



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for alleged damage to the rental unit, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

There were two previous hearings involving these parties, regarding two different Applications.

The first hearing between the parties involved an Application by the Tenant to cancel a Notice to End Tenancy. While the Notice to End Tenancy issued by the Landlord was cancelled, the Tenant was ordered to clean the rental unit and keep it tidy.

The second hearing between the parties involved an Application made by the Tenant where he was awarded the return of double his security deposit and overpayments of rent collected by the Landlord. I note that as the issue of the security deposit has already been dealt with, I dismiss the request by the Landlord to keep it in this present Application.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began in November of 1995, with the Tenant renting from a previous owner. The Tenant gave a Notice to End Tenancy to the Landlord and vacated the rental unit at the end of November in 2010.

The Landlord is claiming it has incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Agent for the Landlord testified she did not understand why the Tenant went after double his security deposit and overpayment of rents in the earlier hearing. She testified that the Landlord did not initially understand that it could not simply keep the security deposit for the perceived charges, as they knew the Tenant was poor and they did not want to go after him for all the damage and cleaning of the rental unit.

The Agent for the Landlord further testified that the Landlord did not understand it had to perform a condition inspection report when the Tenant moved out. The Agent also testified that the Landlord did not take any pictures of the rental unit after the Tenant vacated.

The Agent for the Landlord testified that the Landlord purchased the rental unit property from a prior owner in approximately 2002, and the Tenant was already occupying one of 14 rental units in the building at the time they took over.

The Landlord claims the Tenant did not clean the rental unit when he moved out and that the rental unit required painting, and claims \$497.00 for professional cleaning and painting and \$84.78 for paint and supplies. The Agent for the Landlord testified the unit had not been painted since they took over the building.

The Landlord claims that the flooring was too dirty to be cleaned and had to be removed and claims \$1,917.71 for replacing all the flooring in the rental unit. The Agent testified that the floor was a mixture of carpet and linoleum, but did know when it was installed. The Agent testified that the Landlord did not replace the flooring in the rental unit since they took over the building.

The Landlord claims the Tenant did not clean the fridge properly and it had to be replaced at a cost of \$562.39, plus the cost of delivery of the new fridge and disposal of the old one of \$75.00.

The Landlord claims that because of the time it took for cleaning and repairs to the rental unit, the rental unit could not be re-rented for the next month and they lost one month of rent for December of 2010, in the amount of \$600.00.

The Landlord also claims the Tenant damaged all the furniture provided with the rental unit and that it all had to be removed. The Landlord claims \$1,250.00 as an estimate of this cost. The Agent testified that the furniture had been in the rental unit when the Landlord took over the building. She testified it was in terrible condition, as it was dirty and had torn areas.

In reply, the Tenant testified he did not agree to any of the claims of the Landlord.

The Tenant submitted that the Landlord was attempting to renovate the rental unit at his expense. The Tenant testified that he was told by Agents for the Landlord that when he moved out they intended to renovate the rental units.

Upon cross examination, the Agent for the Landlord testified that approximately half of the rental units in the building had already been renovated. She further added that the Landlord had not been informed that the fridge required repairs.

The Tenant provided testimony and evidence that the rental unit had not been painted since he moved in, nor had any changes been made to the furniture. He testified that some of the furniture was at least 30 years old.

The Tenant provided photographs of the rental unit at the end of his tenancy.

The Agent for the Landlord replied that the Tenant attempted to mislead the condition of the furniture, as some of it was covered with a sheet.

### Analysis

Based on the above, the testimony, evidence and photographs, and a balance of probabilities, I find that the Landlord's claims must be dismissed, for the following reasons.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlord, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the Landlord has failed to prove the Tenant breached the Act or tenancy agreement. I accept the photographic evidence of the Tenant which indicates the rental unit was reasonably clean and tidy when he vacated.

I accept the argument of the Tenant that the Landlord is attempting to have the Tenant pay for the renovations to the rental unit, as I find that the Landlord has attempted to charge the Tenant for items that are the responsibility of the Landlord. For example, the Landlord is responsible for painting the rental unit at reasonable intervals, pursuant to Policy Guideline #1. The evidence here is that the rental unit has not been painted since before the beginning of the tenancy. This is not a reasonable interval and the Landlord is responsible for this painting.

Likewise, the Tenant is not responsible for reasonable wear and tear to the rental unit, such as the flooring and furniture. Pursuant to Policy Guideline #37, the useful life expectancy of the flooring and furniture was 10 years. These items are more than 10

years old at best. Therefore, the Landlord is again attempting to have the Tenant pay for something that is the responsibility of the Landlord.

For these reasons I dismiss the Application of the Landlord, without leave to reapply.

Conclusion

I dismiss the Application of the Landlord in its entirety without leave to reapply. The Landlord has failed to prove the Tenant breached the Act or tenancy agreement. Furthermore, the Landlord is attempting to have the Tenant pay for renovations to the rental unit.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: October 21, 2011.

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Residential Tenancy Branch