



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNRL-S, MNDL-S, FFL**

### **Introduction**

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented by property managers DM and CJ. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and didn't have any concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### **Preliminary Issues**

At the beginning of the hearing, the tenant advised me that English is her second language and that she may not understand everything that is said. I advised the tenant

to interrupt the proceedings if she had difficulty in understanding me or the landlord and the tenant acknowledged she understood the instructions.

The landlord submitted the front page of a revised monetary order worksheet but didn't amend his application for dispute resolution seeking a greater amount. I advised the landlord that in order for me to consider the amendment, the landlord was required to file the amendment in accordance with Rule 4 of the Residential Tenancy Branch Rules of Procedure and serve the tenant with a copy of the amendment at least 14 days prior to the hearing. The landlord acknowledged he did not. I advised the parties that the hearing is limited to the matters claimed on the original application for dispute resolution in accordance with rule 6.2 and proceeded to hear the original claim filed by the landlord.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Can the landlord retain the tenant's security deposit or pet damage deposit?

Can the landlord recover the filing fee?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on April 15, 2019, with rent originally set at \$2,150.00 per month, payable on the first day of the month. A condition inspection report was done at the commencement of the tenancy and again at the end of the tenancy. A security deposit and a pet damage deposit totalling \$2,150.00 was collected from the tenant and the landlord continues to hold it.

The landlord testified that the tenant purchased a presale condominium and the occupancy date of the purchase kept getting moved back. The tenant signed a mutual

agreement to end tenancy for April 30<sup>th</sup>, however didn't vacate the rental unit until the day of the move-out condition inspection report, May 8<sup>th</sup>.

The tenant testified that the compensation being sought by the landlord is nothing more than wear and tear associated to a tenancy that lasted for 3 years. Daily usage of the rental unit is to be expected and the tenant points to the photos she took at the end of the tenancy as proof of the condition of the unit at the end.

The landlord filed a monetary order worksheet describing the nature of his claim. Both parties' submissions are recorded together for ease of reading, although testimony was heard at different times.

1. Carpet cleaning:

Landlord: The tenant signed clause 8 to the tenancy agreement and clause 13 of the cleaning checklist agreeing to professionally steam clean the carpets at the end of the tenancy. The high-quality wool carpets were not cleaned at the end of the tenancy and the landlord hired a cleaner to do so.

Tenant: There's no need to have it professionally cleaned. The tenant did it herself.

2. Retractable door screen

Landlord: The landlord purchased a brand-new screen at the commencement of the tenancy, and it was ripped and torn when the tenancy ended. The tenant had a dog and a family using the screen door, living on the ground level, going in and out a dozen times a day. It had to be replaced because it was unusable when the tenant moved out.

Tenant: She used the screen door daily and it continued to work when she left.

3. Replace broken blind

Landlord: the tenant's dog scratched and chewed the 2 inch faux blinds.

Tenant: the blinds were not damaged. Only regular wear and tear on the blinds.

4. Water damaged cabinets

Landlord: The lower cabinets in the kitchen and bathroom were destroyed. The tenant allowed water to run down the face of the shaker style cabinet doors, then sit on the edge, causing the medium density fiberboard to swell.

Tenant: there was an issue with the dishwasher and the landlord fixed it. The cabinets were clean at the time. She lived in the suite for 3 years and all was in good working order. She didn't agree to have them changed when she moved out.

5. 8 days overholding property

Landlord: The tenant remained occupying the rental unit beyond the date noted on the mutual agreement to end tenancy, April 30, 2022. She stayed there until the day of the condition inspection report on May 8<sup>th</sup>, and didn't want to return the keys until the police made her do so.

Tenant: She paid rent until April 30<sup>th</sup>. Agreed she was still cleaning the unit until May 8<sup>th</sup> and due to the covid pandemic, the move into her new condominium was delayed until then.

6. Washer boot replacement

Landlord: The tenant failed to air out the rubber gasket (boot) of the front-loading washing machine, causing it to grow mold and stink. The landlord replaced the 9-year-old washer with a new one.

Tenant: she left the door open after every use. She denies it was moldy or stinky and she did not agree to the replacement of the boot. It was reasonable wear and tear.

7. Track lights in living room

Landlord: the brackets holding the light bulbs were missing. The landlord replaced the lights.

Tenant: was not informed of defects in track lights. Not mentioned when she gave back the keys to the rental unit.

8. 16 hours cleaning

Landlord: the suite had to be degreased and cleaned. The landlord provided the invoice for the cleaner hired to clean the unit for 14 hours at \$40.00 per hour.

Tenant: she cleaned the unit herself after the landlord quoted her \$600.00 to clean it.

There was no need to have a professional clean the unit. The tenant provided photos of the condition of the rental unit upon move out to corroborate the cleanliness of the unit.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In the case before me, the burden is upon the landlord to prove it is more likely than not the facts support his claim. Section 21 of the Residential Tenancy Regulations states: In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, **unless either the landlord or the tenant has a preponderance of evidence to the contrary.**

1. Carpet cleaning. I accept that the tenant signed the tenancy agreement and agreed to the clause whereby she would clean the carpets professionally with a steam cleaner at the end of the residential agreement. The tenant testified that she did not do so, and I award the landlord the cost of the steam cleaning of the carpets, as invoiced, **\$158.00**.
2. Retractable door screen. The landlord provided in evidence an invoice to show that the screen door was new at the beginning of the tenancy. I accept that the condition inspection report shows the door screen was damaged during the tenancy. I find it reasonable that the landlord had to replace the door screen and I find the cost of the replacement screen at \$200.48 to be reasonable. The landlord is awarded **\$200.48**.
3. Broken blind. Residential Tenancy Branch Policy Guideline 40 [Useful life of building elements] indicates the useful life of a blind is 10 years. The landlord testified that the blinds were approximately 8 or 9 years old, original to the rental unit. I find that the blinds were close to the end of their useful life and I award the landlord 1/10 the cost of replacement, as the damage was noted on the condition inspection report. The landlord is awarded **\$21.00**.
4. Water damaged cabinets. The landlord argues that some of the kitchen and bathroom cabinets were water damaged and the damage is noted on the condition inspection report. However, the landlord did not provide any photographic evidence for me to come to the same conclusion that they were so damaged that they were in need of replacement. Without photographic evidence

to support it, I find it unreasonable that those cabinets, installed in damp environments such as kitchens and baths, would not withstand being exposed to water. Consequently, I find that the landlord has not provided sufficient evidence to satisfy me the cabinets were in need of replacement, and I dismiss this portion of the landlord's claim.

5. 8 day overholding property. The tenant agreed that she paid rent until the end of April and vacated the unit on May 8<sup>th</sup>. This makes the tenant an *overholding tenant* as defined under section 57 of the Act. As stated in Residential Tenancy Branch Policy Guideline 3 – Claims for Rent and Damages for loss of Rent:

*In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.*

I find the tenant is liable for the loss of rent suffered by the landlord for the 8 days the tenant remained in the rental unit beyond the end of the tenancy. The landlord is awarded compensation as [ $\$2,182.00 / 31 \text{ (days)} \times 8 \text{ (days)} =$  **\$563.09**].

6. Washer boot replacement: Once again, even though the boot was listed as being stained and dirty in the condition inspection report, the landlord did not provide any photographic evidence to satisfy me it was in need of replacement. Nor did the landlord provide any testimony regarding any attempts at cleaning it and mitigating the losses he seeks to recover. I find the landlord provided insufficient evidence regarding this portion of the claim or evidence of mitigating the loss and for these reasons, I dismiss it.
7. Track Lighting Living Room: in the condition inspection report, it is noted under "damage to rental unit or residential property for which the tenant is responsible" – replace track light. The document is signed by the tenant. On a balance of probabilities, I find the track light in the living room was missing the brackets as stated and that the fixture required replacement. Policy Guideline 40 states the useful life of a light fixture is 15 years. As the fixture was 9 years old at the end of the tenancy, 9/15 or 3/5 of the useful life has passed. I award the landlord 2/5 or 40% of the cost to replace the light, **\$42.00**.

8. 16 hours cleaning: Section 37(2)(a) states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline 1 which states:

*the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).** (emphasis added)*

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

The landlord did not provide any photographs of the unit at the end of the tenancy. I have reviewed the photos provided by the tenant at the end of the tenancy and find that the unit was reasonably clean at the end of the tenancy. As the onus falls to the applicant to provide sufficient evidence to satisfy me their version of the facts are most likely to be believed, I find the landlord has fallen short. The claim for cleaning is dismissed without leave to reapply.

The landlord was generally successful in his claim and the filing fee of \$100.00 will be recovered.

The landlord continues to hold the tenant's security deposit and pet damage deposit totalling \$2,150.00. In accordance with the offsetting provisions of section 72, the landlord may retain a portion of the deposits in full satisfaction of the monetary order.

Item	Amount
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Carpet cleaning	\$158.00
Retractable door screen	\$200.48
Broken blind	\$21.00
8 days overheld property	\$563.09
Living room track light	\$42.00
Filing fee	\$100.00
Less security deposit and pet damage deposit	(\$2,150.00)
<b>Total</b>	<b>(\$1,063.52)</b>

Pursuant to section 72, the landlord is to return the remainder of the tenant's security deposit and pet damage deposit, totalling \$1,063.52 to the tenant.

#### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,062.52.

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: February 08, 2023

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Residential Tenancy Branch