



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## **DECISION**

Dispute Codes      For the Landlords: MNDL-S, LRSD, FFL  
For the Tenants: MNDCT, MNSD, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Landlords' application pursuant to the Act is for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the Deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The Tenants' application pursuant to the Act is for:

- an order for the landlords to return the deposit, pursuant to section 38;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord CS, agent GS, tenants SS and MI attended the hearing on March 28, 2025. The Landlord represented landlord RS. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This decision should be read in conjunction with the interim decision dated February 21, 2025.

### Service

The parties each confirmed receipt of the evidence package with the new evidence documents after the prior hearing and that they had enough time to review them.

Based on the testimonies, I find the parties served the new evidence after the prior hearing in accordance with section 71(2)(c) of the Act.

### Issues to be Decided

Are the Landlords entitled to:

1. A monetary order for losses?
2. An authorization to retain the Deposit?
3. An authorization to recover the filing fee?

Are the Tenants entitled to:

1. A monetary order for losses?
2. An order for the return of the Deposit?
3. An authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' and tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on February 1, 2022 and ended on October 31, 2024. Monthly rent when the tenancy ended was \$2,322.54, due on the first day of the month. The Landlords collected and hold the \$1,000.00 Deposit.

The parties also agreed the Tenants provided their forwarding address in writing on November 12, 2024 and did not authorize the Landlords to retain the Deposit. The rental unit is a 3-bedroom, 1,200 square feet lower-level suite (the Unit).

The Landlords applied for dispute resolution on November 25, 2024.

The parties confirmed they received each other's monetary order worksheet and understood the claims.

The Landlord affirmed the Unit was built in 1963, renovated it in the early 2000s, the Landlord purchased it in 2022, painted the walls and upgraded some cabinets that year. The Tenant stated the walls were not painted when the tenancy started.

The parties agreed they signed a condition inspection report when the tenancy started (the move in Report), and this document indicates the parties agreed when the tenancy started the Unit's walls were in fair condition and the entry walls had some marks.

The Landlord testified that when the tenancy ended she had the Report on her phone "because nowadays everything is digital", she was filling it out on her phone but did not inform the Tenants. The parties had an argument, and the Tenants left the Unit without signing the Report.

The Tenant said the Landlords did not indicate they had the Report with them and that there was no argument.

The Landlords are seeking \$388.50, as the Tenants did not clean the Unit when the tenancy ended. The Landlord affirmed the Unit's floors were very dirty, the walls, stove, refrigerator, windows and sink needed to be cleaned, and the Landlord paid the amount claimed for 8 hours of cleaning. The Landlord stated the tenancy agreement requires the Tenants to professionally clean the Unit when the tenancy ends, and the Tenants failed to comply with the tenancy agreement.

The Landlord submitted 34 photos and videos as the new evidence time stamped October 31, 2024. These photos show floors in the kitchen, bathroom, and also baseboards with dust and the kitchen sink with food. The video shows a spider web in the living room and dust around the baseboard heater in the living room.

The Tenant testified the Landlord's videos do not show the entire Unit and that she cleaned the Unit when the tenancy ended.

The Landlords are seeking \$785.00 as the Tenants damaged the Unit's walls and they paid the amount claimed to paint the walls of the entire Unit.

The Landlord said that, to her knowledge, when the tenancy started the walls were not scratched or damaged.

The Tenant affirmed the walls were damaged when the tenancy started, as it is pointed out in the move in Report.

The Landlord stated the move in Report indicates there was no wall damage.

The Landlords submitted photos and videos dated October 31, 2024 showing walls in the living room and kitchen with large scuffs, several nail holes in the living room and the front door with scuffs. The videos show the walls in the 3 bedrooms and living room.

The Tenant testified the videos only show one wall dirty, the videos do not provide details of the walls and do not show the entire Unit. The Tenant said that the painting was at least 13 years old when the tenancy ended and that she properly maintained the Unit during the tenancy.

The Tenant submitted a photo dated 2015 showing the walls had children stickers in 2015. The Tenant affirmed that all her photos, except for the ones from 2015, were taken on October 31, 2024.

The Landlord stated she does not believe the Tenants' photos were taken on October 31, 2024 and noticed they are not time stamped, as the Landlords' photos are.

The Tenants' photos show a clean bathroom and kitchen and scuffs in the walls throughout the Unit.

The Landlord testified that she could not paint just some walls, as the colours would be different, so the Landlord had to paint all the walls.

The Landlords are seeking \$224.70, as the Tenants damaged the Unit's electrical system. The Landlord said she paid the amount claimed because the Tenant cut the wires in the main electric panel.

The Tenant affirmed the Landlords' agent damaged the electric system sometime around the end of September 2024 and verbally informed her that he would fix it.

The Landlord stated her agent did not damage the electricity system.

The Tenants are seeking \$2,260.68, as the Landlords' agents verbally ordered them to move out. The Tenants testified they did not want to live in a place without peace and moved out because of the Landlords' verbal request. The Tenants said they spent the amount claimed for moving costs.

The Landlord affirmed the Tenants moved out because they wanted to do so.

### Analysis

Pursuant to Rule of Procedure 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

### Deposit

Section 38(1) of the Act requires landlords to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

I accept the uncontested testimony the tenancy ended on October 31, 2024, the Landlords received the forwarding address in writing on November 12, the Tenants did not authorize the Landlords to retain the Deposit, the Landlords retained the Deposit and submitted this application.

Section 35(1) of the Act states the Landlord must inspect the unit when the tenancy ends.

Section 36(2)(c) of the Act states a landlord extinguishes the right to claim against the deposit if the landlord does not complete a move out inspection.

Based on the Landlord's undisputed testimony, I find the Landlord attended the move out inspection with a digital copy of the Report on her phone and did not inform this to the Tenants.

The Act does not prohibit the parties from completing documents in digital media. However, as the Landlords did not inform the Tenants that they had a digital copy of the Report during the move out inspection and the Tenants left the inspection without seeing the Report, I find the Landlords failed to complete a move out inspection report and breached section 35(1) of the Act. Thus, I find the Landlords extinguished their right to claim against the Deposit in accordance with section 36(2)(c) of the Act.

Policy Guideline 17 explains: "7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it."

Policy Guideline 17 further states that "If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit."

As the Landlord received the forwarding address on November 12, 2024, retained the Deposit and applied for dispute resolution after failing to complete a move out Report, in accordance with section 38(6)(b) of the Act, I find the Tenants are entitled to double the Deposit.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenants are entitled to a monetary award of \$2,000.00 (double the \$1,000.00 Deposit).

### Cleaning

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

Policy Guideline 1 states "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."

I accept the uncontested testimony the Unit is a 3-bedroom, 1,200 square feet suite.

Based on the Landlord's uncontested and convincing testimony, I find the Landlords proved the tenancy agreement has a clause requiring the Tenants to professionally clean the Unit when the tenancy ends, the Tenants did not professionally clean the Unit, and the Landlords paid the amount claimed for a professional cleaning.

I find the Landlord's photos and videos are more compelling than the Tenants' photos, as they are time stamped and provide a more detailed view of the Unit's cleaning conditions when the tenancy ended.

Thus, I find the Landlords proved the Tenants breached section 37(2)(a) of the Act by not reasonably cleaning the Unit when the tenancy ended. Furthermore, the Tenants admit they did not hire a professional cleaning service, as agreed in the tenancy agreement. I find the Tenants breached the tenancy agreement and the Landlord suffered a loss due to the Tenants breach.

I find the amount claimed by the Landlords reasonable, considering the Unit's size.

I award the Landlords \$388.50 for cleaning expenses.

### Walls

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Policy Guideline 1 states: "2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. 3. The tenant is responsible for all deliberate or negligent damage to the walls."

Policy Guideline 1 also states: "Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant."

The Landlords must initially prove the walls were in good condition when the tenancy started.

The parties agreed the move in Report indicates the walls were in fair conditions and had some marks. Later the Landlord contradicted herself by indicating the move in

Report indicates there was no wall damage. However, she agreed it indicates the walls were only in fair condition and with some marks.

The Landlords did not submit photos and videos providing more details about the extent of the wall marks when the tenancy started.

The Landlords did not submit documentary evidence that they painted the walls prior to the start of the tenancy and the parties disagreed about this fact. I find the Landlord's testimony about the wall conditions when the tenancy started vague, as the Landlord indicated "to her knowledge, when the tenancy started the walls were not scratched or damaged."

Landlords are not required to take photos along with the move in and out inspection reports. However, given the vague information in the move in Report about the wall conditions when the tenancy started and the vague testimony from the Landlord during the hearing, I find the Landlord failed to prove the wall condition when the tenancy started. Thus, I cannot conclude if the wall conditions when the tenancy ended were worse than when it started. Consequently, I find the Landlords failed to prove the Tenants are responsible for worsening the wall conditions during the tenancy.

As such, I dismiss the claim for painting the walls.

#### Electric repair

I find the Tenant's testimony that the Landlord's agent damaged the electrical system "around the end of September 2024" vague and non-credible, as it is very unlikely the Tenant would not have contacted the Landlord in writing regarding this issue and the Tenant did not provide a specific date.

Based on the Landlord's convincing testimony, I find the Landlords proved the Tenants breached section 32(3) of the Act by damaging the electrical system and the Landlords suffered the loss claimed.

Thus, I award the Landlords \$224.70.

#### Moving costs

Based on the Tenant's testimony, I find the Tenants moved out because they felt harassed by the Landlord. The Tenants could have applied for dispute resolution (as



they did after the tenancy ended) seeking an order to address the alleged Landlord's agents order for them to leave the Unit.

Considering the Tenants did not have the obligation to move out, I find the Tenants are not entitled to compensation for moving costs, as there is no legal basis for this claim.

I dismiss the Tenants' claim.

#### Filing fee and summary

As both parties were partially successful with their applications, each party will bear their own filing fee.

Policy Guideline 17 sets guidance for a set-off when there are two monetary awards: "The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order."

In summary:

Award for the Tenants	\$2,000.00
Award for the Landlords (cleaning and electrical repairs)	\$613.20
<b>Final award for the Tenants</b>	<b>\$1,386.80</b>

#### Conclusion

Pursuant to sections 38 and 67 of the Act, I grant the Tenants a monetary order in the amount of \$1,386.80.

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** in accordance with section 88 of the Act. Should the Landlords fail to comply with this Order, this 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 *Act*.

Dated: April 3, 2025

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Residential Tenancy Branch