



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, for a loss of rental income and to recover the filing fee for this proceeding.

The Landlord's application named an employee for the Tenant's legal representative (or committee) as a Party to these proceedings, however I find that the legal representative for the Tenant is the party who should have been named rather than its employee and therefore the style of cause is amended to remove the legal representative's employee as a Party and to add instead the Tenant's legal representative.

### Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?

### Background and Evidence

This tenancy started on June 1, 2002 and ended on October 31, 2011 when the Tenant's legal representative removed all of the Tenant's belongings from the rental unit. Rent was \$740.00 per month. The Landlord instituted a rent increase of \$15.00 effective November 1, 2011. The Tenant paid a security deposit of \$305.00 on June 15, 2002.

The Tenant's agent said the Tenant has multiple sclerosis which has progressing rapidly. The Tenants' agent said that the Tenant was hospitalized in July 2011 as a result of a fall in the rental unit and at this time it became clear to his physicians that the Tenant was unable to care for himself and to continue to live independently. The Tenant was placed in an extended care facility and the Tenant's representative was appointed the Committee of his estate on August 25, 2011.

The Landlord's agent said the Landlord purchased the rental property in 2009 and he could find no record of a condition inspection report having been completed at the beginning of the tenancy. The Landlord's agent argued, however, that the rental property was inspected prior to its purchase and the rental unit must have been in satisfactory condition at that time otherwise the Landlord would have required the

vendor to make improvements (and he was unaware of improvements being required). The Landlord's agent said he also believed that the rental property was renovated approximately 10 years ago but he was not sure about that. The Landlord's agent said that he was unaware if any updates or renovations had been made to the rental unit prior to 2009 and admitted none had been made after 2009.

The Landlord's agent and a cleaning contractor for the Tenants completed a condition inspection report on October 14, 2011. The Landlord's agent also relied on photographs of the rental unit, some of which he said were taken on October 14, 2011 before the Tenants' contractors began cleaning the rental unit and some on October 30, 2011. The Landlord's agent claimed that at the end of the tenancy, the following damages were discovered and as a result, the Landlord has incurred or will incur the following expenses to repair or replace the items in question:

- Burn and scratch marks to kitchen cabinets. Cost to repair, \$600.00;
- Holes and scratches on 3 interior doors. Cost to repair, \$600.00;
- Two closet doors that won't close properly. Cost to repair, \$300.00;
- A sliding patio door can't be opened and the screen door is missing. Cost to repair door and replace screen, \$400.00;
- Carpet damaged by cigarette burns and water stains. Cost to replace, \$2,500.00;
- Holes in walls throughout the rental unit. Cost to repair and repaint, \$1,600.00;
- A damaged faucet, sink and toilet in the bathroom. Cost to replace, \$600.00;
- A refrigerator is damaged from lack of cleaning and the thermostat pulled out. Cost to replace with a used appliance, \$800.00;
- A stove is damaged from lack of cleaning. Cost to replace with a used appliance, \$600.00;
- A damaged kitchen exhaust fan. Cost to repair or replace, \$200.00;
- Curtains in the rental unit soiled. Cost to clean or replace, \$200.00;
- Damage to a security telephone. Cost to repair \$100.00.
- Keys not returned. Cost to replace, \$100.00.

The Landlord's agent did not submit any receipts, estimates or other documentary evidence in support of the amounts he sought but claimed that these costs were reasonable and that based on his experience, they were less than what a professional contractor would charge. The Landlord's agent said he advised the Tenant's representative in early October about the repairs that need to be done and offered her an opportunity to do them if she thought the Landlord's quotes were unreasonable. The Landlord's agent said the Tenant's representative did not do the repairs and as a result, the rental unit was not in a condition to be rented out for November 1, 2011 and the Landlord lost rental income for that month.

The Tenants' agent admitted that the Tenant was unable to care for himself and clean the rental unit for some period of time and she also admitted that she was unsure how long this would have been. The Tenants' agent argued however, that the Tenant's legal

representative had done everything that was required. The Tenants' agent said she gave the Landlord written Notice on September 14, 2011 that the tenancy would end on October 31, 2011 and paid rent for September and October 2011. The Landlords' agent said she also arranged to have the Tenant's belongings removed, the carpets cleaned and deodorized and the rental unit professionally cleaned. The Landlords' agent said she made a payment of \$470.00 to the Landlord to repair a front door of the rental unit which was damaged by the Tenant's wheelchair and she agreed that the Landlord could keep the Tenant's security deposit in payment of any other additional repairs or cleaning.

The Tenants' agent argued that there was no evidence as to what condition the rental unit was in at the beginning of the tenancy and no record of updates or renovations having been done to the rental unit in the 9 ½ years that the Tenant occupied the suite. The Tenants' agent argued that it was not the responsibility of the Tenants to replace or repair the things sought by the Landlord because they were either suffering the effects of normal wear and tear or were maintenance issues. The Tenants' agent admitted that the rental unit was dirty however, she said 2 professional cleaning companies were hired to clean the rental unit and clean and sanitize the carpets. The Tenants' agent admitted that the curtains were not cleaned at the end of the tenancy as she was unsure if that was the Tenant's responsibility. The Tenants' agent claimed that the Landlord provided her with all the photographs he submitted as evidence at the hearing prior to October 14, 2011 and therefore she argued that they must have been taken before the cleaning was done. The Tenant's agent said she returned the keys to the Landlord in November 2011.

### Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

I find that there are a number of difficulties with the Landlords monetary claims in this matter. Firstly, there is no reliable evidence of the condition of the rental unit at the beginning of the tenancy. Although the Landlord's agent claimed that all rental units in the rental property may have been renovated around the beginning of the tenancy, he was unsure of this and there is no other evidence to support that assertion. The Landlord's agent claimed that other suites of the same vintage in the rental property that have been well maintained by their occupants do not have the same amount of damage as the rental unit did. The Landlord's agent argued that this shows the damage to the rental unit was more than just normal wear and tear however, he provided no evidence of the condition of other units to substantiate this assertion. Consequently, I find that there is no evidence to determine the age or condition of the appliances and other items in the rental unit at the beginning of the tenancy. This then makes it difficult to

determine whether the Tenant caused damages or if they were simply the result of normal wear and tear (with the exception of cigarette burns in the carpet and holes in the walls) over a prolonged period of time. Additionally, I find that the Landlord's photographs of the rental unit likely were taken prior to cleaning having been done on October 14, 2011 and therefore, I find that they are unreliable as far as they purport to show what the condition of the rental unit was at the end of the tenancy.

The second difficulty with the Landlord's claim is that as building materials, appliances and other articles age, they will develop some wear and tear associated with normal use and their value will diminish *for that reason*. It is a principle of compensation that a party is only entitled to be compensated for their actual losses. This means that a Landlord is not entitled to be compensated for the cost of a new carpet, for example, to replace an old carpet that by virtue of its age has little to no value. RTB Policy Guideline #37 at p. 15 contains a table that sets out the useful lifetime of various assets. In particular, it states that the useful lifetime of a carpet and drapes are each 10 years, that interior paint is 4 years and a refrigerator, stove and intercom are each 15 years. Consequently, I find that the Landlord's claim for compensation is largely based on seeking the cost of replacing articles that are 10 years old or older with much newer ones.

The third difficulty with the Landlord's claim is that it has provided no reliable evidence to support the amounts sought for replacing or repairing various items. Although the Landlord's agent claimed that the amounts he seeks are based on his experience making repairs to rental properties, I find that there is no evidence that he is qualified to make those opinions of value. Consequently, I find the Landlord's agent's uncorroborated evidence unreliable and not sufficient to make out the substantial compensation claim he has advanced.

Consequently, given the lack of evidence of the age or condition of the rental unit and its contents at the beginning of the tenancy, I find that there is insufficient evidence to conclude that the damages to the kitchen cupboards, interior doors, closet doors, patio door, walls, bathroom fixtures and kitchen appliances and fan occurred during the tenancy or were the result of an act or neglect of the Tenant. In other words, I find it equally possible that these items could have been damaged prior to the tenancy or developed wear as a result of at least 10 or more years of use.

While I find that the Tenant was likely responsible for damaging a carpet with cigarette burns and water stains, I find on a balance of probabilities that the carpet is at least 10 years old and therefore I find that it has exceeded its useful lifetime and has no further value. Consequently, I find that the Landlord is not entitled to be compensated for the carpet. Furthermore, I also find that the refrigerator and stove are likely more than 10 years old and for that reason as well, the Landlord would not be entitled to be compensated for replacing them.

RTB Policy Guideline #1 says that a Landlord is responsible for painting the interior of a rental unit at reasonable intervals. I find that the rental unit likely was not painted during

the tenancy and therefore I find that it would have needed to be painted regardless of any damages to the wall and I find that there is no evidence that the Tenant was responsible for those holes. I also find that there is no evidence that there was a screen door at the beginning of the tenancy or that if there was one that he was responsible for removing it. I further find that the Tenants' agent did return the keys to the Landlord in November 2011. While the keys should have been returned on October 31, 2011, I find that the Landlord has provided no evidence that it actually incurred expenses to change the locks and the Landlord's agent admitted that he did not rent the rental unit for November 2011 in any event. Consequently, I cannot conclude that the Tenant should be responsible for compensating the Landlord for these items.

I find that the Tenant likely was responsible for damaging a security phone which was pulled out of the wall and for drape cleaning. However, I also find that the Tenant's legal representative allowed the Landlord to keep the Tenant's security deposit of \$305.00 and accrued interest of \$10.81 in the event there was further cleaning or repairs required and I find that \$315.81 is sufficient to compensate the Landlord for these additional cleaning and repair expenses. Finally, as I have found that there is insufficient evidence that the Tenant was responsible for the balance of the repairs to the rental unit, I find that there is no basis upon which to award the Landlord a loss of rental income for November 2011.

In summary, I find that that the Landlord has provided insufficient evidence to conclude that damages to the rental unit was the result of an act or neglect of the Tenant because they could have had pre-existing damage or wear and sustained additional wear during this tenancy of almost 10 years. I also find that many of the articles for which the Landlord seeks compensation have no value because they have exceeded their useful lifetime. Furthermore, I find that the Landlord has provided no reliable evidence that he has or will incur the expenses he has claimed. I find that the Tenant is responsible for drape cleaning expenses and repair expenses to a security telephone however I also find that the Landlord has already been compensated for these items. As a result, the Landlord's claim in its entirety is dismissed without leave to reapply.

### Conclusion

The Landlord's application is dismissed without leave to reapply. 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: January 19, 2012.

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Residential Tenancy Branch