



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on September 29, 2022 seeking compensation for damages to the rental unit and other money owed. Additionally, they seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 27, 2023.

### Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding and evidence

The Landlord attended the scheduled hearing; the Tenants did not attend.

At the start of the hearing, I confirmed with the Landlord that they served the Notice of Dispute Resolution Proceeding to each Tenant as required. The Landlord provided registered mail tracking numbers for each package sent separately. They sent the packages on October 14, 2022; I deem the material served on October 19, 2022.

The Landlord confirmed that each package contained the evidence they intend to rely on for this hearing. Based on what the Landlord presented about service of the Notice of Dispute Resolution Proceeding to each Tenant, and their evidence, I find they served the material to the Tenants as required. I give full consideration to the evidence, where necessary and relevant below.

Given that the Landlord completed service of the Notice of Dispute Resolution Proceeding for each Tenant as required, the hearing proceeded in the Tenants’ absence.

The Tenants provided a single document as evidence to the Residential Tenancy Branch on June 8, 2023. The Landlord stated they did not receive this from the Tenants. I exclude this document from consideration where the Tenants did not attend the hearing to explain it or testify as to their service of evidence to the Landlord.

#### Preliminary Matter – rescheduled hearing

The Residential Tenancy Branch informed the Landlord and Tenants on June 19, 2023 of the hearing schedule change from June 19 to June 28. On June 19, the Residential Tenancy Branch contacted the Tenants by telephone, and then sent a notice of the rescheduled hearing to each party.

#### Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

#### Background and Evidence

As completed on the Landlord's Application and shown in the tenancy agreement they provided as evidence, the basic amount of rent in this tenancy was \$1,600. The tenancy started on December 1, 2020 and ended on August 2, 2021.

The Landlord served a Two-Month Notice to End Tenancy, and this effectively ended the tenancy, with the Tenants moving out from the rental unit on August 2, 2021. The Tenants challenged the end-of-tenancy through a dispute resolution process at the Residential Tenancy Branch. The hearing was scheduled for September 21, 2021; however, the Tenant moved out in the interim period and the Tenant's Application for a cancellation of the end-of-tenancy notice was dismissed by an arbitrator.

In their completed Monetary Order Worksheet, signed on September 29, 2022, the Landlord listed the following amounts for compensation:

1. \$1,600 – one month's rent for compensation
2. \$1,480 + 177.60 tax – 400 sq feet of carpet because of "extreme bedroom damage to carpet"
3. \$105 – professional cleaner (\$35 x 3 hours) for cleaning within the entire rental unit, "beyond normal wear and tear"
4. \$267.88 – "re-floor" due to hardwood damage – new flooring due to damage from tenants' dogs
5. \$2,666.50 – compensation for the Tenants keeping the dispute date of September 21, 2020 with no official notice
6. \$88.96 – estimate damage to wall, for "paint & spackling"

As a total, the Landlord listed the amount of \$6,385.06.

In the hearing, the Landlord explained each line item as follows:

1. They made this line entry in error. Alternately, they referred to the line 5 entry.
2. The carpet damage was confined to one Tenant's room. The Tenant had their computer station on that spot and the computer blew carbon onto the carpet area. This stain did not come out despite the Landlord's miscellaneous efforts. This dollar amount is the estimate for the cheapest replacement carpet available, including the cost of underlay, and sized to the entire dimensions of the bedroom floor. The Landlord referred to a picture in their evidence showing what they perceive to be damage to the bedroom carpet.
3. The Landlord described one room being full of pet hair, also affecting the floors in the rental unit. The Landlord described shampoo remnants in the shower "all over" and toothpaste left in the sink, and grease in the kitchen. A few days after the Tenants left, the Landlord paid a cleaner to come in.
4. The Landlord described one of the Tenants bringing their bicycles inside to the rental unit. This left tire marks on the walls, from bicycles being dragged across walls, and the bicycles would fall and chip on the floor.

In the affected area, the Landlord removed the laminate flooring, and re-floored the area with "cheaper tiles". This amount of \$267.88 was the cost of tiling, completed in early 2022. The Landlord provided a receipt for the tile material, totalling \$145.98 for the purchase they made on May 19, 2022.

5. The Landlord calculated this amount as a per diem amount at \$53.33 per day for 50 days. This was the time period from the date the Tenants moved out, through to the previous hearing date of September 21, 2021.

The Landlord referred to their evidence in the form of text messages to/from the Tenant wherein the Tenant referred to the Landlord's notice to end tenancy as the reason the tenancy was ending, thereby not requiring any other notice from the Tenant that they were leaving. This is "2 days after" they set tenancy end-date of July 31. The Landlord in the hearing reiterated that a text message from the Tenant does not constitute "written notice", and the Tenant had "stated [they] wanted to stay and keep the arbitration".

The Landlord provided an image of another text message from one Tenant wherein that Tenant stated they "don't want to cancel my dispute".

The Landlord provided another image of a message they sent to the Tenant (undated), in which they notified the Tenant that "a text message is not an official notice of moving out . . ."

6. The Landlord attributed wall damage to the Tenant's own bicycles that they stored within the rental unit. This left "dime-sized holes" in the rental unit walls, and the Landlord had to plaster and repaint those wall areas. The Landlord included two images: one shows a single hole in the wall surround by areas of paint scraped away; the second shows 5 dots, approximately evenly spaced that the Landlord speculated was the Tenants' attempt and installing some sort of shelving unit.

### Analysis

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 provide in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

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

For each line item claimed by the Landlord, I find as follows:

1. The Landlord disclosed in the hearing they gave this item in error; therefore, I grant no compensation.
2. I am not satisfied of the need for carpet replacement in the entire room because of a stain. I find the Landlord's evidence does not show enough detail of a stain requiring carpet replacement. I find this was not "extreme damage" as the Landlord listed.
3. The Landlord simply did not provide evidence of the need for cleaning, nor did they prove this was an amount they paid with the inclusion of an invoice or receipt.
4. I find the Landlord did not provide an actual expense amount for work completed. I am not satisfied on the need for floor replacement without any evidence showing the actual damage. I am not satisfied the Landlord's purchase of floor material is actually related to the tenancy, minus any evidence showing that.
5. I understand that the Landlord brought this piece of their claim because the Tenant did not withdraw their Application for a hearing from the Residential Tenancy Branch, and the hearing went ahead on September 21, 2021. I find the Tenant maintaining their right to the hearing, aside from moving out from the

rental unit, does not constitute a breach of the *Act* in any way. I infer with reason that the Landlord is making this claim with their understanding that the Tenant providing inadequate notice of their final move out from the rental unit altered the Landlord's plans for the rental unit, and this time during the interim period until the hearing was rental income lost.

Given that the tenancy ended via the Two-Month Notice, the Tenants were entitled to one month's rent payable, as per s. 51(1) of the *Act*. The second Arbitrator in their prior decision of September 26, 2022 accounted for this, and it is based purely on the Landlord ending the tenancy via the Two-Month Notice, not affected by whether the Tenant advised of ending earlier with a written notice.

Beyond that – *i.e.*, from September 1 to September 21 the date of the Tenant's hearing – I find this was not a period of time during which the Tenant resided in the rental unit with rent unpaid. With the Tenants' exit on August 2, the Landlord had occupancy of the rental unit, and certainly through September the Tenant was not legally obligated to pay rent to the Landlord for that time.

I find the Tenant not providing adequate written notice of an earlier end-of-tenancy date to the Landlord does not equate to rent amounts owing to the date of September 21, 2021, with that date not established as a clear end-of-tenancy date. I am not certain of the significance of this September 21, 2021 date as being an end-date period of time for which the Landlord feels they are owed the equivalent rent amount. I find the Landlord had possession of the rental unit by August 2, and there was no impact to the Landlord's own use of the rental unit for their own purposes beyond that date once the Tenant returned the keys to the Landlord.

Given that the August rent was granted as compensation in line with the Landlord ending the tenancy via Two-Month Notice, and 21 days in September not being time the Tenant occupied the rental unit without rent paid, I find there is no amount that is legally justified as owing from the Tenant to the Landlord as loss of rental income. Any award granted to the Landlord for this piece would constitute a penalty to the Tenant for their maintaining the legal right to have a matter heard, and that is not the intent or purpose of the *Act*. The purpose of compensation in the *Act* is to put a person who suffered a monetary loss in the same position as if the loss had not occurred; I find that is not the case in what the Landlord proposes as an amount owing to them.

For these reasons, I dismiss the Landlord's claim for compensation for this item.

6. The Landlord did not include any evidence of an expense to them for damage to the walls. With no proof of the actual expense to them, I dismiss this piece of the Landlord's claim.

With the above rationale, I dismiss the Landlord's Application in its entirety, without leave to reapply. The Landlord was not successful on this Application; therefore, I grant no reimbursement of the Application filing fee to them.

### Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 28, 2023

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Residential Tenancy Branch