



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties are seeking monetary orders against the other party.

The hearing was conducted via teleconference and was attended by the landlords and their witness and the tenants.

In their original applications both parties named the landlord as a property management company. The landlord acknowledges that the property management company no longer is his agent and as such both applications were amended to exclude the property management company name and to add the landlord's partner as a party to this matter.

### Issues(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenants are entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord has provided the following documentary evidence:

- A copy of a tenancy agreement and addendum signed by the parties on December 9, 2009 for a month to month tenancy for a monthly rent of \$1,200.00 due on the 1<sup>st</sup> of the month with a security deposit of \$600.00 paid on December 9, 2009. The two page addendum stipulates the tenants are not allowed any pets without the landlord's permission and that the tenants are not to put any large holes or screws in the walls;
- Copies of two estimates for replacing the flooring, one of which includes an estimate for replacing the countertops;

- Copies of invoices from December 2009 for the installation of the laminate flooring prior to the start of the tenancy;
- A summary of the landlord's case and evidence; and
- 27 photographs taken approximately one week after the end of the tenancy.

The tenants have provided the following documents:

- A copy of page 1 of 4 from the Condition Inspection Report completed at the start and end of the tenancy;
- A copy of the tenants details of wireless usage;
- A summary of the tenant's case and evidence; and
- 39 photographs and a video tape showing the condition of the rental unit.

The tenants completed a move out inspection on May 31, 2010 with the landlord's agent, the landlords themselves were not in attendance. The landlords testified that they went through the rental unit with the property manager at a later date.

The landlord contends there are three specific issues: the new flooring in the living/dining room area has been scratched; the kitchen countertops that are 5 years old are scratched and marked; and the tenants had a pet contrary to the tenancy agreement.

The tenants acknowledge owning a dog but are adamant that they have had the dog staying with friends on an acreage as they knew this living arrangement was going to be temporary.

The landlords contend that one of their flooring suppliers indicated that bubbling of some of the laminate flooring was possibly caused by pet urine, as he had seen this before. The landlord also indicates they found coarse hair in the rental unit that they believe is some type of pet hair.

The tenants acknowledge one scratch in the laminate flooring but contend the landlord's agent indicated it was wear and tear; the agent testified that she did not indicate the scratches to be wear and tear. The tenants also state there was only one scratch and that the landlord and/or the agent later altered the move out inspection report.

The tenants refer to page 1 of the move out Condition Inspection Report and state that the word "scratch" was altered to read "scratches" by the landlord or agent after the move out inspection. The tenant contends that they are not sure what caused the damage but it was likely children's toys or some other activity.

Page 1 also includes the kitchen section and notes that at the start of the tenancy there was one scratch on the countertop and there is no comment at the end of the tenancy but the agent has marked the countertop in good condition.

The parties also made reference to page 3 in the hearing but neither party submitted any further pages than page 1 of the document.

### Analysis

Section 38 of the *Act* states that a landlord must, within 15 days of the end of the tenancy and receipt of the tenants' forwarding address, either return the security deposit less any mutually agreed upon deductions or file an Application for Dispute Resolution to claim against the security deposit.

The section goes on to say that if the landlord fails to comply with that clause the landlord must pay the tenants double the amount of the security deposit. I find the landlord filed an Application for Dispute Resolution within the 15 day time frame and therefore find the tenants are not entitled to double the amount of the security deposit.

In order to be successful in a claim of damages the party making the claim must provide sufficient evidence to establish the following 4 points:

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

From the photographic evidence, it is clear there is damage to the flooring in the rental unit and I accept that this damage included scratching of the laminate floor material, however, as the agent failed to acknowledge the bubbling of one section I find the landlord has failed to establish that this damage was present during the move out inspection.

I am satisfied that at least some of the damage occurred while the tenants had occupancy of the unit as the flooring was new at the start of the tenancy and this fact is substantiated by the tenants' own videotape evidence.

Section 37 requires 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. I am not persuaded by the tenants' argument that any scratches were caused by reasonable wear and tear.

In regard to the landlord's claim for reparation to the kitchen countertop, I find the landlord has failed to establish that any damage exists or that if it does exist it is beyond reasonable wear and tear.

As to the value of the damage, per the landlord's testimony, the landlord has indicated that he has not made any repairs to the flooring or countertops and as such, relies upon the estimates for repairs that were submitted to establish the value of the damage.

The estimates submitted establish the value of the repairs for the flooring to be in the range of \$840.00 to \$1,135.00 and that replacement of the countertops would be \$880.00. The landlord has provided no other estimates.

While the estimates submitted by the landlord include repairs to the area of the flooring that I have found the landlord has not established as the responsibility of the tenants and since the most expensive of the estimates suggests the cost to repair that area of the flooring is \$385.00 – I find it reasonable to adjust the cheaper estimate by \$250.00 to set the range at \$590.00 to \$750.00. I therefore accept the value of \$600.00 for the damage.

In this case, I find the landlord has taken reasonable steps to mitigate the loss of value of the flooring by obtaining estimates to the costs associated with the repair.

### Conclusion

Based on the above, I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$650.00** comprised of \$600.00 for the value of the damages and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Further, I dismiss the tenant's application in its entirety.

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: November 02, 2010.

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Dispute Resolution Officer