



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties, who remained under oath from the original hearing, were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Landlord states that they sent their evidence to the Tenant on a usb in December 2021. The Tenant states that they also obtained a usb from the Landlord however the usb could not be read and repairs were not successful. The Landlord states that they resent the evidence again by email on July 5, 2022. Tenant confirms receipt of the Landlord’s evidence by email but states that the emailed copies are not clear.

Rule 3.7 of the Rules provides that evidence must be clear and unclear evidence may not be considered. Although the Tenant’s evidence is that the Landlord’s evidence is unclear the Tenant did not indicate that the lack of clarity impeded their ability to respond. For this reason, I will accept the Landlord’s evidence and will consider the Tenant’s evidence of lack of clarity in making determinations on the weight of the Landlord’s evidence.

The Tenant states that they sent their evidence to the Landlord by express post on October 27, 2022 and that the postal tracking evidence indicated the evidence was delivered. The Landlord states that although they received a text about the expected delivery of evidence from the Tenants, it has not been delivered to date.

Rule 3.15 of the Rules provides that a respondent's evidence must be received by the applicant not less than seven days before the hearing. Noting that the Tenant's evidence was received by the RTB on November 1, 2022 and considering the Landlord's evidence that the Tenant's evidence was not received, I find that the Tenant's evidence may not be considered. The Tenant has opportunity to provide oral testimony on the claims.

#### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

#### Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on April 23, 2021 and ended on September 4, 2021. At the outset of the tenancy the Landlord collected a security deposit of \$1,500.00. The Landlord has not returned the security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenants. The Parties mutually conducted a move-out inspection with a completed report.

The Landlord's Witness states that they were present with the Landlord as the Landlord's agent for the move-out inspection. The Witness states that the Tenant was given opportunity to take photos of each page of the move-out report. The Witness does not know whether a copy of the move-out report was otherwise provided to the Tenants.

The Tenant states that the Landlord had their forwarding address from the outset of the tenancy agreement. The Tenant states that they also provided their forwarding address in August 2021 with their notice to end tenancy, to the Landlord at move-out and by text on November 18, 2021. The Landlord states that they did not receive any forwarding address at the move-out inspection. The Landlord's Witness states that the Tenants repeatedly refused to provide a forwarding address at move-out.

The Landlord states that the Tenants left dishes damaged and claims \$36.96 for their replacement. The Landlord confirms that no dishes are included in the inventory of household furnishings set out in the tenancy agreement. The Landlord confirms that the state of the dishes at move-in were not noted on the move-in condition report. It is noted that no damaged dishes are noted on the move-out condition report. The Landlord states that the Tenants left cushions stained and damaged. The Landlord claims \$10.20, \$27.56, and \$12.13 as the costs to clean the cushions. The Landlord states that the Tenants left stools and the sofa with stains and claims \$149.31 as the costs to clean the upholstery on these items. The Landlord states that one of the stained cushions could not be cleaned. The Landlord claims the replacement cost of \$74.98. The Landlord states that the cushion was not replaced. The Landlord withdraws the claim for protective spray on the upholstery.

The Tenant states that they did not leave any damage to the stools, sofa or dishes and that the cushions that were stained at move-in. The Tenant states that they did not damage any dishes.

The Landlord states that the Tenants caused a potted plant dead by failing to water the plant. The Landlord claims \$49.83 as the cost to replace the plant and \$12.59 for the cost of the soil. The Tenant states that the Landlord was informed at the onset of the tenancy that they did not want the plant and that the Landlord failed to remove the plant.

The Landlord states that some hooks left on the wall for hanging items were removed by the Tenants. The Landlord claims the replacement cost of \$5.72. The Tenant states that they never saw any such hooks in the unit.

The Landlord states that the Tenants left a table fan broken and that it could not be repaired. The Landlord claims \$50.83 for its replacement. The Landlord confirms that no receipt for this cost was provided. The Tenant states that they did not leave any fan damaged and did not use any fans during the tenancy as the Tenants used their own air conditioner.

The Landlord states that a bath sheet was missing at the end of the tenancy and was replaced by one that the Landlord had on hand. The Landlord claims the cost of \$149.00.

The Landlord states that the Tenant did only a small amount of cleaning to the unit. The Landlord claims cleaning costs of \$624.75 and provides a receipt. The Landlord states that the costs include washing walls where scuffs and marks were left. The Tenant states that the unit was left cleaner than was provided. The Tenant states that during the tenancy the Landlord had commented on the cleanliness of the unit. The Tenant states that during the move-out inspection the Landlord was marking numerous spots on various parts of the unit as unclean or damaged and that the Landlord was very extreme in this activity, marking locations that the Tenants could not even reach. The Tenant states that the appliances were not even used during the tenancy.

The Landlord states that the Tenant left damage to the paint and drywall requiring a painting of the unit. The Landlord claims \$450.00 as an estimate of the costs to paint the unit. The Landlord did not paint the unit and states that they rented the unit to another set of tenants with the walls not repaired and no rental discount given to the new tenants for being provided with damaged walls.

The Landlord claims \$210.00 for its time and travel costs to cleaners, hardware and garden shops.

The Landlord claims \$58.67 for the costs of photos provided as evidence for this hearing. The Landlord claims \$312.50 for the cost of having an agent attend the move-out inspection.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

As the Landlord does not have any evidence of the state of the dishes, cushions, sofa or stools at move-in given the Tenant's evidence that none of these items were damaged or stained by the Tenants, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the losses being claimed by the Landlord and I dismiss these claims. Based on the Landlord's evidence that no costs were incurred for the replacement of a cushion I find that the Landlord has not substantiated the claim for this cost, and it is dismissed.

As the Landlord withdraws their claim for upholstery protective spray, I dismiss this claim.

As no hooks are noted on either the move-in or the move-out report and given the Tenant's evidence of no hooks being seen, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants removed any hooks. I therefore dismiss the claim for their replacement.

Given that the move-out report does not note any damage to any fans and given the Tenant's evidence that no fans were either used or damaged, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused any damage to the fan. Further the Landlord has not provided evidence of the cost claimed. For these reasons I dismiss the claim to replace a table fan.

As the Landlord did not incur any cost to replace any bath sheet and noting that no such damage is noted on the move-out inspection I find that the Landlord has not substantiated that the Tenants caused any loss of the bath sheet or that the Landlord incurred the costs claim. I dismiss this claim.

The move-out inspection notes a few areas that were left unclean and do not support the amount of time indicated to have been spent on the cleaning. I also consider that some of the spots marked by the Landlord and depicted on the photos are numerous and do not all show any damage or uncleanliness. Given the Landlord's photo evidence and the Tenant's evidence of the Landlord's zeal at marking items with stickies, I find on a balance of probabilities that the Landlord's evidence exaggerates the state of the unit at move-out in terms of cleanliness. I therefore dismiss the cleaning costs claimed.

Given the undisputed evidence that the Landlord was asked from the outset to remove the plant from the unit and as the Landlord did not remove the plant, I find that the Landlord failed to take reasonable steps to mitigate any losses for the plant and was left at the Landlord's peril. Any damage from not having been watered remains the responsibility of the Landlord and for this reason I dismiss the claim to replace the plant.

Based on the Landlord's evidence that no costs were incurred to paint the walls and that no rental loss was experienced as a result of the walls, I find that the Landlord has not substantiated the costs claimed to paint the walls and I dismiss this claim.

As there are no provisions under the Act for claiming the costs of participating in the proceedings other than for recovery of the filing fee and as the photo costs are the costs of evidence for the proceeding, I dismiss the claim for photo costs. As the Landlord seeks costs for its time and travel to shop for repairs or replacement in relation to unsubstantiated claims, I dismiss this claim.

Section 36(2)(c) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Section 18 of the Residential Tenancy Regulations (the "Regulations") requires that a copy of the move-out inspection report be provided to the Tenant within 7 days after the condition report is completed. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Given the undisputed evidence that the Tenants were given opportunity to take photos of the complete move-out report and as there is no evidence that the Landlord's copy of the move-out report is any different from the Tenants' photocopies, I find that the

Landlord effectively provided a copy of a duly completed move-out report to the Tenant by way of the photos of the report at move-out. As a result, I find that the Landlord's right to claim against the security deposit was not extinguished at move-out and that the Landlord is not required to pay the Tenant double the security deposit on this basis.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Given the Landlord's supported evidence that they repeatedly asked for the Tenants' forwarding address at move-out, as the Tenants have no supporting evidence of the Landlord being provided with the forwarding address, and as the Landlord did not dispute receipt of the forwarding address by text on November 18, 2021 I find on a balance of probabilities that the Landlord received the Tenants' forwarding address on November 18, 2021. As the Landlord made their application on November 19, 2021, I find that the Landlord made their application within the required time and is not required to pay the Tenant double the security deposit on this basis.

As none of the Landlord's claims have met with success, I dismiss the Landlord claims to retain the security deposit or to recover the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to return the security deposit of **\$1,500.00** plus zero interest to the Tenants forthwith.

### Conclusion

The Landlord's application is dismissed.

I grant the Tenants an order under Section 67 of the Act for **\$1,500.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.



This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 16, 2022

---

Residential Tenancy Branch