



# 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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord and the male Tenant were represented at the hearing but the female Tenant was not in attendance.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent in one package addressed to both Tenants at the service address on the Application for Dispute Resolution, via registered mail, on July 15, 2010. As the male Tenant appeared at the hearing, I am satisfied that the male Tenant received a copy of the Application for Dispute Resolution and Notice of Hearing

The landlord has applied for a monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case I find that I have insufficient evidence to determine that the female Tenant was properly served with notice of this hearing, as I cannot conclude that she received the package that was addressed to both Tenants. With the consent of the Landlord, I have amended the Application for Dispute Resolution to remove the female Tenant as a Respondent in this matter, as she has not been served in accordance with section 89(1) of the *Act*.

The Landlord and the male Tenant were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord stated that he submitted a package of evidence to the Tenant via courier at the service address listed on the Application for Dispute Resolution on November 16, 2010. The Tenant does not dispute that evidence was sent to that address however he has not been home since that date and has not yet received the evidence package. I find that this evidence package has been sufficiently served on the Tenant, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*, and I permitted the Landlord to

rely on this evidence at the hearing. Evidence in this package that was discussed at the hearing was described to the Tenant.

The Landlord acknowledged receipt of the Tenant's evidence package.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damages to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord stated that this tenancy began on September 01, 2009; that it ended on June 30, 2010; that the Tenant was required to pay monthly rent of \$6,800.00; that the Tenant paid a security deposit of \$3,500.00 and a pet damage deposit of \$3,500.00.

The Tenant submitted a copy of a Condition Inspection Report, dated August 23, 2009, which was completed prior to the beginning of this tenancy. This report indicates that the floor in the kitchen was scratched, marked, and was faded from the sun. The Tenants and the Landlord each submitted a photograph of the kitchen floor prior to the start of the tenancy, which appears to be the same photograph. No significant damage to the kitchen floor in the area of the stove can be seen in either photograph.

The Landlord and the Tenant agree that a Condition Inspection report was completed at the end of this tenancy, a copy of which was not submitted in evidence.

The Landlord submitted several photographs of the kitchen floor that were taken at the end of the tenancy. The photographs were described to the Tenant, who acknowledged that they fairly represented the condition of the floor at the end of the tenancy. These photographs clearly show that the floor is damaged in front of the oven.

The Tenant stated that this is a high traffic area and that the floor deteriorated due to traffic in that area. He stated that it is possible the floor was also damaged as a result of the oven being cleaned. The Landlord argued that the damage exceeds normal wear and tear as a result of traffic.

The Landlord had claimed \$1,397.20 in compensation for damages to the floor however he reduced the amount of this claim to \$1,100.00 at the hearing. The Landlord submitted three estimates for refinishing the hardwood floor, the lowest of which was \$1,100.00.

The Tenant stated that he spoke with a hardwood installer who expressed the opinion that spot repairs could be conducted to a damaged hard floor for between \$150.00 and \$300.00, providing the floor was well maintained or new. The Landlord argued that a spot repair was not appropriate in these circumstances, as the floor was not in new condition.

The Landlord stated that the floor in the rental unit was in good condition when he purchased the property approximately seven years ago, and that the floors likely had been recently refinished. The Tenant estimates that the floor was refinished approximately ten years ago.

The Landlord is seeking compensation for repairing a cracked living room window. The Landlord and the Tenant agree that the window was chipped at the beginning of the tenancy and that the chip extended into a crack during this tenancy. The Tenant stated that they did nothing to the window to cause the crack in the window.

The Landlord is seeking compensation, in the amount of \$84.45 for long distance and cable charges that were incurred during this tenancy. The Tenant agrees that he is responsible for these charges.

### Analysis

After hearing the statements of both parties regarding the damaged floor, I find that the floor was damaged during this tenancy and that the damage exceeds normal wear and tear. In reaching this conclusion I was heavily influenced by the photographs of the damages. In my view the pattern of the damage is not consistent with normal wear and tear caused by foot traffic, but is more consistent with something being spilled from the open oven door, as the damage is consistent with the shape of the door.

I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to repair the damage to the floor. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*.

The evidence shows that it will cost approximately \$1,100.00 to refinish the floor. The evidence also shows that spot repairs are not appropriate for worn or older floors. Even though a spot repair would be less expensive, I find that it is likely not appropriate in these circumstances, as the floor was not in new condition.

The Residential Tenancy Policy Guidelines suggests that the life expectancy of hardwood flooring is twenty years and I find that suggestion to be reasonable. The Landlord estimates that the floors were refinished approximately seven years ago, which is a personal opinion that is based on viewing the floor at the time he purchased the unit. Although the Tenant estimated the floors were refinished ten years ago, I find his opinion to be less reliable, given that he did not view the floors until 2009. I therefore find that the flooring had depreciated by at least thirty-five percent, and that

the Landlord is entitled to sixty-five percent of the cost of refinishing the floor, which in these circumstances is \$715.00.

I find that a window in the living room was chipped at the beginning of the tenancy and that the chip extended into a crack during this tenancy. I find that the Landlord submitted no evidence to cause me to conclude that the crack in the window was the result of the action or the negligence of the Tenant. As the *Act* only requires tenants to repair damage that is caused by the actions or neglect of tenants or their guests, I find that the Tenant is not obligated to repair the cracked window. On this basis, I dismiss the Landlord's claim for compensation for the broken window.

As the Tenant agreed to compensate the Landlord, in the amount of \$84.45 for long distance and cable charges that were incurred during this tenancy, I find that the Landlord is entitled to compensation in this amount.

I find that the Landlord's application has merit and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$849.45, which is comprised of \$715.00 for damages to the floor; \$84.45 for cable/telephone charges; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain \$849.45 from the security deposit paid by the Tenant in full satisfaction of this monetary claim. The Landlord remains obligated to return the remaining portion of the security deposit and pet damage deposit that were collected in relation to this tenancy.

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: December 01, 2010.

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Dispute Resolution Officer