



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Although the landlord applied for an order authorizing him to retain the security deposit, I note that the deposit was addressed in an earlier decision issued on January 26, 2012. In that decision, the tenant was awarded double the security and pet deposits. The decision was not set aside through the judicial review process and I find that I am bound by the findings in that decision. I therefore dismiss the claim against the security deposit as the issue has already been dealt with.

At the hearing, T.R. appeared to assist the tenant and testified that he was a co-tenant. He challenged that the landlord should not be permitted to act against just one tenant. I explained to T.R. that as a co-tenant, he and the named respondent are jointly and severally liable and that the landlord is free to pursue either or both parties. T.R. also suggested that the landlord's application should be dismissed because he had misspelled the tenant's name and incorrectly written the tenant's current address. The tenant appeared at the hearing and was ready to respond to the allegations in the landlord's claim and I find that the spelling error in her name did not mislead her into believing that someone else was the respondent. Further, the tenant acknowledged having received the landlord's claim and evidence and regardless of whether the address was incorrectly written on the application, I find that she has not in any way been prejudiced by that error.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in July 2010 and ended in July 2011. The parties did not inspect the unit together at the end of the tenancy.

The landlord testified that the tenants caused damage to the walls of the unit, leaving numerous holes in the walls which the landlord had to pay to have filled and repainted. He seeks to recover \$1,120.00 as the cost of repainting. He provided an invoice for that amount which was dated October 2, 2011. The tenants denied having caused any damage beyond what may be characterized as reasonable wear and tear.

The landlord testified that the ceran cooktop was damaged at the end of the tenancy and had to be replaced. He claimed that the cooktop was 2-3 years old and was in good condition at the beginning of the tenancy as evidenced by the move-in condition inspection report. He provided photographs showing that at the end of the tenancy, there were burn marks around several burners and provided an invoice showing that the cooktop was ordered in December 2011 and that labour was estimated at \$195.00. The tenants pointed out that the landlord's invoice gave a purchase date of 2006, which they took to mean that the cooktop had originally been purchased in 2006, making it 6 years old. They testified that there was nothing wrong with the cooktop at the end of the tenancy.

The landlord seeks the cost of replacing what he described as a control panel at the top of the dishwasher. The landlord testified that although the dishwasher was fully functional at the end of the tenancy, the control panel was missing and he had to replace it at a cost of \$358.40. He provided a copy of a quotation dated January 4, 2012 for replacing the panel and claimed that the work had been completed but he didn't have an opportunity to submit the invoice. The tenants testified that the dishwasher was always missing a piece of trim, but stated that the dishwasher itself always worked well.

The landlord testified that at the end of the tenancy, he discovered that an electrical heater in the dining room was not functioning properly. He provided a copy of an invoice showing that he paid \$268.80 to have the heater repaired. The tenants testified that they did not damage the heater and acknowledged that it was possible that it was not functioning.

The landlord seeks to recover the cost of a cover for the light in the refrigerator and provided an invoice dated January 4, 2012 showing that he paid \$30.86 to replace the cover. The tenants claimed that the cover was missing throughout the tenancy.

The landlord also seeks to recover the cost of photocopying documents in support of his claim as well as the filing fee paid to bring his application.

### Analysis

The landlord claimed that the tenants damaged the walls of the unit and that he had to repaint. He provided an invoice dated more than 2 months after the tenancy ended and photographs which were so indistinct, they did not show any damage. In order to establish his claim, the landlord must prove that there was damage to the walls which goes beyond reasonable wear and tear, that the damage was caused by the tenants and that he suffered a loss as a result. I am not satisfied that any damage was beyond reasonable wear and tear and therefore I find that the landlord has not proven his claim for the cost of painting and I dismiss the claim.

While the landlord's photographs clearly show that there were marks around the burners at the time the photographs were taken and while I accept that the burning occurred during the tenancy, I find it likely that this is reasonable wear and tear. I find it more likely than not that the cooktop was 6 years old as indicated on the landlord's invoice and there is no evidence that the cooktop was not fully functional at the end of the tenancy, particularly as the landlord waited for more than 4 months to replace it. I find that the damage was likely cosmetic and while the landlord is not precluded from making a claim for cosmetic damage, I find that the cooktop was halfway through its useful life and some cosmetic damage was to be expected by that point. I dismiss the claim for the cost of replacing the cooktop.

The landlord claimed that the dishwasher was working well at the end of the tenancy but that the control panel was missing. I accept that the dishwasher was working well and I find it unlikely that the landlord would have waited 6 months to replace the control panel if the operation of the dishwasher had been in any way affected. It would appear that the strip described by the tenants was one piece of the control panel which was merely cosmetic, but the landlord replaced an entire panel. I am not persuaded that the entire panel needed to be replaced and I find the cost to be exorbitant, particularly as both parties agreed that the dishwasher was fully functional. For these reasons, I dismiss the claim.

In order to establish his claim to recover the cost of repairing the dining room heater, the landlord must prove that the heater stopped functioning due to the actions of the tenant. I am not satisfied that this is the case. The landlord provided no evidence to show that the tenants had damaged the heater and I find that in the absence of such evidence, the tenants cannot be held liable for the cost of the repair. I dismiss the claim.

The landlord pointed to the move-in condition inspection report and claimed that because it did not note that the refrigerator light cover was missing, it must have been in place at the beginning of the tenancy. The tenants claim that the cover was missing throughout the tenancy. In order to establish this claim, the landlord must prove both that the light cover was in place at the beginning of the tenancy and that it was missing at the end of the tenancy. The move-in condition inspection report does not show that the cover was missing and the move-in report for the occupant who took possession immediately after the tenants vacated shows that the cover was missing at the beginning of that tenancy. The reports show that the landlord was detailed in marking deficiencies and I find it more likely than not that the cover went missing during the tenancy. I find that the tenants are responsible for the cost of its replacement and I award the landlord \$30.86 which is the amount shown on the invoice.

I dismiss the claim for the cost of photocopying documents. Under the Act, the only litigation-related costs I am empowered to award is the cost of the filing fee. As the landlord has been substantially unsuccessful in this application, I find that he should bear the cost of the filing fee.

### Conclusion

The landlord is awarded \$30.86 and I grant him a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The parties each hold orders against the other and are encouraged to set off the orders as against each other

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: April 10, 2012

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Residential Tenancy Branch