



# Dispute Resolution Services

Page: 1

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 tenants for the cost of this application.

The landlord and all of the tenants attended the conference call hearing and the parties provided evidence in advance of the hearing. The landlord and 2 of the tenants gave affirmed testimony and the parties were given the opportunity to cross examine each other on the evidence provided and testimony given, all of which 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

The parties agree that this tenancy began as a fixed term tenancy on February 1, 2011 to expire January 31, 2012. The tenancy then reverted to a month-to-month tenancy, which ultimately ended on February 28, 2012. Rent in the amount of \$2,100.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,050.00 as well as a pet damage deposit in the amount of \$250.00. The pet damage deposit was returned to the tenants but the landlord still holds the security deposit in trust.

The landlord testified that a move-in condition inspection report was completed on January 31, 2011, a copy of which was provided by the landlord in advance of the

hearing, however, the landlord also testified that the dates on the document are incorrect; the document shows that the move-in condition inspection report was completed in 2012 but was in fact completed in 2011. The rental unit is actually 2 suites in a house and the tenants rented both suites in one tenancy agreement, which thereby had 2 kitchens.

The tenants took an extra day to complete cleaning inside the rental unit and the move-out condition inspection report was completed on March 2, 2012. The landlord testified that the rental unit had not been cleaned and provided photographs to illustrate the cleaning required. The landlord testified that drawers had not been cleaned out in the bathroom, the tub drain was full of hair, the bathtub was dirty, and the light switch for the bathroom which is located in the hallway was also dirty. Dog hair was not cleaned up and the oven in one of the suites had not been cleaned, and required 2 cleanings. The landlord does not reside in the same city as the rental unit and hired a cleaning company to complete the cleaning. The landlord paid \$300.00 for that service and provided a copy of an invoice to substantiate that claim. Also provided are 2 email estimates for cleaning; one at \$436.80 and the other at \$597.00.

The landlord further testified that the kitchen countertops in the basement were left with bleach stains. The landlord spoke to staff at Rona and Home Depot and learned that bleach stains cannot be removed. The countertop was 6 years old when the tenants moved in. The landlord obtained 2 quotes for replacement, and the least expensive was \$714.24, being \$604.24 for the countertop and \$110.00 to remove and reinstall the sinks. The other quote was \$520.80 and did not include removal or reinstallation of the sinks, nor did it include installation of the countertop. The landlord claims \$714.24 for the countertop.

The landlord further testified that the bathroom door in the upper level contains a hole which was obviously caused by the door closer going through the hollow door. The landlord claims \$84.76 to replace the door and provided an invoice to substantiate that claim. The door required sanding and painting and then installation as well.

The landlord further testified that the master bedroom door frame was damaged during the tenancy from an over-the-door hanger; the paint had scraped off and the wood was gouged. The frame needed sanding, puttying and painting. Also, the second bedroom door frame was damaged by exercise equipment during the tenancy, and the cost for labor to sand and paint the bathroom door and repair both door frames was \$100.00. The landlord provided a copy of a receipt for that claim.

The landlord also testified that a light under a cabinet in the kitchen was broken and required the entire fixture to be replaced because it's all one piece. The landlord has not yet ordered the fixture but provided a quote for the repair at \$15.54.

The landlord's application claims \$2,500.00, however the damages claimed in the landlord's evidence total \$1,214.54 in total.

One of the tenants testified that as soon as the tenants gave the landlord notice to vacate the rental unit, the relationship of the parties changed; the landlord was unhappy that the tenants were moving.

The landlord had asked the tenant to complete the move-out condition inspection report on March 2, 2012 at an early hour, but the other tenants could not attend due to work commitments. The tenant also had to miss some work but worked close to the rental unit, so only one tenant attended. The landlord had arranged for the inspection to take place at 10:30 or 11:00. The tenant arrived at about 10:35 or 10:40 and the landlord and the landlord's spouse had obviously already been there awhile. Green masking tape appeared in several sections of the rental unit, being 50 to 100 pieces. The landlord had marked every pinhole, all wear and tear issues throughout the house and told the tenant how filthy and disgusting the rental unit was. The landlord had insisted on regular inspections and completed them almost monthly throughout the tenancy and never accused the tenants of being disgusting. The landlord did not take any photographs in the rental unit during the move-out condition inspection.

The tenant also testified that the stove in the downstairs unit was never used by the tenants. When the move-in condition inspection report was completed, no one opened the oven door.

The entire move-out condition inspection took about 25 minutes to complete. The document shows that the tenants agreed that the report fairly represented the condition of the rental unit, however the tenant testified that that box was not ticked during the move-out condition inspection.

The tenant further testified that the landlord was told that the morning of March 2, 2012 was not convenient for a move-out condition inspection, and the landlord did not offer a second opportunity. The tenant caved and showed at the date and time offered by the landlord.

The tenant further testified that the tenant would have been happy to do the repairs and told the landlord that during the move-out condition inspection, as well as in an email

dated April 18, 2012. The landlord did not communicate with the tenants at all. The tenants also provided a document setting out estimates for the repairs.

Another tenant testified that the landlord conducted inspections every 30 days or so, and all went smooth. The landlord had no complaints and thanked the tenants for taking care of the rental unit. The tenant also pointed out that the photographs provided by the landlord are magnified 8 times to give a worse impression of the damages or cleaning claimed by the landlord.

The parties agree that the landlord was provided with a forwarding address of the tenants in writing on March 2, 2012 and the postal code was provided the following day.

### Analysis

The *Residential Tenancy Act* states that a tenant must leave a rental unit reasonably clean and undamaged except for normal wear and tear. The onus in a claim for damages lies with the landlord to establish that any damage or cleaning required is beyond normal wear and tear. Also, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to reduce or mitigate such damage or loss.

The *Act* also states that move-in and move-out condition inspection reports are evidence of the condition of a rental unit, however, I also must consider the undisputed testimony of the tenant that the move-out portion of the document was altered after it was signed by the tenant. The tenant testified that the copy signed did not contain a checkmark in the box indicating that the tenant agreed with the report but the tenant did not indicate what portions the tenant did not agree with.

The tenants provided a document setting out estimates to repair damages, however, the tenants knew when they provided notice to the landlord that they were moving, and the time for completing such repairs was before the end of the tenancy, not after the tenants move out of the rental unit.

I have reviewed the move-in/move-out condition inspection reports and have compared them to the photographs provided by the landlord. I agree with the tenant that the photographs are magnified several times but still depict a rental unit requiring attention

that I find is the responsibility of the tenants and not the landlord. I find that the landlord has established a claim in the amount of \$300.00 for cleaning, \$84.76 to replace the bathroom door, \$100.00 for labor to sand and paint the bathroom door and repair both door frames, and \$15.54 for the light fixture under the counter in the kitchen.

With respect to the landlord's claim for the countertop, I refer to the Residential Tenancy Branch Policy Guideline 40, Useful Life of Building Elements, which sets the useful life of items in a home and states that the useful life of a countertop is 25 years. The landlord testified that the countertop was 6 years old at the outset of the tenancy, and the tenants resided in the rental unit for 13 months. I am satisfied that the damage was caused by the tenants, and I am satisfied that the landlord attempted to mitigate any loss, however, any award for damages must not place the landlord in a better financial position than the landlord would be had the damage or loss not occurred. I therefore find it reasonable to pro-rate the amount. ( $\$714.24 / 25 = \$28.57 \times 7 = \$199.99$ .  $\$714.24 - \$199.99 = \$514.25$ ). I find that the landlord has established a claim in the amount of \$514.25 as against the tenants for the damaged countertop.

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

In summary, I find that the landlord has established a claim in the amount of \$300.00 for cleaning, \$514.25 for the damaged countertop, \$84.76 to replace the bathroom door, \$100.00 for labor to sand and paint the bathroom door and repair both door frames, \$15.54 for the light fixture under the counter in the kitchen, and \$50.00 for the cost of filing, for a total of \$1,064.55. I order the landlord to keep the security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the balance of \$14.55.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$1,050.00 in partial satisfaction of the claim and I grant the landlord a

monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$14.55.

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: May 18, 2012.

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Residential Tenancy Branch