



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company and the tenant attended the conference call hearing, both gave affirmed testimony, provided evidence in advance of the hearing, and were given the opportunity to cross examine each other on the evidence and testimony provided. All evidence and testimony has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

This month-to-month tenancy began on May 27, 2007 and ended on August 30, 2011. Rent in the amount of \$1,147.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On June 1, 2007 the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord.

The landlord's agent testified that during the move-out condition inspection, the parties discussed chips in the counter top, and the tenant claimed it was like that at move-in. The landlord tried to get the chips filled but the contractor said that if it was just surface damage it could be sealed but the chips were too deep. The countertop had to be replaced, and the landlord only replaced the portion that was chipped. The landlord

provided an invoice for \$229.60, however the landlord is claiming a pro-rated amount; the countertop had been installed in 2000 which makes it 11 years old, and a countertop is expected to have a life of 25 years, meaning that \$229.60 divided by 25 years is \$9.18 per year. The life left, being 14 years, multiplied by \$9.18 per year equals \$128.52, which is the amount claimed by the landlord.

The landlord's agent further testified that the tenant changed the kitchen drawers and the front of the cutting board is missing. The laminate on the upper cabinet is also missing. The landlord claims \$156.80 including taxes for the repair and provided an invoice for that service. The landlord's agent further testified that the tenant's father worked for the landlord company during the time that the tenant took possession of the rental unit, and he removed the cabinet. The only way to remove it includes removing the vertical laminate strip. The landlord has not claimed the cost of re-installing although it was not reinstalled correctly. When the landlord reinstalled it, the laminate strip was already missing; if they had the strip the landlord could have re-glued it but it was gone.

The landlord's agent also testified that the tenant was provided with a new stove on September 22, 2008. When the tenant moved out of the rental unit, the tenant had only cleaned the top surface, not the dripping pans. The tenant had told the landlord when the move-out condition inspection report was completed that the old stove had not been cleaned, so the tenant would not clean the rest of the new stove before departing. The landlord's agent cleaned it, and claims \$10.00 for that service.

Further, the landlord's agent claims \$25.00 for cleaning the inside of the cabinets and provided photographs as evidence that the tenant did not leave the kitchen reasonably clean.

The landlord's agent also testified that the tenant had the locks to the rental unit re-keyed and the landlord paid the tenant the sum of \$95.20 by deducting it from rent. Now that the tenant has vacated the rental unit, the landlord needs to re-key the door; the deadbolt has a code and the tenant gave the landlord the original keys in April, 2008, but to use those keys, the landlord's agent will have to take them to the locksmith to re-key the lock back to those keys. The landlord's agent took the lock in to the locksmith and the re-keying was done. Also, 1 key is missing. The total cost is \$45.19, for which the landlord has provided a receipt.

The landlord claims \$45.19 for the re-keying cost, \$156.80 for the cost of fixing the cabinet, \$128.52 for the cost of replacing the countertop, \$25.00 for general cleaning, and \$10.00 to clean the dripping pans on the stove.

The tenant testified that the chips in the counter are so small, the tenant believes they were overlooked during the move-in condition inspection report; the marks are not obvious damage, but more like wear and tear, not cut marks or chips. The tenant provided photographs of the countertops on both sides of the kitchen.

The tenant further testified that the laminate on the cabinets are at least 20 years old, and denies ever changing the drawers.

The tenant also disputes any cost for re-keying the rental unit, because the parties appeared before a Dispute Resolution Officer with the Residential Tenancy Branch who ordered that the landlord bear that cost.

### Analysis

Firstly, with respect to the countertops, I have reviewed the photographs provided by both parties and the move-in condition inspection report. The report states that the countertops contained stains at move-in, yet the photographs only show small black spots about the size of the head of a pin and no stains. I find that the stains mentioned on the move-in condition inspection report are the small black spots.

With respect to the cabinets, I accept the testimony of the parties that the tenant's father, who was an employee of the landlord company at the commencement of the tenancy, removed the cabinet and then reinstalled it at the end of the tenancy. The landlord's agent testified that the cabinets are probably close to 20 years old, which have a useful life of about 25 years. I have also viewed the photographs provided by the parties and I do not agree with the landlord's testimony that the front of the cabinets is water damage caused by the tenant. That kind of water damage can only be caused from using them for several years. Further, the landlord's agent testified that the only way to remove the cabinet includes removing the laminate strip, and the landlord is not claiming the charge of reinstalling, even though it was reinstalled incorrectly, but when the landlord had it reinstalled the laminate was missing, and if they had the strip the landlord could have re-glued it but it was gone. The testimony of the tenant is that the drawers were never changed by the tenant. In the absence of any proof from the landlord, I find that the landlord has failed to establish that the damage was caused by the tenant or that the amount claimed is reasonable.

With respect to re-keying, I have read the Decision of the Dispute Resolution Officer who ordered that the locks be changed, and agree that the locks were changed as a result of the landlord's failure to comply with the *Residential Tenancy Act* at that time, and therefore, the tenant is not responsible for re-keying.

With respect to cleaning, I find that the tenant had an obligation to clean the drip trays on the stove even if they weren't cleaned at the beginning of the tenancy because the landlord provided the tenant with a new stove during the tenancy. The tenant is required to leave a rental unit reasonably clean except for normal wear and tear. Failing to attempt to clean the drip trays is not normal wear and tear. I find that the landlord has established a claim for \$10.00.

With respect to general cleaning, I accept the testimony of the landlord, having seen the photographs, and find that the landlord has made out a claim for \$25.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord still holds the security deposit in the amount of \$525.00 and I find that the landlord is obligated to pay the tenant \$12.56 in interest which is calculated from the date of payment to the landlord to the date of this hearing. The landlord has been successful for a claim totalling \$85.00.

### Conclusion

I order the landlord to return the balance of the security deposit to the tenant in the amount of \$452.56. If the tenant does not receive that amount from the landlord by December 20, 2011, the tenant will be at liberty to make an application for dispute resolution.

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 6, 2011.

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Residential Tenancy Branch