



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding Centurion Property Associates  
Inc and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on November 18, 2022 seeking compensation for damage to the rental unit. 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 August 4, 2023. Both the Landlord and the Tenants (hereinafter the “Tenant”) attended the hearing. The Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord and the Landlord’s prepared documents for evidence. The Tenant did not prepare evidence on their own for this hearing.

### Issues to be Decided

Is the Landlord entitled to compensation for alleged damage in the rental unit, 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

In the hearing, the Landlord stated they purchased this rental unit after the tenancy had already started. They provided a copy of the tenancy agreement that was in place,

commencing on October 1, 2020. The rent was \$1,955. The Tenant paid a security deposit of \$947.50.

The Landlord presented that this tenancy ended because the Tenant notified the Landlord they would be moving out. On the Application, the Landlord indicated the end-of-tenancy date as September 27, 2022.

The "Condition Report" provided by the Landlord in the evidence refers to the condition of the rental unit at the start of the tenancy. In the hearing, the Landlord stated the rental unit property was "brand new" when people started moving in.

They completed a move-out inspection with the Tenant present. This is documented in the Landlord's evidence as "Condition Report", providing the move-out inspection date of September 27, 2022. The document lists three spaces in the rental unit as "needs painting", and one note of holes in the walls. The Tenant signed the agreement to show they "disagreed with painting bylaw b/c Landlord responsibility to paint the place."

The Landlord took issue with the condition of the painting in the rental unit. The "condition was not acceptable", being "not sanded, and [with] painting needed." The Landlord stated their acknowledgement of "small artwork" and attributed that to "normal wear and tear."

The Landlord pointed to a policy guideline by the Residential Tenancy Branch that a tenant may be required to pay in such instances. The Landlord referred to particular pictures in their evidence as being "extensive damage" and something "beyond wear and tear". Referencing the same pictures, the Tenant pointed out that the area could not be patched because of an obstructing swivel chair.

In their evidence, the Landlord also referenced the invoice they provided, and stated in the hearing that the total cost of painting was "almost \$3,000"; however, they reduced it to "just the parts needing it." In a brief description in the evidence, the Landlord cited the useful life of interior paint as 4 years, the total amount of \$2,971.50 (as shown in the provided invoice dated October 4, 2022), then dividing this 2-year tenancy, for a total cost owed by the Tenant at \$1,485.74.

In regard to more general cleaning in the rental unit, the Landlord stated they were not making that claim. The Landlord's listed amount for carpet cleaning, as shown with an invoice dated October 5, 2022, is \$157.50.

The Tenant presented that they had a cleaner involved, and this cleaner, who was the building manager's partner, came to the rental unit for general cleaning on October 1<sup>st</sup> and October 2<sup>nd</sup>. For this, the Tenant paid \$350 in total. The Tenant acknowledged they did not clean the carpets in the rental unit before the end of this tenancy.

More generally, the Tenant in the hearing stated their belief that any damage was "normal with two young kids", consisting of "picture holes and scuffs". The Tenant presented that they were responsible for painting rental units for this Landlord, and it was not the case that they were refusing to paint the rental unit before the tenancy ended. They recalled the instruction from the Landlord at that time was "not to paint, just to patch holes."

### Analysis

The *Act* s. 32 sets out that during a tenancy a tenant must repair damage to the rental unit that is caused by the actions or neglect of the Tenant.

More generally, 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 s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss an 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.

I find the Landlord has provided the need for repair – in the form of painting -- in the rental unit at the end of the tenancy. This is a slight cost they incurred, based on my finding that the Tenant is credible on the point they raised in the hearing that they were instructed not to complete the job of painting. I find the Tenant was capable of doing so; I find they were also credible on the point that they did such jobs for the Landlord in the past. The fact that certain of the areas were patched, but not painted, lends weight to

the Tenant's testimony on the point that they were instructed to not complete the job of incidental painting in the rental unit at the end of the tenancy.

I find what the Landlord presented is damage to the walls, yet only insofar as it required a relatively simple paint job to cover up scratches and other markings that were something beyond wear and tear. Of the total number of pictures presented by the Landlord, I find very few of them show significant damage beyond wear and tear.

I find the Landlord did not mitigate to the best of their capabilities by not allowing the Tenant to complete the work. This is likely due to a gap in communication between the Landlord and their agent who handled the move-out inspection and management at the rental unit property.

I find the Tenant, from their statement in the hearing, acknowledged not completing the cleaning of the carpet. This was required by paragraph 31 in the tenancy agreement. I find this is not an unreasonable term therein, and grant this full amount to the Landlord, as verified in their evidence in the form of the invoice they paid. This amount is \$157.50.

I find the cost of necessary painting – *i.e.*, that due to markings and other flaws that are beyond normal wear and tear – is \$690, which is approximately one-half of the amount claimed by the Landlord. This is from my review of the picture evidence provided by the Landlord, of which approximately half show unique flaws beyond wear and tear. As above, the Landlord did not mitigate by not allowing the Tenant to complete the work, despite patching then being present.

I find it was necessary for the Landlord to bring this Application to the Residential Tenancy Branch for resolution in the matter. The Landlord was successful in this Application; therefore, I grant reimbursement of the Application filing fee.

The sum total of the award to the Landlord is \$947.50. The *Act* s.72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord here established a claim of \$947.50. After setting off the security deposit amount of \$947.50, there is a balance of \$0. I am authorizing the Landlord to keep the security deposit amount in full.

### Conclusion

Pursuant to s. 67 and 72 of the Act, I grant the Landlord the amount of \$947.50. The Landlord may keep the security deposit amount in full.

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: August 18, 2023

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Residential Tenancy Branch