



# 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 as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$7,000.00 for damages for the Landlord, retaining the security deposit to apply to the claim; and to recover the \$100.00 cost of her Application filing fee.

The Tenants 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 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; 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.

At the outset of 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.

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 her Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2019, with a monthly rent of \$1,350.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$600.00, and a \$75.00 pet damage deposit. They agreed that the tenancy ended when the Tenants vacated the residential property on December 31, 2021, as they moved somewhere with more space. The Landlord confirmed that she still holds both deposits in full to apply to her claims.

The Landlord said that the residential property is 29 to 30 years old, but that it was repaired or renovated in 2017, two years prior to this tenancy starting. The Landlord did not provide details about what was in new condition at the start of the tenancy.

The Parties agreed that they did a “walk-through” at the start of the tenancy, but that they did not produce a condition inspection report (“CIR”) to document the condition of the residential property at the start of the tenancy for comparison at the end.

The Landlord submitted a monetary order worksheet that listed her claims, which we reviewed consecutively in the hearing.

**#1 CARPET REPLACEMENT [est.] → \$2,207.73**

The Landlord explained this claim, as follows:

As noted in my evidence, in the primary bedroom - and even in their evidence - they admit to damaging the carpet in the closet of the primary bedroom. That carpet wasn't even a year old and the damage - you can't replace a section. You can't get that carpet again.

There were stains in the bedroom, but I got most of those stains out. The ripped carpet exposes underlay that is partially in the closet and partially in doorframe – see photos. There are four pictures to a page, and they're itemized by room.

The estimate is to replace both bedroom carpets, because the other carpet had a

distinct smell of urine, as well.

The Landlord submitted photographs of beige/tan carpeting that has spots, which could be stains. However, some photographs are too close up to see what is a stain and what is the lay of the carpet fibres. Also, a photo of the primary bedroom shows pressure lines from furniture having been on the carpet and protecting it from walking paths/patterns. I find that this indicates to me that it had not been shampooed yet, to determine what was a stain and what was removable dirt.

The Tenants responded:

We actually went to the carpet store and they told us we could replace the part, because it was just in the closet and didn't extend into the room. We had checked with the Landlord – evidence package page 9 – saying we would like to replace it and fix it before we move out. She said we will assess it tomorrow – she didn't want us to fix it at that point.

I asked the Tenants about the odour in the second bedroom, and they said;

We didn't know about an odour. We had it professionally cleaned before we moved out – see pages five and six – carpets were professionally cleaned. And we believe the only part of the carpeting to repair is the primary bedroom closet. We showed them a photo and they had – the colour matched closer to the bathroom floor, so not exactly to the bedroom, but very similar.

We're disputing having to replace the carpeting for the entire unit.

The Landlord said that she is not claiming new carpeting for the whole unit, but: "It's just the two bedrooms."

The Tenants said: "There was no distinct urine smell, and we had it professionally cleaned. We do take responsibility for the damage in the closet."

The Landlord said:

Having had my carpets cleaned multiple times, I am aware that when they are professionally done, the cleaning head leaves distinct markings in the carpet. Those weren't there in the [move-out inspection] walk-through. [The Tenant] said the stains in the living room were unable to come out. I had them cleaned, and

most stains did come out. That's why I'm not asking for the living room carpet replacement.

In their evidence on page five the [national hardware chain] receipt – that is not the correct unit number, so I'm not sure if they went to this unit.

The Tenants said:

That is a typo on [the store's] behalf. I have the phone number to call, if needed, and they can verify this. They came to our address, and I had no access to [the named unit].

Looking up the supposed company used by [the Landlord], it is just a name and not a company. She paid \$300.00 two days in a row.

The Landlord said:

This was a referral from a friend who was just starting up. But the Sunday rate was because it was an emergency - we had a new tenancy beginning January 5<sup>th</sup> or 6<sup>th</sup>, so yeah, I did have to pay a Sunday rate. The friend of a friend who was just starting, hadn't incorporated yet.

The Landlord submitted an invoice for cleaning and carpet cleaning by the friend of a friend, who provided a professional invoice, as set out in the third section below.

The Landlord submitted an estimate from a carpeting company for:

2 bedrooms

Beige

Supply & install over existing underly	\$1,028.12
GST	51.41
PST	<u>40.47</u>
<b>Total</b>	<b><u>\$1,120.00</u></b>

The Tenants submitted copies of a text message exchange dated December 31, 2021, between the Parties in which the Tenants comment on the damaged carpet in the master bedroom closet.

The December 31 text at 1:21 p.m. from Tenant to Landlord:

Hi [Landlord], the carpets have all been shampooed. There is an area in the walk through closet that our chihuahua had pulled at. We rehomed him with another family member right away, but I'm unsure what you would prefer we do about the carpet. We feel absolutely horrible about it. We had a runner over it so we had completely forgotten that it was there until lifting the runner. We talked to a flooring place, and [we] are able to replace just the closet with the same type of carpet that we have both worked with in the past. The only problem is that the colour they have in stock is not beige, it's a darker grey (sort of like the colour of the bathroom floor). If you would rather take it out of our damage deposit we fully understand. But we wanted to let you know that we are willing to fix it so that you guys don't have to worry about it.

Landlord to Tenant: Thanks for letting us know. We'll just have to assess it tomorrow.

Within this claim, the Landlord requests compensation for having to replace carpeting in the second bedroom, because she said a urine odour remained in the carpet after it was professionally steam-cleaned. The Tenants said they had the carpets all steam cleaned, too, and they denied that there was an odour in this bedroom at the end of the tenancy.

The Landlord submitted two photographs of stains on the second bedroom carpet. The first photo is quite close up, and it is difficult to determine what the Landlord is referring to in terms of spots, as the carpet has different hues with the way it lays. The second photo is a little farther back, and I find that there are two spots near a wall in the corner of the room from this photo; however, it remains difficult to determine the size of the spots. Further, the spots are slightly darker only than the tan/brown colour of the carpet. Another photograph is straight on to the spots, and they can be seen in comparison to an electrical outlet above them. From this comparison, I find that the spots are about the size of a quarter or less than the size of an electrical plug-in.

## **#2 PAINT, DRYWALL REPAIR – BATHROOM → \$5,948.54**

The Landlord explained this claim as follows:

Going through each room, there are screw marks in the walls. In the same wall, there are four screw holes in a distinct circle. Below that a chunk of the wall was taken out.

The Landlord said that the amount claimed is an estimate.

The Tenant said:

When we did the initial walk through, [J.] wasn't present; her partner [H.] walked us through. He told us first – he showed us damage already on the wall. He said it's okay to put up shelves, pictures, TVs, etc., because the damage that's already there will be repaired. It'll take just a little bit of mud and paint, he said.

The Landlord said:

I have no comment, I can't speak for my husband. But tenants need to put [the rental unit] back the way they received, it. Holes were not there when they moved in. I have pictures of it prior to them moving in, not showing damage to that wall.

There's washing machine damage - mould that will not come off. The cleaners tried to scrub it out. And the wall behind the washing machine was filled with holes; there was a hook there - that all needs to be repaired. I submitted the purchase receipt for that washing machine; it was brand new.

The Tenants agreed that these machines were delivered new during the tenancy. The Landlord submitted a photograph of a wall with a hook glued or stuck to the wall at about 60 centimetres off the floor. There also appears to be a screw in the wall beside the hook. The Landlord submitted photographs of chips or damage to the bathroom counter. The Landlord also submitted a photograph of the bathroom flooring, saying it demonstrates damage done; however, I find that damage was not apparent in this photograph.

I asked the Landlord where there was mould in the washing machine, and she said it was inside the rubber piece. She referred me to a photograph in evidence.

The Tenant said:

Again, the wall – there were already things in the walls, and we were told that a shelf is okay. [H.] said it would be okay.

The washing machine. I don't know what to say. Any frontloading I have ever come across - I'm pretty sure that's a common issue with front loading machines

I asked the Tenants if they cleaned the washing machine, and they said they wiped it down with a rag every time they used it. They said:

When they purchased the machine, they asked us to watch for that, and we did wipe it with a rag each time. We did as much as possible.

The Landlord said: "I've been having a front loader for some time. Closing the washing machine door when nothing's in it causes that, so it should be left open. That's what causes that."

I asked the Landlord if she advised the Tenants of this when the new machines were installed, and she said: "Yes, when we had the new machines delivered, we mentioned wiping it out and not closing the door completely when not in use."

The Tenant said: "The only time the door was closed was when it was in use, because we didn't want mould in the house, either."

The Landlord submitted an invoice from a large appliance chain dated March 20, 2019. I note that the tenancy started in January 2019. The washing machine cost \$799.98 plus tax.

The Landlord submitted an estimate for the repair work dated January 28, 2022. In this estimate the vendor listed the following activities/costs:

Dear Sir: The undersigned proposes to furnish all materials and perform all labour necessary to complete all the work described below:

- Supply paint light grey / repair of drywall
- 10 ft baseboard replacement
- Demo bathroom: remove toilet / flooring  
remove sink / counters
- Replace flooring (grey) / installation
- Installation of toilet (existing)
- Replace countertop (grey)
- Installation of existing sink / faucet

All of the above to be completed in a good and workmanlike manner for the sum of five thousand nine hundred & forty-eight dollars and 54/xx cents. \$5,948.54

### **#3    CLEANING & CARPET SHAMPOO → \$900.00**

The Landlord submitted a receipt for cleaning and carpet shampooing dated January

14, 2022. This invoice billed the Landlord, as follows:

Date	Description	Qty	Unit Price	Cost
2022-01-02	Clean apt. after move-out; Sunday rate	5	\$60.00	\$300.00
2022-01-03	Clean apt. after move-out; regular rate	5	\$30.00	\$150.00
2022-01-03	Shampoo Carpets	3	\$150.00	\$450.00
			<b>Total</b>	<b>\$900.00</b>

The Tenants submitted receipts showing an expenditure at a steam dry carpeting vendor for \$182.70 dated December 30, 2021.

In the hearing, the Landlord said:

The apartment was quite dirty. The walls needed to be wiped down thoroughly, mopping the floors, and there's other damage in the main bathroom we haven't addressed yet. I had to have someone there on a Sunday, and it did take some time. This person did cleaning and shampooed the carpets.

The Tenant said:

We spent probably a week straight in that unit cleaning it; all the floors were mopped and walls scrubbed. Every place of that unit was clean, so I'm not sure why it would need that much cleaning to be done. We did the cleaning before we moved out.

The Landlord responded:

Other than there's no way they spent a week cleaning. It was filthy. The guy was in there cleaning for ten hours. My photos in the evidence should show some of that.

Damage to living room, stains on the carpet, hooks glued to the fire place, damage to the window and door moulding and patio - just in living room alone. In main bathroom damage to the counter top that needs to be replaced; residue on linoleum unable to scrub out. Random hook and a screw with an anchor,



I have photos of the apartment six months prior to their tenancy, because we had it listed for sale.

The Tenants said:

Actually, the damage in the bathroom - [H.] pointed it out to us before we moved in. He said it's because it's getting old. The floors having marks; hey're 30 years old, and the dirt built up over time. It was starting to turn pink before we moved in.

### 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. RTB 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 REPLACEMENT [est.] → \$2,207.73**

I find that the Tenants acknowledged responsibility for the damage to the carpet in the master bedroom closet. The Landlord said the carpeting was last new in 2017 when the rental unit was renovated, two years before the tenancy started, and therefore, it was four years old at the end of the tenancy.

I find that the Tenants acknowledged responsibility for the damage their dog caused to the carpet in the doorway between the master bedroom and the closet. However, they did not acknowledge having left an odour in the other bedroom carpet.

I find that the Landlord has not provided sufficient evidence to establish that she needed to replace all of the carpeting in the master bedroom and closet, because of a small patch of scratched carpet in a doorway. I find that this demonstrates that the Landlord did not try to minimize or mitigate her losses, pursuant to Step 4 of the Test. She did not indicate having visited multiple carpeting stores in an effort to match the carpet. Further, she has not incurred the cost of repairing the damage, as the amount claimed is an estimate.

The carpeting in the second bedroom is also part of this claim, as the Landlord said that

an odour remained in that carpet after it was steam cleaned. I find that the Landlord has testified that there was an odour of urine in the carpet of the second bedroom; however, she did not provide any evidence to supplement her testimony, such as another person's statement confirming the odour. I note that the Tenants admitted to having damaged the master bedroom carpet; however, they denied that there was an odour in the second bedroom carpet.

Based on the evidence before me overall, I find that the reported stains in the second bedroom carpeting are so small that they are no more than normal wear and tear. Further, without evidence supporting her testimony that there was an odour in this carpet, I find the Landlord has not provided sufficient evidence to prove her claim on a balance of probabilities.

PG #16 sets out that

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. Nominal damages may be awarded 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.

I find that the Tenants took responsibility for the damage to the carpeting in the master bedroom closet; however, the Landlord did not provide an estimate for replacement of the closet carpet, as a means of mitigating her loss. Pursuant to section 67 of the Act and PG #16, I **award the Landlord** with a nominal amount for this claim of **\$500.00** from the Tenants that may be used toward repairing the damage to the master bedroom carpet.

## **#2 PAINT, DRYWALL REPAIR – BATHROOM → \$5,948.54**

The Parties agreed that there was no move-in inspection of the condition of the rental unit at the start of the tenancy. Further, the Tenants' evidence is that the Landlord's husband did the move-in walk through with them, and pointed out some of the damage that was present at the start of the tenancy. The Landlord acknowledged that she was not present for this inspection, and that a CIR was not produced at the move-in inspection. As such, a move-in CIR is not available to compare the condition of the residential property at the start of the tenancy to that at the end of the tenancy.

Given the failure to produce a move-in CIR, along with the Tenants' testimony that much of the damage was present at the start of the tenancy, I find that the Landlord has failed to provide sufficient evidence that the Tenants caused the damage claimed herein. Accordingly, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

### **#3     CLEANING & CARPET SHAMPOO → \$900.00**

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]

The Landlord's evidentiary submissions mainly consist of photographs of damage and carpet stains. There are no photographs of a dirty bathroom, kitchen, floors or walls. The Landlord did not direct me to photographs of the condition of the rental unit at the start of the tenancy, nor did she direct me to photographs of cleanliness or lack thereof in the unit at the end. The Tenants' evidence is that they cleaned the rental unit at the end of the tenancy, including having had the carpets shampooed.

I find that the Landlord has not provided sufficient evidence to demonstrate that the rental unit needed \$900.00 of cleaning and carpet shampooing at the end of the tenancy. Accordingly, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#### 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 Tenants' security deposit of \$600.00 and their pet damage deposit of \$75.00 in complete satisfaction of the Landlord's monetary award. I authorize the Landlord to retain \$500.00 of the Tenants' deposits, and to return the remaining \$175.00 to the Tenants as soon as possible.

<u>Awards</u>	<u>Respective Claims</u>
\$500.00	Carpet replacement
\$ 0.00	Drywall, other bathroom damage
\$ 0.00	Cleaning

Given that the Landlord has been predominantly unsuccessful in her claim, I **decline to award** her with recovery of the **\$100.00** Application filing fee from the Tenants.

I grant the Tenants a **Monetary Order** of **\$175.00** from the Landlord to facilitate the prompt return of the remaining security and pet damage deposits from the Landlord. This Order must be served on the Landlord by the Tenants, and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

#### Conclusion

The Landlord is marginally successful in her claim for carpet replacement, as she is awarded **\$500.00** from the Tenants for this claim. The Landlord failed to provide sufficient evidence to prove her remaining claims on a balance of probabilities.

The Landlord is authorized to retain **\$500.00** from the Tenants' **\$600.00** security deposit and to return the remaining **\$100.00** and the **\$75.00** pet damage deposit to the Tenants as soon as possible. The Tenants are granted a Monetary Order of **\$175.00** in this regard. This Order must be served to 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 26, 2022

---

Residential Tenancy Branch