



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-S, MND-S, MNDC-S, FF

### Introduction

This hearing convened by teleconference on August 15, 2022, to deal with the landlords' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for the following:

- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the cost of the filing fee.

The landlords and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 64 minutes, at which time the hearing was adjourned due to the length of time. An Interim Decision was issued on August 24, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the landlords and the tenant attended.

The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. At the reconvened hearing, no parties raised concerns with service of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

I find the landlord submitted insufficient evidence that the other listed tenant, NC, was served with the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package). The tenant MC stated that NC was in another country and did not receive the application package.

I have therefore excluded NC from any further consideration in this matter.

#### Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenant and recovery of the cost of the filing fee?

#### Background and Evidence

The tenancy began on March 1, 2012 and ended on September 14, 2020, when the tenant vacated the rental unit. The monthly rent to begin the tenancy was \$1,275 and \$1,513 at the end of the tenancy. The tenants paid a security deposit of \$637.50 and a pet damage deposit of \$637.50 (collectively, "the deposits"). The landlords have retained the deposits, having made this claim against them.

The landlords' monetary claim is reproduced below:

<u>For</u>	<u>Amount</u>
Use and occupancy for September 2020	\$ 1,513.00
Clean unit	422.10
New carpet	1,159.54
Install carpet	938.43
Painting	6,726.30
Blind cleaning	236.25
Cabinet door	85.05
Crisper drawers	203.82
OTR microwave	373.50
Install microwave	141.75
Freezer door shelf retainer bar	97.74
Stove inserts	40.28
4 - LED light bulbs - 60W	14.10
8 - Halogen light bulbs - 50W	63.12
Replace counter top	1,393.08
Refinish hardwood floor	2,813.74
Pot light clips	30.49
Window screens	183.75
Fence repair	613.66
Estimate to replace tile	3,659.00
Armoire	222.88
Two wall shelves	42.56
Two wall shelf brackets	22.40
Filing fee reimbursement	100.00
Less: Damage deposit withheld	(1,275.00)
	<u>\$ 19,821.54</u>

[Reproduced as written]

In support of their claim, the parties submitted the following:

Unpaid rent

The tenant agreed to the claim.

Cleaning

The landlord submitted that there was no final move-out inspection with the tenant. The landlord submitted that they emailed the tenant on September 18, followed-up on September 19, for an inspection on September 20, and a final notice was sent on September 21. The landlord said they did not get a response from the tenant. Photos of the rental unit were taken on September 22.

The landlord described the rental unit as a 3 floor townhouse and the home just needed a good cleaning. The home was dusty, and the kitchen was left dirty.

The tenant submitted she thought the home was clean and said that the fridge and stove were not on wheels, so she could not pull out the appliances to clean behind or underneath them.

The landlord disagreed and that they confirmed with the next tenants the stove pulled out easily.

#### New carpet; installation

The landlord said the carpet was installed in 2010. The landlord submitted that the photos show that the carpeting was extensively stained and there was damage to the underlay. The landlord said they did not attempt to clean the carpet as they knew the tenant cleaned the carpet. For these reasons, the carpet and underlay were replaced.

The tenant disagreed and said the carpet was worn when they moved in and they looked after the carpet as best they could during the tenancy.

#### Painting

The landlord submitted that the tenants had 4 hooks in the ceiling and the painting was damaged and patched. The tenancy agreement prohibited hooks. The rental unit was freshly painted in 2010. The damage to the paint was unreasonable and the rental unit was required to be re-painted, due to the damage.

The tenant submitted said they asked several times during the tenancy to have the walls repainted and the request was denied. The tenant submitted that they were a family of five, with three children and the home was used and looked after for 8 years. The tenant said they assumed the rental unit would be repainted between tenancies.

#### Blind cleaning

The landlord submitted that the blinds were thick with dust, and they had a professional clean the blinds.

#### Cabinet door

The landlord said that the PVC to the bottom of one of the cupboard doors was melted due to a heat source. The landlord said they expected the door not to be damaged. The landlord said they did not replace the cupboard door, but just the PVC coating.

The tenant said she did not know the cupboard door was damaged and did not agree to the claim.

#### Crisper drawer

The landlord said the fridge crisper drawer was cracked and damaged.

The tenant said she does not agree to the claim as she does not remember it being damaged.

#### OTR microwave

The landlord submitted they replaced the microwave as it was broken during the tenancy. The microwave was installed in 2010. They bought the tenants a countertop replacement, which was gone at the end of the tenancy.

The tenant said they reported to the landlords that the microwave was broken, and they refused to repair it. The tenant said the microwave panel was not working, but the fan worked and the unit was functioning as a fan. The tenant submitted she did not use the countertop microwave and it was an old appliance.

The tenant said they never had a working microwave during the tenancy.

#### Freezer door shelf retainer bar

The landlord submitted that the retainer bar was missing.

#### Stove inserts

The landlord said the 4 stove element inserts were heavily soiled and needed to be replaced. The inserts were not cleanable, and they initially had been replaced in 2012 before the tenants moved in.

#### Light bulbs

The landlords submitted they replaced a total of 7 halogen light bulbs and 4 LED light bulbs.

#### Countertop

The landlord said that there were gouges on top, as well as burn marks. The countertop was laminate, and has not yet been replaced.

The tenant denied there were gouges, and if anything, there were scratches. The tenant said the countertop material was chipboard laminate and any scratches were reasonable wear and tear.

#### Refinish of hard wood floor

The landlord submitted the hardwood floor was damaged and the flooring needs to be refinished. The landlord agreed the work has not yet been done and that other tenants have been residing in the rental unit. The landlord explained that the home was from the 50's or 60's and the floors were original, but they were refinished and like brand new when they bought the property in 2010.

The tenant said that the floors was hard wood from the 50's and were repurposed. The rental units were old garrison officers' buildings and there was no coating on the top of the floors. The tenant said they talked to the landlords several times during the tenancy about the lack of coating and the scratches. The tenant said that the flooring was old, soft wood and any scratches were reasonable wear and tear over the course of a long tenancy.

The landlord said there was black paint on the floors.

#### Pot light clips

The landlord said some light clips were missing and had to be replaced to keep the lights in place.

#### Window screens

The landlord submitted there were two screens missing from the two upper bedrooms. They found one screen, but the other was too damaged to be re-used.

#### Fence repair

The landlord said that almost every panel on the back fence was damaged and they were not like that when the tenants moved in. The landlord confirmed the repairs were not yet done.

The tenant submitted that the fence was part of a strata complex and there were several fence posts that were damaged. The tenant said that the unit beside theirs had a rat infestation and they and other neighbours had raccoons, and they suspected the animals scratched the fences. The tenant said that in 2017 the strata had the fence repainted and they cover the scratches. The tenant submitted that the photos show that there was paint over the scratches.

#### Estimate to replace tile

The landlord submitted that the kitchen and main floor tile needed to be replaced due to the chipped and cracked tiles.

The tenant submitted that from the photos, the issue looks like reasonable wear and tear.

#### Armoire, 2 wall shelves and brackets

The landlord submitted that these items came with the rental unit and were missing at the end of the tenancy.

The tenant submitted that there were 2 wall shelves in the main living room which were not anchored. The shelves were screwed into drywall and they started to make larger holes, which led the tenants to remove them perhaps 6 years into the tenancy. The tenants tried to repair the holes. The tenant submitted she did not remember the armoire.

In response to my inquiry, the tenant said she did not attend the move-out inspection as she had Covid at the time. The landlord replied that they tried to arrange 3 separate times to arrange a move-out inspection.

Evidence filed by the landlords included written statements accompanied by photos, receipts, estimates/quotes, a written statement in response to the tenant's evidence, and the move-in and move-out condition inspection report (Report).

Evidence filed by the tenant included previous cleaning invoices during the tenancy, 2 painting invoices, and a written statement.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove **each** of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or



tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

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, not to put the person in a better position.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

As a result, tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning the rental unit to bring the premises to a higher standard.

In this matter, I find the testimony of both parties to be clear, credible and delivered in a forthright manner. For this reason, I must consider the documentary and photographic evidence of the parties, bearing in mind the landlords have the burden of proof in this matter, on a balance of probabilities.

#### Unpaid rent

I award the landlords \$1,513, as this claim was undisputed by the tenant. For this reason, I find the landlords have established a monetary claim of **\$1513**.

#### Cleaning

I agree with the landlords that there remained some areas of deficiency as to the cleanliness of the rental unit after the tenant vacated. This was shown in the up-close

photos provided by the landlords. The landlords did not provide photographs of the entire rental home to show the rental unit was not left in its totality reasonably clean.

Further, I disagree with the landlords that the tenant is responsible for having the rental unit cleaned to a standard that it is move-in ready condition for the next tenants, which I find appears to be the case. The receipt for cleaning was dated nearly 2 months after the tenancy ended, and after the landlords had major work done on the rental unit, such as wall repair and painting and carpet installation. I find this means the cleaners also cleaned more than the small areas of deficiency left by the tenant. The receipt said the service provided was "Move in residential cleaning service".

The cleaning invoice covered 6 hours with 2 cleaners. Considering that amount of time worked, which I do not find to be considerable for a multi-level home for an 8 year tenancy, and the cleaners also cleaned after work was done in the rental unit, I find the landlord submitted insufficient evidence to support this claim.

For these reasons, I **dismiss** the landlord's claim for cleaning of \$422.10, without leave to reapply.

#### New Carpet; installation

After reviewing the photographs submitted by the landlords, I find the carpet was heavily stained. In this case, I find there was insufficient evidence submitted that the carpet replacement was of equal quality to the carpet replaced and I do not find the landlords are entitled to a higher quality carpet.

In the case of fixtures in a rental unit, I find a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, which are depreciating throughout a tenancy through normal wear and tear.

I considered that at the end of the tenancy, the evidence before me showed the carpet was at least 10 years old at the time it was replaced. Under section 40 of the Tenancy Policy Guideline, the useful life of carpet is 10 years. In this case, I find the carpet had been fully depreciated.

I also find that if the landlords were compensated for new carpeting, in consideration of the carpets having fully depreciated, they would be put in a better position than if the damage had not occurred.

I therefore **dismiss** the landlords' claim for new carpet and carpet installation, without leave to reapply.

### Painting

From my review of the painting invoice, I find the entire rental unit, which included 4 bedrooms and three levels, was repainted. I find the landlord submitted insufficient evidence that the tenants damaged the entire rental unit to the extent all walls needed to be repaired and painted resulting from the actions of the tenants.

In considering that the tenancy was 8 years, I find that most of the areas of concern for the landlords were reasonable wear and tear. Apart from that, Tenancy Policy Guideline 40 provides that the useful life of paint is 4 years. As the original painting had been at least from 2010, I find the paint was fully depreciated at the time of repainting. However, I do not dismiss the landlords' entire claim. I find the photos showing where the door stopper was missing and gouges in the wall, most likely from moving, was damage beyond reasonable wear and tear. For this reason, I find it reasonable to award the landlords nominal damages of **\$100**.

I also find the landlords' photos show that there were multiple missing door stops and multiple outlet covers were either missing or broken. I find this damage was beyond reasonable wear and tear. In reviewing the evidence to support the replacement costs, there was not a specific breakdown in the landlords' evidence, as the costs were included in the overall costs on the painter's bill. I find it reasonable to grant the landlords nominal costs of **\$75**.

For the above reasons, I **dismiss** the landlord's claim of \$6,726.30 for painting, with the exception of \$175, which they are awarded for nominal damages. I find the landlords have established a monetary claim of **\$175**.

### Blind cleaning

In reviewing the landlords' receipt for blind cleaning, the date of cleaning was November 14, 2020, which was after the date the landlords had construction done in the rental unit, according to those receipts. I find it reasonable to conclude that this work caused more dust to accumulate on the blinds, for which the tenant is not responsible.

I therefore find the landlords submitted insufficient evidence to support this claim and I **dismiss** the claim for blind cleaning, without leave to reapply.

#### Cabinet door

In consideration of an 8 year tenancy, I find the melted PVR on the bottom of a cabinet door from a small appliance to be reasonable wear and tear. I therefore **dismiss** the landlords' claim for \$85.05.

#### Crisper drawer

I find the landlords submitted sufficient evidence to support that the crisper drawer was damaged beyond reasonable wear and tear due to the broken handle. As Tenancy Policy Guideline 40 provides that the useful life of a refrigerator is 15 years, I find the crisper drawer from the refrigerator had depreciated by two-thirds, as there was no evidence the refrigerator was newer than from 2010. I therefore find the landlords have established a monetary claim of **\$67.94**, which is one-third of \$203.82.

#### OTR microwave; installation

In this case, the tenant said that the microwave was broken early in the tenancy and notified the landlord, which I find resulted in the landlords purchasing a countertop microwave. I do not find the landlords submitted sufficient evidence that the tenants' use of the microwave caused the appliance to be broken.

Apart from that, Tenancy Policy Guideline 40 provides that the useful life of microwaves are 10 years. As the microwave was at least 10 years old, I find the microwave was fully depreciated. I therefore **dismiss** the landlords' claim for \$373.50 for a new microwave and \$141.75 for microwave installation, without leave to reapply.

#### Freezer door shelf retainer bar

I do not find it reasonable that the freezer door retainer bar would be broken during the tenancy due to normal wear and tear. Therefore I find the landlords' claim for the replacement to be reasonable and I find the landlords have established a monetary claim of **\$97.74**.

#### Stove inserts

In consideration of an 8 year tenancy for a family of 5, I find the any damage of the stove inserts to be reasonable wear and tear. I therefore **dismiss** this claim of \$40.28, without leave to reapply.

#### Light bulbs

As to the landlord's claim for costs associated with light bulb replacement, Policy Guideline 1 states that a landlord is responsible for, among other things, replacing light bulbs in hallways and other common areas; the tenant is responsible for replacing light bulbs during their tenancy.

I interpret this Guideline to provide that a landlord is not responsible to replace lights bulbs during the tenancy if a tenant asks, so long as they were working at the time of move-in. I find it is the tenant's choice to replace light bulbs during the tenancy.

Further, I find it reasonable to determine that light bulbs that are burnt out at the end of the tenancy to be reasonable wear and tear.

I **dismiss** the landlord's claim for \$14.10 for LED light bulbs and \$63.12 for Halogen light bulbs, without leave to reapply.

#### Countertop

I find the landlords submitted insufficient evidence that they met parts two and three of the four-part test for damages or loss described above.

Even after two years of the next tenants residing in the rental unit, the landlords have still not incurred a loss as the countertop has not been replaced. New tenants have been using the countertop for over 2 years. If the landlords were to receive this monetary compensation, I find the landlords would be unjustly enriched, as the new tenants have had 2 years of use with no responsibility for any damage to the countertop to this point.

For this reason, I **dismiss** the landlords' claim of \$1,393.08, without leave to reapply.

#### Refinish of hard wood floor

I find the landlords submitted insufficient evidence that they met parts two and three of the four-part test for damages or loss described above.

Even after two years of new tenants residing in the rental unit, the landlords have still not incurred a loss as the hardwood floors have not been refinished. New tenants have been using the hardwood floors for over 2 years. If the landlords were to receive this monetary compensation, I find the landlords would be unjustly enriched, as the new tenants have had 2 years of use with no responsibility for any damage to the finishing of the floor to this point.

For this reason, I **dismiss** the landlords' claim of \$2,813.74, without leave to reapply.

#### Pot light clips

I find the landlords submitted insufficient evidence to support that the tenants were the cause of the missing pot light clips. I **dismiss** the landlords' claim for \$30.49, without leave to reapply.

#### Window screens

At the hearing, the landlord said that two window screens were missing, and although one screen was found, it was not usable. I find the tenant should be responsible for missing screens.

As the screens were at least 10 years old at the time of replacement, I find it reasonable to award the landlords half the costs of replacement.

I therefore find the landlords have established a monetary claim of **\$91.88**, which is one-half the cost of \$183.75.

#### Fence repair

I find the landlords submitted insufficient evidence that they met parts two and three of the four-part test for damages or loss described above.

Even after two years of the next tenants residing in the rental unit, the landlords have still not incurred a loss as the fence has not been repaired. Additionally, I find the evidence was unclear if the landlords were responsible for fence repairs or if this was an

issue for which the strata would be responsible. I also find from my viewing of the photographs that the scratches were aesthetic in nature rather than impacting the functionality of the fence.

New tenants have been residing in the rental unit for over 2 years. If the landlords were to receive this monetary compensation, I find the landlords would be unjustly enriched, as the new tenants have had 2 years of use with no responsibility for any damage to the fence to this point.

For this reason, I **dismiss** the landlords' claim of \$613.66, without leave to reapply.

#### Estimate to replace tile

I find the landlords submitted insufficient evidence that they met parts two and three of the four-part test for damages or loss described above.

Even after two years of the next tenants residing in the rental unit, the landlords have still not incurred a loss as the tiles have not been replaced. New tenants have been using the flooring for over 2 years. If the landlords were to receive this monetary compensation, I find the landlords would be unjustly enriched, as the new tenants have had 2 years of use with no responsibility for any damage to the tiling to this point.

For this reason, I **dismiss** the landlords' claim of \$3,659, without leave to reapply.

#### Armoire, 2 wall shelves and brackets

I have reviewed the Report and found the landlords listed 2 missing shelves. I did not find an armoire listed on the Report. Although I accept that there were two missing shelves, as shown on the Report, I find the landlords did not provide a proof of loss. The evidence on this claim was an online listing of what a new armoire and shelves would cost at IKEA, but I did not find a corresponding receipt or invoice.

As the landlords submitted insufficient evidence of a loss on these items, I **dismiss** the claims of \$222.88 for an armoire, \$42.56 for two wall shelves, and \$22.40 for two wall shelf brackets, without leave to reapply.

As the landlords have had some success with their application, I award them recovery of their filing fee of \$100.

Using the offsetting provisions contained in section 72 (2)(b) of the Act, the landlord may keep the tenants' security deposit and pet damage deposit of \$637.50, each, or \$1,275 in total.

### Conclusion

I issue a monetary order of \$770.56 in favour of the landlord as follows:

ITEM	AMOUNT
1. Unpaid rent, September 2020	\$1,513.00
2. Nominal costs related to painting	\$175.00
3. Crisper drawer	\$67.94
4. Freezer shelf retainer bar	\$97.74
5. Window screens	\$91.88
6. Filing fee	\$100.00
7. <i>Less security and pet damage deposit</i>	<i>(\$1,275.00)</i>
<b>TOTAL</b>	<b>\$770.56</b>

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this order to be enforceable. Should the tenant fail to comply with this order, the order 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 *Residential Tenancy Act*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 07, 2023

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Residential Tenancy Branch