



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S MNRL-S MNDCL-S FFL

### Introduction

This dispute relates to the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$6,352.75 for damages to the unit, site or property or other compensation,
2. Retain the tenant's security deposit of \$950 towards any amount owing,
3. Filing fee.

The parties listed on the cover page of this decision attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed service of the documentary and digital evidence and that they had the opportunity to review that evidence prior to the hearing.

### Preliminary and Procedural Matters

The parties confirmed their email addresses during the hearing and confirmed their understanding that the decision would be emailed to both parties.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?

- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 1, 2019, and converted to a month-to-month tenancy after December 31, 2019. Monthly rent was \$1,900 per month and due on the first day of each month. The landlord continues to hold the tenant's \$950 security deposit. The interest on the security deposit will be calculated later in this decision. The parties agreed that the tenant vacated the rental unit on October 1, 2022.

The landlord's monetary claim of \$6,352.75 is comprised as follows:

1. Flooring replacement, \$4,047.75,
2. Painting job, \$2,205,
3. Filing fee, \$100.

Any amount higher than \$6,352.75 was not amended formally by the landlord and as a result, is dismissed without leave to reapply.

Regarding item 1, the landlord provided a copy of the incoming Condition Inspection Report (CIR). The landlord stated that the tenant did not stay for the outgoing inspection on September 30, 2022. The landlord stated the tenant asked for one more day before vacating, which was granted. The landlord confirmed that an outgoing CIR was not completed.

The landlord confirmed that the rental unit was 8 years old at the start of the tenancy in 2019 as the building was built in 2011. The landlord clarified that they purchased the rental unit in 2018. By the end of the tenancy the flooring would be 11 years old. The landlord stated that the flooring in the rental unit was tile in the kitchen and bathroom and that the family room and two bedrooms were carpet, and that the carpet is the only flooring being claimed.

The video evidence shows a dirty rental unit with junk on the carpet and unwanted leftover items left behind by the tenant. The landlord stated that the rental unit was "stinky" and that they did not attempt to clean the rental unit due to the smell of smoke throughout the rental unit. The landlord stated that no smoking was permitted during the tenancy, which the tenant did not deny during the hearing.

In replacing the carpet, the landlord upgraded to laminate flooring instead of carpet. In the photo evidence, there is an ashtray on the counter and the tenant claims they did not smoke in the rental unit and instead walked outside every time with an ashtray and then would bring the ashes back to the rental unit as there was no garbage outside of the building.

The tenant claims that at 4:30pm of the move out day, the landlord deactivated the fob which provided access to the building and that due to one of the elevators being broken, each trip took 30-40 minutes to wait for the one working elevator. The tenant claims they did not discover the lack of access to the building until 6:00pm. The tenant claims they did not phone the landlord to get their car out. The tenant stated, "there was no point even trying" as the tenant "didn't want a confrontation".

The tenant claims the landlord advised the tenant on September 30, 2022 not to worry about the carpet as a reno was planned, which the landlord vehemently denied saying.

A flooring invoice dated October 10, 2022 was submitted which did not include the suite number on the rental unit address in the amount of \$4,047.75, which confirms laminate was installed versus carpet, which was originally in the rental unit.

Regarding item 2, the landlord has claimed \$2,205 for repainting of the rental unit. The landlord stated that the rental unit was repainted in 2018 but did not indicate a receipt for that painting in evidence. The landlord stated that the painting was completed by the landlord and their father. The landlord stated that repainting was necessary due to the smell of smoke inside the rental unit and that the smell of smoke inside the rental unit was the biggest issue.

The tenant denies smoking inside the rental unit and that all smoking was done outside of the rental unit. The landlord stated that they had "no words as it is just not true".

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

In the matter before me, the landlord bears the burden of proof with their claim.

**Item 1** – Firstly, I find that it was unreasonable of the landlord not to attempt to clean the carpets. Secondly, RTB Policy Guideline 40 – *Useful Life of Building Elements* (Guideline 40) states that carpets have a useful life of 10 years. As I have no evidence before me to support that the carpets were newer than 2011 and the building was built in 2011, I find the tenants were 100% depreciated by the time the tenancy ended in October 2022, which is 11 years after 2011. As a result, I find item 1, even if successful, would be 100% depreciated and therefore I dismiss this item without leave to reapply, due to depreciation of the carpets.

I am not persuaded by the tenant who claims they never smoked inside the rental unit when an ashtray was left inside the rental unit when they vacated showing used cigarette butts exposed to the air and not in a garbage. I find it more likely than not that the tenant would not bring used cigarette butts back to the rental unit once they were outside smoking and if they did, would immediately put them in the garbage, which the evidence before me proves the tenant failed to do. Therefore, I prefer the testimony of the landlord over the tenant and find the landlord more credible than the tenant in this matter.

As such, I find the tenant had to be repainted due to the smell of smoke claimed by the landlord. Given the above, I also accept that the rental unit was repainted in 2018 as claimed the landlord. I find the tenant breached section 37(2)(a) of the Act, which requires the rental unit to be left reasonably clean, which I find the tenant failed to do. According to RTB Guideline 40, interior paint has a useful life of 4 years. I find that makes the rental unit paint 75% depreciated by the end of the tenancy and therefore, I award the landlord 25% of the \$2,205 claim for painting, which is **\$551.25**.

As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$661.25** pursuant to sections 38 and 67 of the Act.

I find the tenant's security deposit of \$950 has accrued **\$7.61** in interest and that the landlord is holding a security deposit total including interest of **\$957.61** as a result. I authorize the landlord to withhold **\$661.25** of the **\$957.61** security deposit/interest, leaving a balance of the security deposit/interest of \$296.36. As the landlord still has a

monetary order of \$10,100, I find the landlord may keep the entire \$296.36 to offset the \$10,100 monetary order from the previous hearing pursuant to section 38(3) of the Act.

Given the above, the tenant is not granted any monetary order and is reminded not to breach section 37(2)(a) in the future.

### Conclusion

The landlord's claim is partly successful.

The landlord has established a total monetary claim of \$661.25, which has been offset from the security deposit/interest as described above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 30, 2023

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Residential Tenancy Branch