



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant and his witness.

During the hearing the landlord indicated he had not received the tenant's evidence. The tenant confirmed that he did not know that he had to serve the landlord with his evidence. I advised the tenant that I would not be considering any documentary evidence submitted by him as the landlord had not received it.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties provided a copy of a tenancy agreement signed by both parties on December 14, 2007 for an 11½ month fixed term tenancy agreement beginning on January 15, 2008 for a monthly rent of \$825.00 due on the 1<sup>st</sup> of each month and a security deposit of \$412.50 was paid on December 13, 2007.

The landlord submitted into evidence a copy of a document entitled "Report of Rental Premises and Contents" dated January 15, 2008. The document is signed by the landlord, a witness and the tenant. The tenant disputes that this is his signature.

The document records the rental unit to have no damage except for a damaged light fixture in the bathroom. The document records that the condition of the unit throughout was not dirty. There are no comments on the condition of the yard and/or grounds of the residential property at the start of the tenancy.

The tenant and his witness testified that on January 15, 2008 the tenant was at work all day and the witness was at the rental unit all that day but that the landlord did not attend and certainly did not do a move in inspection that day or any other date.

The witness testified that both she and the tenant moved the tenant into the rental unit. When it was pointed out that the tenancy began on January 15, 2008 no one attending the hearing could remember the specific date that the tenant moved into the rental unit. The tenant testified that he thought he paid the landlord an additional ½ month's rent and moved into the unit in December, 2007.

The tenancy agreement notes the tenancy began on January 15, 2008 and that the tenant was expected to pay ½ month's rent on January 15, 2008 and commencing on February 1, 2008 the tenant would begin to pay the full rent. The tenant testified that he moved in a day or two after signing the tenancy agreement on December 14, 2011. The landlord could not recall.

The parties agree they completed a move out inspection on April 19, 2010 and that a local police officer attended the premises at that time but did not complete the inspection with the landlord and tenant. The tenant testified that it was a very rushed inspection. The landlord submitted 44 undated photographs that he states are of the condition of the residential property at the end of the tenancy.

The tenants assert that some of the items the landlord is claiming for have been that way since before the tenancy began and that they completely cleaned the rental unit prior to vacating the rental unit.

When asked about the crayon markings on the cabinetry, the tenant testified that their children would not have done that as they have been taught not to. The tenant felt the landlord marked up the cabinetry himself with crayons in order to make this claim.

The landlord submitted into evidence a written statement from the previous tenant stating that the damage and conditions shown in the landlord's photographic evidence were non-existent when she terminated her tenancy with the landlord.

The landlord testified that he had told the tenants not to worry about cleaning the 10 year old carpets as they would need to be replaced anyway. The tenants testified that they had cleaned the carpets prior to the end of the tenancy and that after leaving the rental unit and returning later on the April 17, 2010 there were foot marks on the carpet. The landlord testified that he had been outside of the local area until the night of the 18<sup>th</sup>.

The landlord submitted receipts for labour costs in the amount of \$5084.10; for miscellaneous supplies that appear to be mostly for painting and refinishing wood work but also includes a laundry faucet and tub in the amount of \$673.22; hearth tiles and supplies for and 1055.46 square feet of flooring in the amount of \$1,796.50.

The landlord makes the following financial claim:

<b>Description</b> (all labour rates @\$20.00/hr except where stipulated.)	<b>Amount</b>
Outside/Yard	
- clean up 32 hrs	\$640.00
- gathering/loading transport of debris 9 hrs @ \$65.00/hr	\$585.00
- green house – cleanup and repair 6 hrs plus materials	\$160.00
- clean/repaint garage wall 2 hrs plus materials	\$50.00
Inside/House	
- Replacement of screen door	\$75.00
- Cleaning	
o Front door/windows 2 hrs	\$40.00
o Kitchen 14 hrs	\$280.00
o Bathroom 9 hrs	\$180.00
o Air intake 2 hrs	\$40.00
o Crayon removal from paneling 2 hrs	\$40.00
o Crayon removal from interior of cabinet doors 4 hrs	\$80.00
- Repairs	
o Wood stove restoration 8 hrs plus materials	\$200.00
o Hearth tile replacement hrs unspecified plus \$57.92 materials	\$407.92
o Flooring replacement hrs unspecified plus \$325.26 materials	\$617.76
o Lower bedroom door 6 hrs plus materials	\$200.00
o Upstairs bedroom door 6 hrs plus materials plus paint and refinish	\$210.00
o Master Bedroom Walls 3 hrs plus materials	\$90.00
o Roll up blind replacement	\$40.00
o Floor vent replacement	\$15.00
o Residual damage to interior of cabinet doors	\$100.00
o Outside of maple cabinet doors – estimate	\$200.00
- Supplies (as per account summary)	\$673.22
- Landlord's prep for previous Dispute Resolution 13 hrs @ \$65.00/hr	\$845.00
- Landlord's prep for this Dispute Resolution 8 hrs @ \$65.00/hr	\$520.00
<b>Total</b>	<b>\$6,288.90</b>

### Analysis

To be successful in a claim for damages or loss the applicant must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;

2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. The steps taken, if any, to mitigate any loss.

In relation to the tenant's claim that they remember that the landlord **did not** complete a move in inspection on January 15, 2008 because they specifically remember that the male was at work and the female was home all day combined with the fact that they cannot remember what day they moved into the rental, I find it unlikely the tenants can remember details of a day when nothing happened but cannot remember the day that they moved all of their belongings into a new home.

As a result, I accept the document submitted by the landlord as a true record of the condition of the residential property at the start of the tenancy. Despite being undated and in the absence of any evidence to the contrary, I accept the landlord's submission of photographs as a record of the condition of the rental unit at the end of the tenancy.

However, I note that this document provides no record of the condition of the exterior of the rental unit; the property; or any external doors and as such, the landlord has failed to establish the condition of the yard, greenhouse and screen door prior to the start of the tenancy.

In light of this and faced with the tenant's testimony that the yard and greenhouse were in this condition at the start of the tenancy, I find the landlord has failed to establish that he suffered a loss as a result of the condition of the yard or that if there is any damage or loss that it resulted from the a violation of the *Act*, regulation or tenancy. I, therefore, dismiss the portion of his claim for cleaning and repairs to the yard; greenhouse; and screen door.

I accept that as a result of the condition of the rental unit shown in the landlord's photographic evidence the landlord suffered a loss for cleaning of the rental unit and that the loss resulted from the tenant's violation of Section 37 of the *Act*, that requires a tenant, when vacating a rental unit, to leave the unit reasonably clean and undamaged. I also accept the landlord's submission of receipts for labour and materials to clean the unit.

I accept the landlord was required to make the all the repairs as outlined in the table above as a result of the tenant's violation of Section 37. However, Residential Tenancy Policy Guideline 37 states that the useful life for carpets and window coverings is 10 years. As the landlord testified that these items were at least 10 years old I find the tenant cannot be held responsible for their replacement and I dismiss this portion of the landlord's claim.

In relation to the landlord's claim for residual damage to the interior of the cabinet doors; the outside of the maple cabinet doors; or the cost of the replacement floor vent, I find the landlord has failed to provide any documentary evidence to establish the value the

landlord asserts it would cost to make these repairs. I therefore dismiss this portion of the landlord's Application.

I accept the landlord has successfully established his claim for the remaining items listed under repairs including the wood stove; the hearth tile; the lower bedroom door; the upstairs bedroom door; and the master bedroom wall, as the landlord has provided sufficient evidence to substantiate the value of these repairs.

As to the landlord's claim for the costs associated with preparing his response to the tenant's previous Dispute Resolution hearing and this current hearing, I note the *Act* does not provide any entitlement to either party for costs associated responding to a dispute resolution proceeding. I therefore dismiss this portion of the landlord's claim.

Finally, I accept the account summary as an accurate record of materials and supplies the landlord required to complete the repairs outlined in his claim with the exception of the laundry faucet and poly laundry tub as there is no evidence before me showing the need to replace these items and I therefore reduce the total by \$74.96.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,416.18** comprised of \$2,366.18 compensation as described above and \$50.00 of the \$100.00 fee paid by the landlord for this application, as he was only partially successful in his claim.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: August 31, 2011.

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Residential Tenancy Branch