



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL (Landlords)
MNSDB-DR, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Landlords filed their application April 12, 2022 (the “Landlords’ Application”). The Landlords applied as follows:

- To recover unpaid rent
- To keep the security and pet damage deposits
- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Tenant filed their application May 02, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of the security and pet damage deposits
- For reimbursement for the filing fee

The Landlords appeared at the hearing. The Tenant appeared at the hearing with N.K., a witness, who was not involved in the hearing until required. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to keep the security and pet damage deposits?
3. Are the Landlords entitled to compensation for damage to the rental unit?
4. Are the Landlords entitled to compensation for monetary loss or other money owed?
5. Are the Landlords entitled to reimbursement for the filing fee?
6. Is the Tenant entitled to return of the security and pet damage deposits?
7. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

Tenant's Application

A written tenancy agreement was submitted. The tenancy started October 01, 2020, and was for a fixed term ending October 01, 2021. Rent was due on the first day of each month. The Tenant paid a \$700.00 security deposit and \$700.00 pet damage deposit. The parties agreed rent at the end of the tenancy was \$1,421.00.

The parties agreed the Tenant moved out of the rental unit March 31, 2022.

The parties agreed the Tenant provided a forwarding address in writing to the Landlords March 31, 2022.

The parties agreed the Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlords keeping the security or pet damage deposits.

The Landlords submitted the Condition Inspection Report (the "CIR"). The Landlords confirmed they signed the CIR on move-in and the Tenant did not. The Landlords testified that they provided the Tenant a copy of the CIR by putting it in the mailbox within one week of the inspection.

The Tenant agreed they did a move-in inspection with the Landlords. The Tenant agreed the CIR was completed on move-in. The Tenant agreed with the accuracy of the CIR on move-in. The Tenant agreed the Landlords provided a copy of the move-in CIR as stated.

The parties agreed on the following. They did a move-out inspection and completed the move-out CIR together. The Landlords signed the move-out CIR, and the Tenant did not. The move-out CIR was provided to the Tenant by registered mail April 10, 2022.

Landlords' Application

Item	Description	Amount
1	Painting	\$1,989.48
2	Carpet replacement	\$941.07
3	Underlay replacement	\$229.82
4	Installation of Carpet	\$262.50
5	Pressure washing	\$71.82
6	Nominal damages for damage to gate	\$100.00
7	Overhold of the suite	\$2,842.00
8	Filing fee	\$100.00
	TOTAL	\$6,536.69

#1 Painting \$1,989.48

The Landlords testified as follows. They asked the Tenant to repair and paint the rental unit due to damage caused by the Tenant's dog. The Tenant had the unit painted; however, there were issues with the paint job. The painter only painted some of the walls and so the color of the walls did not match. Paint got on the ceiling and was visible given the different colors. The Landlords had to have a painting company attend and re-paint the unit so that it was the same color throughout. The Landlords sought multiple quotes from companies to keep the cost as low as possible.

The Tenant testified as follows. They hired a professional company to paint the rental unit and they painted the entire rental unit except a bedroom and the ceiling. The paint used was all one color. The painter did not get paint on the ceilings. The Tenant referred to a video and photos to support their position.

The Tenant's witness N.K. had attended the rental unit and been present at the move-out inspection. N.K. testified that they did not notice anything in relation to the paint in the rental unit and the unit was in excellent condition and clean at move-out. N.K. testified that they did notice a couple of marks on the ceiling, but nothing significant. N.K. testified that the walls of the rental unit were in great shape and repainted at move-out.

#2 Carpet replacement \$941.07

#3 Underlay replacement \$229.82

#4 Installation of Carpet \$262.50

#7 Overhold of the suite \$2,842.00

The Landlords testified as follows. The Tenant's dog damaged the carpet in the rental unit. The Tenant made patches and holes in the carpet. They told the Tenant they would replace the carpet. The Tenant later told the Landlords they had purchased carpet for the unit. The Tenant never told the Landlords they were going to purchase carpet for the unit and did not get the Landlords' permission or input about this.

The Landlords further testified as follows. Someone attended the Landlords' residence to install the carpet in the rental unit and they showed the Landlords an invoice indicating the Tenant had arranged for this. The Tenant then attended the Landlords' residence and the Landlords told the Tenant they did not consent to installation of the carpet in the unit because the Tenant had refused to provide information about the carpet when asked. The Tenant left the carpet and underlay in the rental unit at the end of the tenancy. At the move-out inspection, the Landlords told the Tenant to take the carpet and underlay with them; however, the Tenant said it was now the Landlords. The Tenant overheld the rental unit by leaving the carpet and underlay in it. The Landlords could not just get rid of the carpet and underlay because it was worth over \$500.00. The Tenant did pick up the carpet and underlay May 14, 2022.

The Tenant testified as follows. Their dog made a small hole in the carpet and the Tenant temporarily patched it. The Tenant intended to replace the carpet. The Tenant had a sample of the carpet in the rental unit and asked the carpet store for the same

carpet. The Tenant told the Landlords they would replace the carpet, the Landlords kept asking about the replacement carpet, but the Tenant did not have time to answer them. The Tenant arranged to have the carpet installed; however, the Landlords told the Tenant they would not consent to this. The Tenant did not abandon the carpet and underlay in the unit, they left it there because the RTB told them to.

The only documentary evidence the Tenant could point to to show the carpet they purchased was the same as the carpet in the rental unit was a photo. The Tenant acknowledged they knew the Landlord did not want the carpet they purchased.

N.K. testified that they saw the matched carpet the Tenant purchased for the rental unit. N.K. testified that the Tenant left the carpet in the unit, and nobody mentioned that it needed to be removed. N.K. testified that the Tenant did not receive the information that the Landlords did not want the carpet until a month after the Tenant moved out.

#5 Pressure washing \$71.82

The Landlords sought compensation for the Tenant's dog's hair being caked-on a walkway on the property. The Landlords testified that they had to hire someone to pressure wash the walkway to get the caked-on hair off.

The Tenant testified that they cleaned the walkway at the end of the tenancy and most of the hair was removed.

N.K. testified that they did not see caked-on hair on the walkway and that there may have been minimal hair that would have been easy to clean.

#6 Nominal damages for damage to gate \$100.00

The Landlords sought compensation for numerous scratches on an outside gate on the property which was used by the Tenant and their dog. The Landlords sought nominal damages because they have been unable to get someone to attend and assess the damage and cost of repair.

The Tenant testified that their dog was never outside by themselves and off leash. The Tenant testified that their dog could not have caused the scratches on the gate.

N.K. testified that the Landlords pointed out scratches on a gate at move-out; however, who knows who scratched the gate and it is N.K.'s understanding the Tenant's dog was always on a leash.

Both parties provided further evidence which I have reviewed and will refer to below as necessary.

Analysis

Tenant's Application

Security and pet damage deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties about move-in and move-out inspections, as well as the CIR, I find neither party extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

Based on the testimony of the parties, I accept that the tenancy ended March 31, 2022.

Based on the testimony of the parties, I accept that the Tenant provided a forwarding address in writing to the Landlords March 31, 2022.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenant's forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlords had 15 days from March 31, 2022. The Landlords' Application was filed April 12, 2022, within time. I find the Landlords complied with section 38(1) of the *Act*.

Landlords' Application

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove they are entitled to the compensation sought. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

Given the parties disagree about the issues and have provided conflicting testimony about the issues, I have focused on the objective documentary evidence when making this decision rather than the submissions authored by the parties themselves.

#1 Painting \$1,989.48

Based on the move-in CIR, I find the painting in the rental unit was good at the start of the tenancy. I find the photos and videos submitted to be the most compelling evidence of the state of the rental unit and paint at the end of the tenancy. I find the photos show paint from the walls did get on the ceiling leaving obvious marks due to the difference in color. I find it more likely than not that the Tenant's painter caused the paint marks on the ceiling when they painted the rental unit walls. I accept that the Tenant breached section 37 of the *Act* in this regard.

I do not accept that the Tenant or their painter painted different walls different colors, or only painted some walls such that walls were a different color, because the photos and videos do not support this. If the Landlords have attempted to show this issue in their photos, the photos are not sufficiently clear for me to see a difference between walls. The Tenant's video of the rental unit at the end of the tenancy shows the walls were in good condition and does not show any issue with the paint. I do not accept that the Tenant breached section 37 of the *Act* by only painting some walls such that the walls were different colors at the end of the tenancy.

In relation to the paint marks on the ceiling, I accept it was reasonable for the Landlords to have this fixed. However, the most reasonable approach would have been to have the ceiling re-painted rather than have the walls of the rental unit re-painted. I accept that the Landlords are entitled to some compensation for the cost of having to re-paint the ceiling of the rental unit.

The receipt in evidence for \$1,989.48 includes re-painting walls and therefore is more than the Landlords are entitled to. I award the Landlords one-third of the cost of re-painting the rental unit because I find this addresses having to re-paint the ceilings, which is a smaller area than the walls. I award the Landlords **\$664.00**.

#2 Carpet replacement \$941.07

#3 Underlay replacement \$229.82

#4 Installation of Carpet \$262.50

#7 Overhold of the suite \$2,842.00

There is no issue that the Tenant's dog damaged the carpet and I find the Tenant breached section 37 of the *Act* in this regard based on the documentary evidence submitted.

I accept that the Landlords had to replace the carpet because the Tenant left large holes with patches of carpet in them, which is clearly not an appropriate repair.

I find it irrelevant that the Tenant purchased carpet and arranged for it to be installed in the rental unit. The Landlords were not required to consent to the Tenant purchasing and installing a carpet of their choosing and I find based on the evidence provided that the Tenant went ahead and purchased carpet and arranged for installation of it without the Landlords' approval or consent. I find the Landlords' lack of approval or consent reasonable because I accept that the Tenant was responsible for replacing the carpet in the rental unit and I accept based on the End of the Roll Estimate in evidence that the carpet the Tenant purchased was not the same carpet as that in the rental unit. I also find this is supported by one of the Landlords' photos. I acknowledge that the Tenant submitted a photo and video comparing the original carpet to another carpet; however, I do not find this to be strong evidence because the comparison carpet is still in the store, not the carpet the Tenant left in the rental unit. Regardless, the Tenant knew they did not have the Landlords' approval or consent to purchase a carpet of their choosing and have it installed, and it was unreasonable for the Tenant to approach the issue the way they did. The Tenant has to bear the costs of choosing to purchase carpet and underlay that was not approved by the Landlords.

The Tenant must also bear the cost of actually having the carpet replaced. I accept based on the estimates in evidence that the cost to replace the carpet is as claimed by the Landlords. I find the carpet was approximately three years old at the end of the tenancy because the Landlords state in their materials that the carpet was two years old in 2020. RTB Policy Guideline 40 states that the useful life of carpet is 10 years. Taking this into account, the Landlords are awarded **\$1,003.00 in total**.

I note that the Tenant purchasing carpet and underlay of their choosing for less than the cost claimed by the Landlords does not show the Landlords failed to mitigate their loss

because I accept the Landlords' estimate is based on replacing the carpet and underlay with the equivalent product whereas the Tenant's cost is based on replacing the carpet and underlay with an inferior product. I find this point is shown in the evidence submitted from End of the Roll.

I decline to award the Landlords \$2,842.00 on the basis that the Tenant left their carpet and underlay in the rental unit. I accept that the Tenant did leave their carpet and underlay in the rental unit because this is undisputed. However, I disagree that the Landlords had to keep the carpet and underlay in the rental unit. The Landlords could have moved the carpet and underlay up to their residence above the rental unit. At most, the Landlords could have put the carpet and underlay in storage for a month and a half and sought these costs which would have been much lower than \$2,842.00. I find it unreasonable that the Landlords would leave the carpet and underlay in the rental unit and claim the Tenant was overholding or that they could not re-rent the unit until the Tenant picked up the carpet and underlay. I find this position completely nonsensical. This claim is dismissed without leave to re-apply.

#5 Pressure washing \$71.82

I accept based on the photos in evidence that the Tenant left dog hair on the walkways on the property at the end of the tenancy and breached section 37 of the *Act* in this regard. I accept that the Landlords had to have the hair removed from the walkways. I do not accept that the Landlords had to have the walkways pressure washed to remove the hair because the evidence does not support this. Although the photos show dog hair on the walkways, I do not agree that they show an excessive amount of dog hair or so much hair that some normal cleaning techniques could not have worked. I award the Landlords **\$25.00** for this issue being the average cost of a cleaner for one hour. I find this amount accurately reflects the degree of uncleanliness shown in the photos.

#6 Nominal damages for damage to gate \$100.00

I decline to award the Landlords compensation for scratches on the gate. I am not satisfied there is sufficient compelling evidence before me to show the Tenant's dog scratched the gate such as photos or videos of this occurring. In my view, the number of things that could have resulted in scratches to the outside gate, which is constantly exposed to the weather and anyone coming or going from the property, is too great to find the Tenant's dog caused the damage without some further compelling evidence to support this. I dismiss this request without leave to re-apply.

#8 Filing fee \$100.00

Given the Landlords have been partially successful in the Landlords' Application, they are entitled to reimbursement for the **\$100.00** filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Painting	\$664.00
2	Carpet replacement	\$1,003.00
3	Underlay replacement	Above
4	Installation of Carpet	Above
5	Pressure washing	\$25.00
6	Nominal damages for damage to gate	-
7	Overhold of the suite	-
8	Filing fee	\$100.00
	TOTAL	\$1792.00

The Landlords can keep the \$700.00 security deposit and \$700.00 pet damage deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for the remaining \$392.00 pursuant to section 67 of the *Act*.

Tenant's Application – filing fee

Given the Tenant has not been successful on the Tenant's Application, they are not entitled to recover the filing fee.

Conclusion

The Landlords can keep the \$700.00 security deposit and \$700.00 pet damage deposit. The Landlords are issued a Monetary Order for the remaining \$392.00. This Order must be served on the Tenant. If the Tenant fail to comply with this Order, it may be filed in the Small Claims division of the Provincial 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: January 19, 2023

Residential Tenancy Branch