



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with a landlord's application for compensation for damages or loss under the Act, regulations or tenancy agreement and authorization to retain the tenant's security deposit and pet damage deposit.

All named parties appeared at the hearing and were affirmed. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the landlord served the tenants with his proceeding package and evidence via registered mail. I noted that I had not received any evidence from the tenants prior to the hearing and the tenants confirmed that they intended to provide their position orally during the hearing.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants in the amounts claimed?
2. Is the landlord authorized to retain all or part of the tenants' security deposit and/or pet damage deposit?
3. Disposition of the security deposit and pet damage deposit.
4. Award of the filing fee.

### Background and Evidence

The tenants and the former landlord formed a tenancy for the upper floor of the house starting on July 15, 2019 and then for the entire house starting on August 1, 2019. The tenancy agreement reflects that the tenants paid a security deposit of \$1750.00 and a pet damage deposit of \$875.00.

The current landlord purchased the property from the former landlord and the deposits were transferred to the current landlord. The landlord continues to hold both of the deposits pending the outcome of this dispute.

The former landlord did not provide a move-in inspection report. A move-out inspection report was not prepared by the current landlord, or the landlord's agent.

In filing the claim, the landlord requested compensation of \$3000.00 for the following items:

1. Extra moving costs for me as tenant did not leave the house on time.
2. Cost of cleaning company to clean the house.
3. Cost of dog poop removal company.
4. Cost of garbage removal from the house.
5. Breach of the terms of contract.
6. Pet damage to the walls, baseboards, and curtains
7. Nail damage to the walls
8. Water damage to the basement ceiling due to neglect in the top floor bathroom

[Reproduced as written by landlord]

I noted that there was no Monetary Order Worksheet or other detailed calculation for each of the above items or to demonstrate how the landlord arrived at \$3000.00. The landlord acknowledged he did not prepare a worksheet or detailed calculation but stated his actual costs were nearly \$3500.00 and the landlord is only seeking recovery of \$3000.00. The landlord pointed to the receipts and invoices provided as evidence as the basis for the amounts he is seeking to recover.

Below, I summarize the landlord's claims against the tenants, in the same order as set out in the 8 points described above, and the tenant's responses.

## 1. Extra moving costs

The landlord submitted that the tenants did not vacate the property until 6:00 p.m. or 6:30 p.m., on December 31, 2021, which the landlord considers to be six hours late. The landlord and his movers arrived at the rental unit at 1:00 p.m. or 1:30 p.m. but could not start unloading the landlord's possessions from the moving truck until 6:30 p.m. because the tenants' possessions were in the way. The landlord explained that he did not move his possessions into the upper floor because that was going to be renovated. Nor, did he move his possessions into the lower floor because it needed cleaning and repairs. As such, the landlord waited for the tenants to vacate their possessions from the garage area. The landlord was charged for six hours waiting time by the moving company and the landlord seeks to hold the tenants liable to pay for five of those hours due to them leaving the property late. The charge for standing by was \$774.00 plus GST.

The tenants acknowledge they were late in leaving the property but not as late as the landlord described. The tenants testified that they moved their possessions from inside the house to the garage so that the landlord could move his possessions into the house and the landlord showed up with the moving truck at approximately 2:00 p.m. The tenants testified that they removed their possessions from the garage and left the property at approximately 4:30 p.m. on December 31, 2021.

## 2. Cleaning

The landlord submitted the tenants failed to leave the rental unit clean. The landlord acknowledged he told the tenants that they did not need to clean the unit themselves as he would want the rental unit "deep cleaned", due to Covid. The landlord informed the tenants they could hire a professional cleaner or else he would.

The landlord had planned to perform renovations on the upper floor so the upper floor was cleaned approximately two weeks later. However, the landlord did not plan on renovating the lower level and it was cleaned right after the tenancy ended.

The landlord paid \$997.50 and \$472.00 to have the upper and lower floor deep cleaned, and the carpeting cleaned.

The tenants testified that the landlord came to the unit in November 2021 and informed them he had a cleaner. The tenants submit that they were deprived of the opportunity

to clean the rental unit themselves since the landlord said it would not be good enough and he would get the unit deep cleaned anyways.

The landlord argued the tenants did not even leave the rental unit reasonably cleaned. The tenants disputed that allegation to some extent. The landlord pointed to dirty carpeting and the tenants having pets and the lack of sweeping. The tenants responded that they cleaned the carpeting themselves and did sweep.

3. There was no receipt/invoice for this and the landlord withdrew this claim during the hearing.

4. Garbage removal

The landlord submitted that the tenants left several abandoned items and garbage at the rental unit that he paid to dispose of, including: a barbeque, Christmas tree, plants and household trash. The landlord had two loads taken away at a cost of \$300.00 plus GST.

The tenants acknowledge the Christmas tree and some planting items were theirs that they failed to remove; however, the tenants claimed the barbeque belonged to a former tenant and the tenants are not responsible for removal of the construction materials from repair of the deck.

The landlord stated the deck company removed the deck debris, except a temporary handrail that the tenant was paid to construct during the tenancy.

5. There was no receipt or invoice and the landlord withdrew this claim during the hearing.
6. There was no receipt or invoice and the landlord withdrew this claim during the hearing.
7. Downstairs walls - nail damage

The landlord submitted that the walls in the lower unit were damaged by way of several nail holes and a larger 2 – 3" hole.

The tenants responded that many of the nail holes were pre-existing and others are ordinary wear and tear. The tenants acknowledged that the hutch may have hit the wall when they were moving it.

#### 8. Water damage to basement ceiling

The landlord submitted that water dripped from the upstairs bathroom and caused water damage to the ceiling below. Although the tenants reported it to the landlord it was such a large stain that the landlord believes that the water must have been dripping a long time before they reported it. The landlord is of the view that the tenants are responsible for the ceiling repair as the tenants were negligent in not reporting the water leak sooner.

The tenants responded that once they saw water damage to the basement ceiling they immediately took action to turn off the toilet upstairs and they notified the landlord. The tenant also replaced the fill gasket to repair the leak. The tenant pointed out that the water that escaped the toilet penetrated the ceiling so fast because of the upstairs bathroom had cracked tiles on the floor.

For claims 7. and 8. the landlord paid a total of \$450.00 plus GST to have the drywall patched, mudded, taped and sanded.

In support his claims, the landlord provided a copy of the tenancy agreement, several photographs and receipts/invoices.

#### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

As the claimant in this case, the landlord has the burden of proof. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Upon consideration of everything before me, I provide the following findings and reasons.

### **Extra moving costs**

Under section 37 of the Act, a tenant is required to vacate the rental unit, leaving it reasonably clean and undamaged, by 1:00 p.m. on the day the tenancy ends, unless the parties agree to something different.

I was not provided sufficient evidence to demonstrate the parties had agreed that the tenants were to vacate any earlier or later than 1:00 p.m. on the last day of tenancy. As such, I hold the tenants responsible for vacating the rental unit, which includes removal of all of their personal possessions and garbage from the property, by 1:00 p.m. on December 31, 2021.

Section 57 of the Act provides for what happens when a tenant does not leave the rental unit when the tenancy is over.

**"overholding tenant"** means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

**(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.**

By their own admission, the tenants did not meet the 1:00 p.m. deadline for vacating the property on the last day of their tenancy and without a Writ of Possession the landlord

could not take possession of the rental unit because the tenants were still holding possession. As such, I find the tenants meet the definition of “overholding tenants” and the landlord is entitled to seek compensation for the losses suffered due to the overholding period.

The parties were in dispute as to the period of the overholding. The tenants testified that they removed their possessions from the property and left the property at approximately 4:30 p.m. The landlord testified the tenants did not leave until 6:00 to 6:30 p.m.

When I review the moving invoice, I see the following charges:

Description	Quantity	Rate	Costs
1- Moving with 2 movers and 1 truck	5.5	\$129	709.50
2- Truck fee (flat rate)	1	\$129	129.00
3- Cargo insurance		\$	0.00
4- Packing material		\$	0.00
5- Waiting time for unloading	6	\$129	774.00
Subtotal			\$1612.50
Discount			\$
Tax 5.00 %			\$80.62
Total			\$1693.12

It would appear to me, that when the movers are actively moving (loading and unloading) the charge for the mover’s labour and truck is provided on line 1 of the invoice. However, there is a distinct and separate charge the truck and movers to wait an additional six hours before they could unload. Accordingly, I find the moving invoice supports the landlord’s version of events more so than the tenants’ version. Therefore, I find it more likely than not that the tenants did not leave until at least six o’clock as submitted by the landlord and I find the landlord’s request to recover five hours of the movers’ wait time from the tenants, to be reasonable.

I calculate the five hours of waiting time to amount to a loss of \$677.25 (\$129.00 x 5 hours) + 5% tax] for the landlord and I award the landlord recovery of this amount from the tenants.

## Cleaning

Section 37 of the Act requires the tenant to leave a rental unit “reasonably clean” at the end of the tenancy. This standard is less than perfectly clean or “deep cleaned” as the landlord sought. While a landlord is at liberty to “deep clean” the rental unit, the additional cost to bring it that higher level of cleanliness is a cost for the landlord, despite the Covid-19 pandemic.

The landlord admittedly told the tenants they did not need to clean as he would bring in somebody to deep clean if they attempted to clean the unit themselves. However, a landlord cannot prohibit a tenant from cleaning the unit themselves or require the tenant to have a professional cleaning company to “deep clean” the unit as parties cannot contract outside of the Act. Thus, the tenant’s lawful obligation is to leave the rental unit “reasonably clean” but nothing beyond that.

The landlord argued the tenants did not even leave the rental unit reasonably cleaned. The tenants disputed that allegation to some extent. As such, I turn to the photographs to determine the level of cleanliness the tenants left the unit with a view to determine a reasonable award for to bring the rental unit to a “reasonably clean” condition, if appropriate.

Upon review of the photographs before me, I see the inside the house appears reasonably clean with the exception of the carpets which are quite dirty, and there were pets in the home. On the exterior of the home I see windows that are exceptionally dirty, likely from a dog’s muddy paws or saliva and the decks are not swept at all.

Residential Tenancy Policy Guideline 1 provides that if a tenant has a pet in the unit the tenant is expected to steam clean or shampoo the carpets. It appears to me the carpets were not cleaned before the tenants vacated as the carpeting is quite dirty looking and I find it unlikely they had the time to clean the carpets themselves when the tenants were already late removing their possessions from the property. Therefore, I am satisfied the landlord is entitled to recover carpet cleaning from the tenants and I award the landlord \$210.00 including tax.

I provide the landlord with a nominal award of \$50.00 to clean the two windows that appear exceptionally dirty in the photographs and to sweep the decks.

The balance of the landlord’s claim for cleaning is dismissed as I explained, a tenant is not responsible to have a rental unit “deep cleaned” at the end of the tenancy.



In light of the above, I provide the landlord an award totalling \$260.00 for cleaning.

### **Garbage removal**

Under section 37 of the Act, a tenant is required to leave the rental unit vacant at the end of the tenancy, which includes removal of their garbage and/or abandoned possessions. The tenants admittedly left items behind, including a Christmas tree and planting materials for which the tenants accepted responsibility.

The tenants denied responsibility to remove a barbeque left behind by a previous tenant or wood debris from the deck repair. I find the landlord was unable to refute the tenant's submission that the barbeque was not theirs, especially in the absence of a move-in inspection report. As for the wood debris, the landlord was of the position the tenants should be responsible for removing this since the tenant was paid to install a temporary hand rail; however, if the tenant was required to dispose of the wood debris as part of his contract for services (to install a handrail) then that is a dispute that would have to be resolved in the appropriate forum as I do not have jurisdiction over service contracts.

Photographs of the side of the house also show smaller debris accumulated beside the house and I find it likely that it is the tenant's garbage considering they lived at the property for 2.5 years and I find unlikely they would have left a previous tenant's garbage along the side of the house for that length of time.

In light of the above, I find it appropriate to apportion the garbage removal cost as 60% to the tenants and 40% to the landlord for the barbeque and wood debris removal. Therefore, I award the landlord \$189.00  $[(\$300.00 \times 60\%) + \text{GST}]$  for garbage removal.

### **Basement wall and ceiling damage**

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

The landlord asserted the tenants damaged the basement walls by way of numerous nail holes and a larger hole. The tenants objected to being liable for the nail holes, on the basis they were pre-existing and constitute wear and tear.

Upon review of the photographs, I see what appears to be an ordinary amount of small nails in the walls, likely from the occupant hanging pictures or artwork. Residential Tenancy Policy Guideline<sup>1</sup> provides that a reasonable number of nail holes are to be excepted by a landlord and they are considered normal wear and tear. I do not see the large 2 – 3” hole described by the landlord in the photographs before me. Therefore, I do not hold the tenants liable for wall damage.

The landlord also asserted the tenants are liable for water damage to the basement ceiling on the basis the tenants were negligent in reporting the water leak from the bathroom upstairs in a timely manner. The tenants also deny being negligent in reporting the water leak.

Upon review of the photograph before me, I see damage that is clearly the result of water leaking from above. I heard unopposed testimony that the source of the leak was a gasket for the upstairs toilet which caused water to leak on to the floor and through the cracked bathroom tiles. However, I do not see evidence that the tenants are responsible for causing the gasket or the tiles to break and these items would be a necessary repair for the landlord to make. The landlord asserts the tenants were negligent in reporting the water leak in a timely manner; however, the tenants disputed that allegation and I find the landlord’s assertion is speculative at best. Therefore, I find there is insufficient evidence to prove the tenants knew of the leak sooner than they reported it and do not hold the tenants liable for water damage to the ceiling below.

### **Filing fee, deposits and Monetary Order**

The landlord was partially successful in this Application for Dispute Resolution and I award the landlord recovery of \$50.00 of the filing fee he paid.

The former landlord and the current landlord failed to perform inspection reports at the beginning and end of the tenancy. As such, the landlord lost the right to make a claim against the deposits for “damage” to the rental unit. However, the landlord’s claims included amounts for things other than damage, such as: cleaning, garbage removal and overholding. Also, under section 72 of the Act, I may order offset of amounts owed to the respective parties by the other party.

I authorize the landlord to make the following deductions from the tenants' deposits and I order the landlord to refund the balance of the deposits to the tenants, without delay, as calculated below:

Security Deposit		\$1750.00
Pet damage Deposit		<u>875.00</u>
Total deposits		\$2625.00
Less: authorized deductions for –		
Overholding	\$677.25	
Cleaning	260.00	
Garbage removal	189.00	
Filing fee	<u>50.00</u>	\$1176.25
Balance of deposits owed to tenants		\$1448.75

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenants with a Monetary Order in the net amount of \$1448.75 to ensure payment is made to them, as ordered.

### Conclusion

The landlord was partially successful in his claims against the tenants and the landlord is authorized to deduct \$1176.25 from the tenants' deposits. The landlord is ordered to refund the balance of \$1448.75 to the tenants without delay and the tenants are provided a Monetary Order in this amount to ensure payment is made.

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: January 05, 2023

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Residential Tenancy Branch