\$2,580.00</b>

## **#1 MONETARY LOSS OR OTHER MONEY OWED → \$1,800.00**

### **A. CLEANING → \$180.00**

I asked the Landlord to explain this claim, and he said:

The apartment was left in a filthy condition. It looked like it had never been cleaned while she was there. There was stain on the counter that I couldn't get out. The cleaner before they moved in – the same lady - she wasn't able to get some of the stuff out, so we will have to live with it.

The Tenant said:

There was no running water when we moved out, making it difficult to clean the unit.

His pictures were taken before we finished moving out. There were items that I currently have with me. Some photos have items that I have that we removed. This leads me to believe they took the photos before we returned to clean.

We didn't come back fully until the beginning of February. It was hard to coordinate, because we were moving with the ferry. We also had been struggling with no functioning power and the water lines frozen – we have a very, very young child - so we were in chaos trying to secure my house and meet our basic needs.

I asked the Tenant if she had agreed to keep living there without power. She said: "We agreed and it was manageable, but as soon as the water went out - without water. He couldn't bury the lines to prevent this. I had a one year old at the time.

The Landlord said:

Yeah, I sent [the Tenant] an email on the day before Christmas, saying that the water would probably freeze, but that it would be back on by the beginning of

January, and not when she moved out.

It was on December 20<sup>th</sup> I sent her the email that said she should drain the lines, and I never heard back until the 25<sup>th</sup>. And then she gave me notice on the 20<sup>th</sup>, so she'd actually given me notice the day that I emailed her and said the water would be going – freezing. . . . She had no water. Also, in the 14 days the water was out, and I never heard from her over the Christmas holidays.

She sent one on the 20<sup>th</sup> asking what about the water line and giving notice that she wasn't going to stay.

The Landlord directed me to receipts from someone he had hired to clean the residential property before and after the tenancy. These receipts say:

July 30/21

[Landlords]

4 hours cleaning

at \$30 per hour - \$120.00

Jan 24/22

[Landlords]

6 hours cleaning @

\$30 per hour - \$180.00

After tenant moved out, messy and  
Back-drafted stove, filthy oven

However, there were no photographs in the evidence the Landlord submitted to the RTB, and as such, I am not able to view the condition of the residential property at the end of the tenancy.

## **B. DRYWALL AND PAINTING (est.) → \$1,260.00**

The Landlord explained this claim, as follows:

The drywall and paint were new when she moved in was effectively brand new. There was a missing tool from the stove, a full truckload of garbage to take out, and I didn't charge for my time for cleaning up, either. I'm not trying to be unreasonable at all, I understand she has financial burden, but it's not reasonable to give back the security deposit with so much damage. It looked like someone took a knife and stains and smears on the walls that the cleaner couldn't get out.

The Tenant said:

We cleaned the walls our best; we cleaned it, and wiped stuff down. The walls

were a little bit dirty. The stove in the unit could lead to a build up on the walls. It wasn't perfectly brand new when we moved in. There was a composting toilet with someone's feces and building materials everywhere.

The Landlord said: "The property was cleaned before they moved in - professionally cleaned, with brand new flooring, stoves, etc."

The Advocate noted that the Landlord had failed to conduct a move-in inspection of the residential property, and record it on a CIR. The Landlord replied: "No, but I submitted receipts from a professional cleaner, and the lady who painted it, and it was newly built."

The Advocate asked why there was no move-in inspection, and the Landlord said: "Honestly, it slipped my mind, and since the unit was brand new, there were no scratches and nicks to record. New flooring. Yes, in hindsight I should have done a walk through report."

The Tenant said: "When we moved in, there was garbage all over the unit - garbage and food."

The Landlord said: "I had the unit professionally cleaned - both the yard and the unit. After the workers were out. I literally took out truck loads of garbage that wasn't there when they moved in. I really feel like she's lying about this."

The Tenant said: "When we moved in there was jars of food, half finished bottles, and beer cans and some inside. There was a composting toilet full of feces – it was not clean at all. A urine diverter – not clean. We had to clean up a decent amount of stuff when we moved in.

I asked the Landlord if he had a receipt for the drywall and painting work, and he said: "No, I got the quote done, and I haven't had the money to do it. I haven't rented it, because we decided to stay here."

### **C. CLEANING YARD; DUMPING GARBAGE → \$220.00**

The Landlord explained this claim, as follows:

I believe I didn't put my time [in this claim]; that's mostly fuel and dumping fees – see receipt for one large load. I did some smaller loads, too. I just recently found a bunch of dirty diapers. I'm really not trying to financially hit her; I really think it's

unfair to claim nothing, because I had to do so much work.

The Tenant said:

I believe we did our best to take as much as we could. I know that regularly we were trying to deal with the garbage. We needed a safe space outside to keep garbage outside safe from bears. We would always clean it up and deal with it. I don't know if he was talking about animals dragging stuff away.

The Landlord said:

Look at the photos of all their garbage strewn about the yard and unit. Saying they cleaned everything up - the damage to the drywall. If the space was spotless, I'd be more inclined to leave it. The dump is mainly tipping fees and fuel.

The Tenant said:

Again, there was a lot of garbage and building material when we moved in that didn't belong to us. [The Landlord] had no idea of what he or his builders left behind. I asked him multiple times. He never came it was always a wreck outside.

The Landlord denied that there was any garbage left in the yard at the start of the tenancy, and he said the Tenant, "Never asked me to clean garbage."

I asked the Landlord if he had a receipt from this claim, and he said: "It's about an hour's drive from the unit on the other side of [town], so some fuel fees were included, but I didn't put my time in for that either."

The Landlord submitted an invoice for \$45.89 of recycling fees on February 7, 2022. In his monetary order worksheet, the Landlord explained this claim as: "Cleaning yard, bringing garbage to the dump." He also wrote: "garbage non receipt + 6 hrs Landlord's time."

#### **D. PROPANE TANK HANDLES → \$120.00**

The Landlord said that there were handles on the wood stove that came with it, and a portable handle on the fire box for opening it. He said that was missing, and there was

also a missing propane tank.

Regarding the missing handle, he said: "I can't order the special order wood stove and I can't get another handle. I honestly don't have a receipt. The propane tank was \$40.00 and the handle was the rest."

The Tenant said that she had some help with moving out and that someone took the handle(s) by mistake. The Tenant said: I can get them returned to [the Landlord]." She said she could return: "Within a month or less, we're not too far from there. We're over the ferry, but we could make it happen."

## **#2    LOST RENT → \$800.00**

The Landlord initially claimed \$800.00 in lost rent from the Tenant, given the condition in which the Landlord said the Tenant left the premises. However, during the Parties' discussions in the hearing, the Landlord withdrew this claim. He said: "I didn't wind up renting the unit, so it wouldn't be appropriate even though I would still have to do the repairs to get it up to a rental state, but I'm prepared to withdraw that."

### 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 ("PG #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 Tenant 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")

**#1 MONETARY LOSS OR OTHER MONEY OWED → \$1,800.00**

**A. CLEANING → \$180.00**

Section 32 of the Act states that tenants "...must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 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.

[emphasis added]

Unfortunately, there are no photographs before me indicating the condition of the rental unit at the start and the end of the tenancy. Further, there is no CIR indicating the condition at the start of the tenancy, to compare to that at the end of the tenancy.

However, I appreciate the Landlord's undisputed evidence that the rental unit was newly built before the Tenant moved in, and that his conclusion is that there would be not stains, marks, or other damage to the residential property when they moved in.

I accept from the Tenant's testimony that the end of the tenancy was a hectic period, especially since the power and water were both out leading up to the move out. I find it difficult to understand how the Tenant could clean the rental unit without running water leading up to moving out.



I find that the Landlord holds some responsibility. A landlord is required by section 32 of the Act to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. The Tenant said that the Landlord failed to bury the water lines, which contributed to their freezing. I appreciate that this is an off-grid property, and that the Tenant was willing to do without the solar power; however, doing without water affected her ability to clean properly, let alone live.

When I consider the evidence before me on this point, including the Landlord's failure to provide photographs to demonstrate the degree of cleanliness in the rental unit at the end of the tenancy, I find that both Parties share responsibility for this matter. As such, I **award the Landlord** with half of the cleaning costs of **\$90.00**, pursuant to section 67 of the Act.

#### **B. DRYWALL AND PAINTING (est.) → \$1,260.00**

The Landlord did not submit photographs of the damage to the walls that he claims resulted from the tenancy. As he is living there without having repaired the declared damage, it is not something that interferes with using the premises. However, I appreciate that the Landlord said it would have to be repaired for another tenant.

As set out in 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.

In terms of the Test, I find that the Landlord has not proven on a balance of probabilities that the Tenant breached the Act or tenancy agreement in this regard. Further, as he has not completed the repairs, I find that he has not proven the second step in the Test, that the Landlord has suffered damage or loss as a result of the Tenant's breach of the Act or tenancy agreement.

Further, since the Landlord has not had these repairs done, I find that he has not proven the value of the claimed losses on a balance of probabilities.

Accordingly, I am not satisfied that the Landlord proved this claim on a balance of probabilities and, therefore, I **dismiss this claim without leave to reapply**.

### **C. CLEANING YARD; DUMPING GARBAGE → \$220.00**

I find from the evidence before me in this matter, that the Landlord estimated most of this amount, as he only submitted an invoice for \$45.89 of recycling fees dated February 7, 2022. The Landlord's claim of using fuel to take the garbage to the dump was not set out anywhere in the evidence he directed me to. It is important to have supporting evidence to prove your claim, when the other party denies it.

In the Application, the Landlord explained this claim as: "Cleaning yard, bringing garbage to the dump." He also wrote: "garbage non receipt + 6 hrs Landlord's time." As such, and contrary to the Landlord's testimony that he did not include his time in the claims, I find he has done so here, without further details. There are no photographs of the condition of the yard and/or garbage. There was only one receipt that could be considered as relating to this claim.

The Tenant's main argument in this regard is that the residential property was cluttered with building materials, food, cups, and bottles at the start of the tenancy. However, a tenant is not required to return the premises to the condition at the start of the tenancy, but to maintain it during the tenancy to a level that is "reasonably clean and undamaged".

While the Tenant's comments on the condition of the residential property at the start are not relevant to that at the end, it does indicate that the premises were not as clean and pristine and the Landlord claims they were. But again, without photographs or a CIR of the condition at the start of the tenancy, I give this evidence limited weight.

Based on the testimony and documentary evidence before me, I find that it is more likely than not that the Landlord had to remove some debris left by the Tenant at the end of the tenancy. The \$45.89 receipt for recycling some weeks after the end of the tenancy supports this conclusion. As such, I **award the Landlord** with **\$45.98** from the Tenant, pursuant to sections 37 and 67 of the Act.

### **D. PROPANE TANK HANDLES → \$120.00**

The Tenant has agreed to return the missing wood stove handles, and if she fails to do this, the Landlord may apply for dispute resolution to require them returned or to apply for compensation for their absence.

However, the Landlord has not provided any evidence of the cost of replacing the

propane tank, and therefore, I find he had not provided sufficient evidence to prove this claim on a balance of probabilities. Accordingly, and aside from the Tenant's obligation to return the missing handle(s), I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

## #2 LOST RENT → \$800.00

The Landlord withdrew this claim in the hearing, so I **dismiss it without leave to reapply**.

### Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$800.00 security deposit in complete satisfaction of the Landlord's monetary awards.

	Receipt/Estimate From	For	Amount
1	two receipts – move-in & move-out cleaning	Cleaning	\$ 90.00
2	[local painting co. estimate]	Fix drywall & paint estimate	\$ 0.00
3	Landlord's time – 6+ hours	Clean yard, garbage to dump	\$ 45.98
4	Landlord	Missing propane tank handles	\$ 0.00
5	Landlord	Lost rent	\$ 0.00
		<b>Sub-Total</b>	<b>\$135.98</b>
	Security Deposit	Complete satisfaction awards	(\$1,000.00)
		Return balance	\$864.02
		Application filing fee	\$ 0.00
		<b>TOTAL</b>	<b>(\$864.02)</b>

Given the Landlord's relative lack of success in this matter, and pursuant to section 72 of the Act, I decline to award him with recovery of his **\$100.00** Application filing fee.

The Landlord was partially successful in his claims, as he was awarded \$135.98 from the Tenant. The Landlord is authorized to **retain \$135.98** from the Tenant's **\$800.00**

security deposit, and to return the remaining **\$664.02** of the security deposit and the Tenant's **\$200.00** pet damage deposit as soon as possible.

The Tenant is granted a **Monetary Order** of **\$864.02** from the Landlord pursuant to section 67 of the Act.

### Conclusion

The Landlord is predominantly unsuccessful in his Application, as he failed to provide sufficient evidence to prove these claims on a balance of probabilities. The Landlord is awarded **\$135.98** from the Tenant for his claims.

The Landlord is authorized to retain \$135.98 from the Tenant's **\$800.00** security deposit, and to return the remaining **\$664.02** of the security deposit and the Tenant's **\$200.00** pet damage deposit as soon as possible.

The Tenant is granted a **Monetary Order** of **\$864.02** from the Landlord pursuant to section 67 of the Act for the return of her remaining security and pet damage deposits.

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: September 29, 2022

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Residential Tenancy Branch