



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with cross applications. The landlord applied to retain part of the security deposit. The tenants applied for return of double the security deposit. The landlord and the female tenant appeared at the hearing. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

As a preliminary issue I noted that the landlord had named the male tenant only in making the landlord's Application for Dispute Resolution whereas the tenant's Application for Dispute Resolution named two tenants.

I was satisfied that the male tenant was served with the landlord's application and evidence by registered mail. The male tenant did not appear at the hearing and the female tenant indicated she would be addressing the issues raised by the landlord. Upon review of the tenancy agreement I was satisfied that there were two tenants on the tenancy agreement. I was also satisfied the female tenant had appeared at the hearing to respond to the landlord's claims. Therefore, this decision names both tenants.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover \$400.93 from the tenants for damage to the glass stove top?
2. Have the tenants established an entitlement to recover double the security deposit from the landlord?

### Background and Evidence

The tenancy commenced August 28, 2010 and ended September 30, 2011. The tenants paid a \$700.00 security deposit. A condition inspection report was prepared by the landlord and given to the tenants at the beginning and end of the tenancy. The tenants would not sign the move out inspection report as they did not agree with the

landlord's assessment of the property, mainly with respect to the damage to the glass cooktop. The landlord did not sign the move-out portion of the report either.

The landlord filed his Application for Dispute Resolution on October 13, 2011 seeking to deduct \$400.93 from the security deposit to install a new glass cooktop. A Notice of Hearing was generated by the Residential Tenancy Branch October 17, 2011 and it was mailed to the tenant via registered mail on October 18, 2011. The tenants filed their Application for Dispute Resolution seeking return of double the security deposit on October 18, 2011.

The move-in inspection report indicates the stove/stove top was in "fair" condition. Most other items were reported to be in "good" condition. The landlord testified that the "fair" notation was made to reflect some scratches on the cooktop at the beginning of the tenancy and that the cooktop was four years old with approximately three years of use.

The move-out column of the condition inspection report was prepared with much less detail than the move-in column. In the move-out column of the report there is a line through all of the sections except for a notation "some damage" next to line for the stove/stove top. In the section that provides for damage for which the tenant is responsible on the third page of the report the landlord recorded "stove top".

The landlord submitted that at the end of the tenancy the cooktop was damaged beyond repair and its black surface had turned white over one element. Since the unit is open concept the damage is very noticeable from the main rooms.

The landlord suspected that a pot had boiled over and the liquid was cooked onto the surface with extreme heat. The landlord attributes the damage to the tenants' actions or neglect in using the cooktop. The landlord acknowledged the cooktop has not yet been replaced. The landlord submitted that the damage cannot be removed or repaired and the amount claimed is based upon receiving two estimates.

The tenant responded by stating the cooktop was already discoloured and scratched at the beginning of the tenancy. The tenant stated that she and her co-tenant used the cooktop normally. The tenant submitted that the landlord's request for replacement cost is unjust given the cooktop is still useable.

Documentary evidence provided for these disputes included: the tenancy agreement; condition inspection report; two estimates for replacement of the cooktop; and photographs of the cooktop taken at the end of the tenancy.

### Analysis

Upon consideration of all of the evidence before me, I provide the following findings and reasons with respect to each of the applications before me.

#### **Landlord's application**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 of the Act provides that a tenant must repair damage to the rental unit caused by the tenant's actions or neglect. Where a tenant has caused damage and does not make the necessary repairs, the landlord may seek compensation from the tenant for the value of the loss. Section 32 also provides that a tenant is not responsible for making repairs for reasonable wear and tear.

Where a landlord is awarded compensation for damage the amount of the award is 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.

Based upon the photographs and the testimony of both parties, I accept that the cooktop was scratched and discoloured at the end of the tenancy. However, I find the tenant's testimony that there were pre-existing scratches and discolouration on the cooktop at the beginning of the tenancy to be likely when I consider the landlord had noted the cooktop as being in "fair" condition at the beginning of the tenancy while the majority of other items had a better rating of "good". While I have accepted there were pre-existing scratches and discolouration, I accept that at the end of the tenancy the

scratches and discolouration had worsened. The issue for me to determine is whether the deterioration of the appearance of the cooktop during the tenancy was the result of the tenants' actions or neglect or from reasonable wear and tear.

The landlord provided a possible explanation as to the reason the cooktop was scratched and discoloured; however, the tenant described reasonable use of the cooktop during the tenancy.

I find it more likely than not that the glass cooktop is prone to showing scratches and discolouration due to reasonable wear and tear as evidence by the fact the cooktop was showing these signs at the beginning of the tenancy which would have been after only two years of use.

In light of the above, I find the landlord has not met the burden to prove the scratches and discolouration are the result of use that exceeded reasonable wear and tear of that particular appliance. Therefore, I find the landlord's claim fails and I dismiss it without leave to reapply.

### **Tenants' application**

If the landlord does not have the tenant's written consent or the Director's authority to make deductions from the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. If a landlord fails to comply with section 38(1) then the security deposit must be doubled in accordance with section 38(6) of the Act.

In this case, I find the landlord made an Application for Dispute Resolution within 15 days of the tenancy ending and did not violate section 38(1) of the Act. Therefore, I do not find the tenants entitled to doubling of the security deposit.

### **Monetary Order**

I make no award to either party for the filing fee and I order the landlord to return the security deposit to the tenants forthwith. I provide the tenants with a Monetary Order in the amount of \$700.00 to ensure payment is made. To enforce the Monetary Order it must be served upon the landlord and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord's claim against the security deposit has been dismissed. The tenants' request for double the security deposit has been denied. The landlord has been ordered to return the \$700.00 security deposit to the tenants forthwith. The tenants have been provided a Monetary Order in the amount of \$700.00 to ensure payment is made.

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.

---

Residential Tenancy Branch