

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for damage to the unit; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the tenancy started on February 1<sup>st</sup>, 2011 and the tenants moved out on March 30<sup>th</sup>, 2011. The rent was \$1300.00 per month and the tenants paid a security deposit of \$650.00. Condition inspection reports were not completed at the start or the end of the tenancy.

In his documentary evidence, the landlord provided 9 photographs showing stained carpeting, damaged walls, damaged portions of the vinyl and hardwood flooring, missing spindles to a staircase, and a damaged cabinet door. The landlord also

provided 2 photographs taken before the tenancy started, showing the presence on spindles and undamaged hardwood flooring.

The landlord testified that the rental unit had been renovated before the tenants moved in, and that it was in, as he put it, “shiny” condition. He stated that the paint and flooring was approximately one year old, and the carpet was three years old. The landlord testified damages to the vinyl flooring, the walls and the paint; the carpet in a bedroom was stained with paint; 6 spindles were missing from the staircase; the carpets were dirty throughout; the locks were damaged; a cabinet door was broken; and garbage was left behind.

The landlord submitted a monetary claim supported for the cost of repairs as follows:

- Damaged locks:	\$ 57.88
- Carpet shampoo:	\$ 130.00
- Cabinet and wall repairs:	\$1120.00
- Kitchen floor and vinyl floor repair:	\$1708.00
- Bedroom carpet replacement:	\$ 861.50
- Garbage clean up:	\$ 200.00
- Missing spindles:	\$ 150.00
- Sub-total:	\$4227.38

The tenant testified that all the damages the landlord alleges are pre-existent, with the exception of the hardwood flooring, which she said was caused by the dishwasher leaking and causing water damage sometime in January 2011. She stated that the house was already in a state of disrepair, which was reflected in the low cost of renting the unit. She said that the vinyl flooring was patched with duct tape, and that condition inspections were not conducted. She said that she shampooed the carpets before moving out; she agreed to the damaged cabinet door, which the landlord stated was a \$75.00 repair, and that the spindles were removed and stored in a cupboard. She states that this claim is new to her and stems from a previous Residential Tenancy Branch

decision against the landlord, in which the landlord was ordered to pay the tenants \$3950.00.

The landlord disagreed with the tenant's testimony, and argued that the tenant did not notify him of the dishwasher leak for 3 days as an act on vindictiveness.

### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports on the landlord. The landlord's claim was not supported by these reports, and the Act states that the landlord's right to claim against a security deposit is extinguished without them. I find the landlord's photographic evidence of limited value as it does not allow me to determine whether the unit was in any better condition when the tenants moved in than when they moved out, or to ascribe a monetary value for damages beyond reasonable wear and tear caused by these tenants. The landlord's "before" photographs are panoramic in nature, and provide no assurance that the damages were not pre-existent, with the exception of the missing spindles on the staircase.

Accordingly I find that the landlord has not proven, on a balance of probabilities, that the damages were not pre-existent or that they were caused by the tenants' breach of the Act. On that basis the application must fail and I dismiss the landlord's application with the exception of the damages agreed to by the tenant.

Based on the documentary evidence and the tenant's testimony, I accept that the tenants did cause damage beyond reasonable wear and tear to the cabinet door and the staircase and I award the landlord compensation as follows:

For the cabinet repair I grant the landlord \$75.00.

For the replacing the spindles I grant the landlord \$150.00.

### Conclusion

The landlord established a claim of \$225.00. Since he was partially successful, I award the landlord partial recovery of the filing fee for \$25.00 and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order of \$250.00. This Order may be registered in the Small Claims 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 *Residential Tenancy Act*.

Dated: November 22, 2011.

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Residential Tenancy Branch