



# 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 Landlords to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, Regulation, or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant affirmed she received the Landlords' application for dispute resolution and some evidence however she did not receive copies of the photographs.

The Landlords affirmed that packages of photos were sent to each Tenant via registered mail and they provided tracking numbers in their testimony (79587843142 & 79587843139). During the hearing the Landlords checked the Canada Post website and confirmed both packages were unclaimed by the Tenants and are in the process of being returned to the Landlord.

I informed the Tenant that refusing to pick up her registered mail does not avoid service and I find that both Tenants have been served with the evidence. Later in the hearing

the Tenant mentioned that they have recently moved and requested the Landlord send one set of photographs to her C.O.D. The Landlords agreed.

The parties agreed they entered into a month to month tenancy that began on September 1, 2010 and ended June 30, 2011 after the Landlords were issued an Order of Possession. Rent was payable on the first of each month in the amount of \$500.00 and on August 15, 2010 the Tenants paid \$250.00 as the security deposit. A move in inspection was completed on August 15, 2010 and signed by the male Tenant. The Landlords offered the Tenants the right to purchase the house and when they refused the Landlords listed the house to sell.

The Landlord affirmed that he had attended the rental unit on June 30, 2011 and found that the Tenants had vacated the property and left it in a deplorable state. He confirmed he did not do any work on the house that day and only changed the locks. They had their real estate agent conduct the move out inspection on July 4, 2011.

In addition to their written statements and documentary evidence the Landlords advised they have owned this house since approximately 1992 and the house was built in the early 1970's. They had occupied the house up to August 2010 at which time they rented to these Tenants who took possession on August 15, 2010. The Landlords conducted renovations on the house between 2006 and 2009 and provided photographs of the house which were taken in August 2010 once they had removed their furniture.

The Landlords currently reside in another city and have claimed for their travel time and fuel costs for travelling back and forth to the rental unit plus the cost of meals while at the unit in the amount of \$1,669.39. The male Landlord conducted the majority of the repairs and had to bring his service truck to the rental house as it holds his tools and compressor.

The Landlords worked a total of 124 hours to clean up and renovate the house to return it to saleable condition. The male Landlord advised he is a journeyman millwright and applied for labour costs at \$34.51 per hour which is his charge out rate for a total amount of \$4,279.24. He confirmed he conducted the work on the rental unit during his days off from work.

The Landlords are seeking the following for costs incurred to purchase materials and pay for labour costs for items listed on page 5 and 6 of their evidence:

\$ 76.15	Cleaning supplies
\$ 718.20	Painting supplies, paint and misc supplies – the entire house (except for one upstairs bedroom) was painted in early 2010.
\$ 458.15	To replace the fireplace glass which was original from the 1970's
\$ 262.56	To replace master bedroom closet doors (a quote of \$574.38 was listed in their list of items claimed but that was an estimate and was not paid) The doors were approximately 4 years old – this receipt included other miscellaneous items
\$3,167.58	For the cost of new carpet, underlay, for the living room, hallway, 3 upper bedrooms, and downstairs family room plus linoleum for the two bathrooms. The carpets were all more than 10 years old and up to 13 plus years in the bedrooms and the linoleum in both bathrooms was approximately 12 years old (the linoleum was installed by the male Landlord)
\$1,720.32	for labour to install the new carpet
\$ 73.94	Cost of mini blinds and light bulbs. The blinds were approximately three or four years old
\$ 92.06	Replace laundry room vinyl door and kitchen cabinet knobs – the kitchen cabinets were new during the renovations in 2007 to 2009
\$ 125.47	To replace closet shelves that were missing and a wall edge
\$ 300.00	for labour for two people who assisted in painting the basement and installing toilets (I note the receipt states for painting and cleaning
\$ 17.99	Cost of new wax toilet seals that were required to reinstall toilets
\$ 336.00	for cleaning after the repairs were completed
\$1,999.96	for the cost to replace the fridge and stove; the fridge smells after having being left with food inside to spoil for over a week as the electricity had been shut off, the seal on the fridge door is ripped, and the oven works however one burner has something melted on the top of the stove and the drawer is bent.

The Tenant responded to the Landlords' claim stating that after one week of occupying the rental unit they called the Landlords to advise the carpet smelled and requested the Landlords have it cleaned. As for the fireplace it broke in November 2010 during an evening when the power was out and they had a fire to heat the house. The fire caused the glass to break and the fire went onto the carpet. They did not tell the Landlords of this immediately and later sent them an e-mail in March 2011 about the incident after the Landlords told them they were going to list the house for sale.

The Tenant stated that she does not believe they left the rental unit in the condition the

Landlords are claiming. She confirmed her and her husband, their two children aged four and six, and her twenty year old sister occupied the house during the tenancy. She made reference to her evidence that the Landlords had not told the truth in their previous hearing when they claimed they had not received the rent payment when in fact they had as supported by the information she provided by her bank. She believes this claim is all part of the Landlords' attempts to improve their house so it will sell, which still has not sold.

The Tenant requested again that the Landlords send her copies of the photos they used as evidence to her new address as provided in her testimony. She requested that the send the photos C.O.D. and only one set would be required.

The Landlords confirmed they received the e-mail in March 2011 about the fireplace damage and questioned the Tenants why they had not put that claim through insurance back in November 2010 when it happened. The Landlords confirmed they had structure insurance but did not have insurance for interior damage by a tenant as it was the Tenants' responsibility to have that insurance.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, photographs from the beginning of the tenancy and after the end of the tenancy, an explanation of the photographs, the move-in and move out inspection report form, written statements from witnesses who viewed the rental unit six and seven days after the end of the tenancy, the Landlords' written statement, a chronological list of events of work performed at the rental unit by the Landlords between July 6, 2011 and August 7, 2011, an itemized cost breakdown, receipts of items purchased, and a copy of the residential tenancy agreement.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 32(2) of the Act provides that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

After review of the evidence before me I find that given the complaints received from real estate agents about the condition of the rental unit during the tenancy and the photographic evidence of the condition at the end of the tenancy, it is reasonable to conclude that on a balance of probabilities the Tenants did not maintain the unit within reasonable health, cleanliness and sanitary standards, which is in breach of section 32(2) of the Act.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides 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.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unclean and with some damage at the end of the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37*.

After careful consideration of the aforementioned and the documentary evidence I hereby find the Landlord has met the burden of proof to establish a monetary claim for the amounts as indicated below, pursuant to section 67 of the Act.

Cleaning Supplies – I accept that the products were required to clean the rental unit. Therefore I award **\$76.15**.

Painting supplies, paint and misc supplies – the useful life of interior paint is four years, as this unit was painted approximately 18 months prior to the tenancy I award an amount based on the remaining 30 months of useful life, of **\$448.87**.

The fireplace glass long surpassed its useful life of ten years as it was original from the early 1970's. Glass of this age can become brittle and therefore the broken glass can be considered normal wear and tear given that it was approximately 40 years old.

Therefore I dismiss this claim.

Master bedroom closet doors were 4 years old and the useful life is ten years, leaving six years remaining. That being said the evidence supports that one of these doors had a pre-existing crack in the mirror. It is reasonable to conclude that over time the crack would spread across the mirror with normal opening and closing, as cracks do in a windshield. Therefore I find this damage to be due to normal wear and tear. Therefore I dismiss this claim.

The carpet and underlay was ten years old, or older, and has surpassed its normal useful life of ten years. I note that this carpet was of an age and character that it was noted as being "older" on the move in inspection report. I further note that there is insufficient evidence to support the carpet in the entire house had to be replaced due to damage caused by the Tenants and not due to its age. Also there is insufficient evidence to deny that any of the carpet could have been restored to its condition at the onset of the tenancy by professional cleaning. The evidence provided as to the condition of the linoleum at the start of the tenancy is insufficient as the before photos in one bathroom show a carpet over the area in front of the shower and toilet where in the after photos shows linoleum not installed which appears to be the manner in which the linoleum was installed to begin with. After consideration of the age of the linoleum, 12 + years, and the normal useful life of 15 years, I award a nominal amount for a portion of the linoleum that was replaced of \$50.00. This claim includes the cost of 100ft of laminate flooring which was approximately four years old. The normal useful life of laminate flooring is 15 years. I note that the invoice for the flooring does not provide a breakdown of the actual costs for each item purchased. Therefore I award a nominal amount for laminate flooring in the amount of \$250.00 for a total amount of **\$300.00**.

Labour to install the new carpet – as I have found above that the carpet had surpassed its useful life the onus lies with the Landlord to bear the burden of labour costs to have it replaced. Therefore I dismiss this claim.

Cost of mini blinds and light bulbs. The blinds were approximately three or four years old. Blinds have a useful life of ten years therefore I award a proportionate amount based on six remaining years of \$40.25 plus \$6.88 for the light bulbs for a total amount of **\$47.13**.

Replace laundry room vinyl door and kitchen cabinet knobs – the kitchen cabinets were new during the renovations in 2007 to 2009. There is no evidence as to the age of the vinyl laundry room door. The damage that was presented in the photographs was breakage at the top of the door at some of the connections to the track. Vinyl or plastic accordion doors break at these points due to normal wear and tear and therefore, in the absence of evidence to support the age of the original door I dismiss this claim and consider the damage to be normal wear and tear. I accept the claim for the two cabinet knobs as there is no indication that these would have been damaged due to normal wear and tear. Accordingly I award **\$8.07**.

To replace closet shelves that were missing and a wall edge. I accept that these items were removed and based on the photographs of the remaining shelves I accept that these were new during the renovation that occurred within the last four years. The normal useful life of metal or wood shelving is twenty years. Therefore I award an amount based on the remaining sixteen years of useful life in the amount of **\$100.38**.

Labour for two people who assisted in painting the basement and cleaning as noted on the receipt but claimed as labour to install toilets. As this receipt does not indicate how much was attributed to painting and how much was for cleaning I award a depreciated amount based on 30 months remaining out of the 48 months of the useful life of the paint in the amount of **\$187.50**.

Cost of new wax toilet seals that were required to reinstall toilets. There is no indication of the age of the previous seals; therefore the amount awarded is based on the remaining three of fifteen years of useful life of the linoleum in the amount of **\$3.60**.

Cleaning after the repairs were completed. This is a claim for post renovation cleaning and therefore is not the responsibility of the Tenants. The cost of removal of debris and cleaning prior to the renovations will be considered in determining the amount awarded for the Landlord's labour below. Therefore I dismiss this claim.

Estimated cost to replace the fridge and stove; the Landlords state the fridge smells after having being left with food inside to spoil for over a week as the electricity had been shut off, and the oven works however one burner has something melted on the top of the stove and the drawer is bent. After careful review of the photographs and the testimony I find there to be insufficient evidence to prove the fridge and stove must be replaced. The photos do not show the stove top to be damaged nor do they show the drawer of the stove to be bent. They do show that each appliance requires extensive cleaning. There is insufficient evidence to prove the fridge odour cannot be removed or that the seal on the fridge could not be replaced. I note that this house remains up for

sale with both these appliances displayed in the kitchen. I accept that the fridge seal has a slice in it; therefore I award nominal damages of \$175.00 for the replacement cost of the fridge seal plus \$75.00 for cleaning for a total amount of **\$250.00**.

The Landlords conduct their business as Landlords while residing in a different city. They have claimed \$1,669.39 for travel time, fuel, and meals to attend the rental unit. I find that the Landlord has chosen to incur these costs which cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Generally "costs" do not include costs for an absent landlord (a landlord who chooses to reside in a different city) unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case. Therefore, I find that the landlord may not claim travel time or costs as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. Accordingly I dismiss this claim.

The Landlord affirmed that he completed the work himself during his days off at his regular employment. He has claimed for a total of 124 hours to clean up and renovate the house and has billed his costs at the labour rate he bills as a journeyman tradesperson of \$34.51. While he may be licensed as a millwright and able to bill at that rate due to his training and licensing, he is not a professional ticketed carpenter, floor installer, painter, or home renovation contractor. I accept that the Landlords were capable of performing the repairs and renovations on their own home and did so in order to save costs therefore it would be reasonable not to bill at a journeyman rate. Furthermore, given that this is not their professions indicates that the time spent may have been longer than a skilled worker and would have included time installing materials that were past the useful life or normal wear and tear. Therefore I award the Landlords labour costs for cleaning, repairs, and painting, in the amount of **\$2,000.00** (80 hours x \$25.00 per hour).

The Landlords have only been partially successful with their application; therefore I award partial recovery of their filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Cleaning Supplies	\$ 76.15
Painting supplies, paint and misc supplies	\$ 448.87
Carpet and underlay & Linoleum	\$ 300.00
Mini blinds and light bulbs	\$ 47.13
Kitchen cabinet knobs	\$ 8.07
Closet shelves and wall edge	\$ 100.38
Labour for painting basement and cleaning	\$ 187.50
Wax toilet seals	\$ 3.60
Replacement cost of the fridge seal	\$ 175.00
Labour costs for cleaning, repairs, and painting	\$ 2,000.00
Filing Fee	<u>\$ 50.00</u>
<b>SUBTOTAL</b>	<b>\$ 3,396.70</b>
<b>LESS: Security Deposit \$250.00 + Interest 0.00</b>	<u>-250.00</u>
<b>Offset amount due to the Landlords</b>	<b><u>\$3,146.70</u></b>

### Conclusion

The Landlords' decision will be accompanied by a Monetary Order in the amount of **\$3,146.70**. This Order is legally binding and must be served upon the respondent Tenants.

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 20, 2011.

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Residential Tenancy Branch