



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDL-S

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord April 11, 2022 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit

The Landlord appeared at the hearing. The Tenants appeared at the hearing with C.H., Legal Counsel. 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 Landlord and Tenants provided affirmed testimony.

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

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

### **Issues to be Decided**

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security deposit?

**Background and Evidence**

The Landlord sought the following:

Item	Description	Amount
1	Blinds	\$982.80
2	Fridge door	\$824.39
3	Dishwasher panels	\$137.94
4	Laminate flooring	\$2,480.60
5	Carpets	\$678.28
	<b>TOTAL</b>	<b>\$5,104.01</b>

A written tenancy agreement was submitted, and the parties agreed it is accurate. The agreement names the prior owner of the rental unit as the landlord. The Landlord testified that they purchased the rental unit in 2021. The tenancy started January 01, 2017. The Tenants paid a \$1,147.50 security deposit.

The parties agreed the Tenants moved out of the rental unit April 04, 2022.

The parties agreed the Tenants provided their forwarding address to the Landlord April 09, 2022.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The Landlord testified that the Tenants agreed to the Landlord keeping \$900.00 of the security deposit on the Condition Inspection Report (the "CIR"). The Tenants acknowledged this and did not submit that their agreement was not valid. The CIR shows the Tenants agreed to pay \$800.00 for blinds and \$100.00 for scratches on the fridge.

The CIR was submitted, and the Landlord testified that it is accurate. The CIR is signed for the Tenants at move-in. Despite this, the Tenants testified that no move-in inspection was done. The Tenants could not point to documentary evidence to support their position about a move-in inspection. The parties agreed a copy of the CIR was sent to the Tenants December 12, 2016.

The Landlord testified that a move-out inspection was done with one of the Tenants. The Landlord testified that the CIR was completed. The Landlord testified that they later noticed further damage in the rental unit. The Landlord testified that they invited the Tenants back to do another inspection; however, the Tenants did not attend. The Landlord testified that they did a revised CIR on their own. The Landlord testified that the move-out CIR was sent to the Tenants April 21, 2022, by registered mail.

The Tenants agreed a move-out inspection was done with the Landlord and one of the Tenants. The Tenants testified that the move-out CIR was completed under the "End of Tenancy" section. The Tenants agreed they were invited back for a further inspection and declined to attend. The Tenants testified that they received a copy of the move-out CIR April 25, 2022, by registered mail.

***#1 Blinds \$982.80***

The Landlord testified that the Tenants caused excessive and deliberate damage to seven blinds in the rental unit and agreed to pay \$800.00 for this damage. The Landlord did not know how old the blinds were and guessed they were from 2005 or 2006.

The Tenants testified that the blinds had pre-existing damage and referred to their photos. The Tenants submitted that the useful life of the blinds had been exceeded and reasonable wear and tear was expected.

***#2 Fridge door \$824.39***

The Landlord testified that the Tenants caused excessive damage to the front of the fridge and that the damage looked intentional. The Landlord testified that the damage was not reasonable wear and tear. The Landlord testified that they replaced the fridge door and are claiming the cost of this. The written submissions of the Landlord state that the fridge was from 2018.

The Tenants testified that damage to the fridge door is a cosmetic issue and they agreed to pay \$100.00 for this cosmetic damage. The Tenants submitted that the Landlord is seeking an excessive amount for replacing the fridge door.

**#3 Dishwasher panels \$137.94**

The Landlord testified that the Tenants damaged the edge of the cupboards on either side of the dishwasher and referred to a photo in evidence showing water damage to this area. The Landlord testified that they had to replace the cupboard panels due to the damage.

The Tenants testified that there is no evidence of the condition of the side panels on move-in. The Tenants testified that there is no evidence of the age of the panels. The Tenants testified that water damage in the kitchen is normal wear and tear. The Tenants testified that the old dishwasher leaked, and they let the Landlord know this; however, the Tenants could not point to documentary evidence of this.

**#4 Laminate flooring \$2,480.60**

In their written submissions, the Landlord states that the laminate flooring in the family room and hallway was brand new at move-in. The Landlord testified that, at the end of the tenancy, there were large unexplained gaps in the flooring and an area that was soft and spongy from water damage. The Landlord seeks the cost to replace the flooring in the family room and hallway. The Landlord testified that the cost to replace the flooring ended up being higher than the estimate which is the amount sought.

The Tenants submitted that laminate flooring can shift over time causing gaps. The Tenants testified that it is obvious some of the laminate slipped under the moulding causing gaps. The Tenants denied that they damaged the laminate flooring in relation to the gaps. The Tenants testified that the soft flooring is due to leaks in the rental unit which they let the Landlord know about and referred to photos and text messages in evidence.

In reply, the Landlord submitted that the Tenants caused the leak in the rental unit; however, the Landlord could not point to documentary evidence to support this.

**#5 Carpets \$678.28**

In their written submissions, the Landlord stated that the Tenants permanently stained the living room carpet. The Landlord testified that the amount sought is to replace the living room carpet. The Landlord said the carpet was from 2005 or 2006.

The Tenants testified that the Landlord told them the carpet was going to be ripped out and referred to a text message in evidence. The Tenants also submitted that the carpet was at least 10 years old at the start of the tenancy and did have reasonable wear and tear on it. The Tenants submitted that they should not have to pay for the cost of replacing the carpet and, if they do, it should only be a small, prorated amount.

In reply, the Landlord testified that they subsequently told the Tenants they were no longer replacing the carpet because they got a dog.

The Tenants then acknowledged the Landlord changed their position about their intention to rip out the carpet.

Both parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

## **Analysis**

### ***Security deposit***

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit 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 a security deposit at the end of a tenancy.

Based on the CIR in evidence, I find the parties did a move-in inspection, the CIR was completed and both parties signed the CIR. I do not accept the Tenants’ position about a move-in inspection because it is not supported by further evidence and is contradicted by the CIR. Based on the testimony of both parties, I find the Tenants received a copy of the move-in CIR within days of the inspection. I find neither party extinguished their rights in relation to the security deposit at move-in.

Based on the testimony of the parties, I find they did a move-out inspection and therefore the Tenants did not extinguish their rights in relation to the security deposit at move-out. Based on the CIR in evidence, I find the Landlord failed to complete the CIR on move-out because pages 1 and 2 of the CIR are blank under “Condition at End of Tenancy”. The parties only completed page 3 of the CIR at move-out and this is not sufficient. I find the Landlord failed to do what was required of them and did extinguish

their right to claim against the security deposit for damage to the rental unit at move-out pursuant to section 36(2) of the *Act*.

I note that what the Landlord did subsequent to the initial move-out inspection with one of the Tenants is irrelevant. The Landlord was required to do a move-out inspection and properly complete the CIR with the Tenant present. There was no requirement that the Tenants attend a second move-out inspection and the Landlord doing a second move-out inspection does not cure the issues with the first move-out inspection. The whole point of move-out inspections is that the parties do them together and accurately record the condition of the rental unit so that there is no disagreement or, if there is, this is noted, and the parties have a chance to obtain further evidence to support their position. The Landlord's second move-out inspection only shows the Landlord's own opinion about the condition of the rental unit at move-out.

Based on the testimony of the parties, I find the tenancy ended April 04, 2022.

Based on the testimony of the parties, I find the Tenants provided their forwarding address to the Landlord April 09, 2022.

Pursuant to section 38(1) of the *Act*, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address to repay the security deposit in full or file a claim against it. Here, the Landlord would have had 15 days from April 09, 2022. The Application was filed April 11, 2022, within time. However, as explained, the Landlord had extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 36(2) of the *Act* by not completing the move-out CIR. Given this, the Landlord was not permitted to claim against the security deposit for damage to the rental unit and only had two options, to return the security deposit in full or file a claim against the security deposit for something other than damage to the rental unit. Here, the Landlord did neither because the Landlord did not return the security deposit in full and only claimed against it for damage to the rental unit.

I acknowledge that the Tenants agreed to the Landlord keeping \$900.00 of the security deposit on the move-out CIR which would usually trigger section 38(4)(a) of the *Act* and allow the Landlord to have kept the \$900.00. However, section 38(5) of the *Act* states:

(5) The right of a landlord to retain all or part of a security deposit...under subsection (4) (a) does not apply if the liability of the tenant is in relation to

damage and the landlord's right to claim for damage against a security deposit...has been extinguished under section...36 (2) [landlord failure to meet end of tenancy condition report requirements].

The Landlord's right to claim against the security deposit for damage to the rental unit had been extinguished under section 36(2) of the *Act* and therefore the Landlord could not keep the \$900.00 of the security deposit pursuant to section 38(4)(a) of the *Act*.

I find the Landlord failed to comply with section 38(1) of the *Act* and therefore must return double the security deposit, as well as interest, to the Tenants. Interest is calculated on the original amount of the security deposit and is not doubled. The interest owed on the \$1,147.50 security deposit is \$1.10. The \$1,147.50 doubled is \$2,295.00. The total **owed to the Tenants is \$2,296.10.**

The Landlord is still allowed to seek compensation for damage, and I consider this now.

### ***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 damage or 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 Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

**#1 Blinds \$982.80**

I accept based on the move-in CIR that the blinds were in good condition at the start of the tenancy. I accept based on page 3 of the move-out CIR that the Tenants damaged seven blinds in the rental unit during the tenancy which they agreed was \$800.00 worth of damage. I find the Tenants breached section 37 of the *Act* in relation to damaging the blinds. Given the Tenants agreed they caused \$800.00 worth of damage to the blinds on the move-out CIR, I accept this is the amount of damage caused and I award the Landlord this amount. I acknowledge the Landlord is seeking \$982.80 and that the quote in evidence shows this is the cost to replace seven blinds. However, the Landlord acknowledged the blinds were from 2005 or 2006 and therefore were 16 or 17 years old at the end of the tenancy. The Landlord got 16 or 17 years of use out of the blinds, which is past their useful life (see RTB Policy Guideline 40). I do not find the Landlord is entitled to more than the \$800.00 agreed to by the Tenants in the move-out CIR. The Landlord is awarded **\$800.00**.

**#2 Fridge door \$824.39**

Based on the move-in CIR in evidence, I accept the fridge was in good condition at move-in. Based on page 3 of the move-out CIR, I accept the fridge was scratched on move-out and that the Tenants agreed they caused \$100.00 worth of damage to the fridge. I find the Tenants breached section 37 of the *Act* in relation to scratching the



fridge. Although I accept the Tenants breached section 37 of the *Act*, based on the photos in evidence, I find the scratches on the fridge door to be just beyond reasonable wear and tear. I do not find them to be excessive damage. Based on the photos in evidence, I do not find it reasonable that the Landlord replaced the fridge door due to the scratches. Nor do I find \$824.39 to be a reasonable amount of compensation due to the scratches. I award the Landlord the \$100.00 agreed to by the Tenants in the move-out CIR because I find the Tenants acknowledged they caused \$100.00 worth of damage to the fridge. The Landlord is awarded **\$100.00**.

### ***#3 Dishwasher panels \$137.94***

I accept that the cupboard panels on either side of the dishwasher were in good condition on move-in based on the move-in CIR. I accept that the Tenants caused the damage to the panels shown in the Landlord's photos because the damage is also shown in the Tenants' photos, and I did not understand the Tenants to dispute that they caused the damage. I am not satisfied based on the evidence provided that the damage is beyond reasonable wear and tear. If the damage was beyond reasonable wear and tear, I would expect it to be noted in the move-out CIR that the parties did together; however, it is not. Further, the damage is the type of damage that will occur over time particularly given it is at the floor and below the dishwasher. The Landlord has not submitted evidence to show the age of the panels and I note they were at least five years old at the end of the tenancy. I am not satisfied the Tenants breached section 37 of the *Act* in relation to this item and I dismiss this claim without leave to re-apply.

### ***#4 Laminate flooring \$2,480.60***

I accept the laminate flooring was in good condition on move-in based on the move-in CIR.

In relation to the gaps in the laminate at the end of the tenancy, I note these are not noted on the move-out CIR signed by the parties. I have looked at the photos of the gaps submitted by the Landlord and cannot find these were caused by the Tenants in the absence of further evidence. I cannot see how the Tenants could have caused the gaps shown. The Landlord suggests in the materials that the Tenants cut the laminate to create the gaps; however, the photos do not support that the ends of the laminate have been cut or damaged in any way. The gaps could not have been caused by accidental damage. It is inexplicable why the Tenants would have purposely cut the

lamine floor. I find it much more likely that the lamine has moved such that the boards no longer connect in some places. I cannot find based on the evidence provided that this is the Tenants' fault. In the circumstances, I do not find the Tenants breached section 37 of the *Act* in relation to the gaps in the lamine flooring.

In relation to the soft spot in the lamine floor, I accept this was there at move-out because the Tenants acknowledged there was a soft spot which they attributed to the ceiling leaking. The Tenants referred to text messages in evidence to show they let the Landlord know about the leaking; however, the text messages and attached pictures show the leak was above the kitchen and not above lamine flooring. I find the Tenants breached section 37 of the *Act* in relation to water damage to the lamine flooring. The issue here is that none of the photos show this damage and it was obviously not evident enough to note on the move-out CIR the parties signed. Further, there is no documentary evidence before me showing the Landlord had to replace the entire lamine flooring in the living room versus replace the small section that was soft. Further, I am not satisfied the lamine in the hallway had to be replaced because of this issue. The Landlord has submitted an estimate for the cost of replacing the lamine in the living room and hallway and I do not find it appropriate to award the Landlord this full amount given the issues noted. RTB Policy Guideline 16 states:

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 the above applies. I am satisfied the Tenants breached section 37 of the *Act* in relation to the soft spot of lamine; however, the Landlord has failed to prove that this caused significant damage and failed to prove that all of the flooring in the living room and hallway had to be replaced as a result. In the circumstances, I award the Landlord **\$100.00** as nominal damages.

**#5 Carpets \$678.28**

I accept the carpet was in good condition on move-in based on the move-in CIR in evidence. I accept the Tenants stained the carpet because this is shown in their own photos. I find the staining to be beyond reasonable wear and tear and am satisfied the Tenants breached section 37 of the *Act*. I accept the Landlord had to replace the carpet given the staining based on the photos in evidence. I accept replacing the carpet would cost \$678.28 based on the estimate in evidence and the Landlord's calculations, which the Tenants did not dispute. I decline to award the Landlord the full cost of replacing the carpet because the Landlord acknowledged the carpet was from 2005 or 2006 and therefore 16 or 17 years old at the end of the tenancy. The useful life of carpet is 10 years and therefore this carpet was well past its useful life (see RTB Policy Guideline 40). In the circumstances, I award the Landlord **\$100.00** as nominal damages because I am not satisfied any significant loss has been proven given the carpet was 16 or 17 years old.

***Summary***

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Blinds	\$800.00
2	Fridge door	\$100.00
3	Dishwasher panels	-
4	Laminate flooring	\$100.00
5	Carpets	\$100.00
<b>TOTAL</b>		<b>\$1,100.00</b>

As stated, the Landlord owes the Tenants \$2,296.10. However, the Tenants owe the Landlord \$1,100.00 and therefore the Landlord can keep this amount from the amount owing to the Tenants. The Landlord must return the remaining \$1,196.10 to the Tenants and the Tenants are issued a Monetary Order in this amount.

**Conclusion**

The Landlord must return \$1,196.10 to the Tenants and the Tenants are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the

Landlord fails 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 18, 2023

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Residential Tenancy Branch