



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for damage to the unit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a condominium. Pursuant to a written agreement, the tenancy started on September 11, 2010 and ended December 15, 2011. The rent was \$1900.00 per month and the tenant paid a security deposit of \$950.00. Condition inspection reports were completed at the start and the end of the tenancy.

The landlord testified by referring to his written submissions for damages, the condition inspection reports, and the receipts for repairs. He stated that the tenants broke the original dishwasher, which was replaced in January 2011. He stated that the tenants broke that one as well, which was replaced in December 2011. He said that there were no carpet stains at the start of the tenancy, and provided a supporting written statement by the onsite building maintenance worker. The landlord said that he did not include a number of damages in the condition inspection report because he wanted to be nice and end the tenancy cordially, but that he filed this application once the tenant filed their own application for the return of the security deposit.

The landlord provided receipts and submitted a monetary claim as follows:

- Carpet cleaning:	\$ 30.00
- New dishwasher:	\$ 470.40
- General cleaning and repairs:	\$ 300.00
- New dishwasher:	\$ 558.88
- Replace kitchen sink:	\$ 742.88
- Replace carpet:	\$1958.85
- Replace laminate flooring:	\$1800.00
- Replace bathroom sink:	\$ 321.44
- 2 light bulbs:	\$ 29.59
- Filing fee:	\$ 100.00
- Sub-total:	\$6312.04
- 1.5 months loss of rental income:	\$2850.00
- Total:	\$9162.04
- Less security deposit:	\$ 950.00
- Balance owed to the landlord:	\$8214.04

The landlord said that the carpet was 9 years old. The landlord said that he advertised the unit as soon as the tenants vacated, but that due to the time it took for the repairs he was not able to re-rent the unit until mid February 2012. The landlord said that in

addition to the four carpet stains identified on the move out report, he found a small fifth stain by the entry way.

The tenant testified that in hind sight she ought not to have signed the move in condition report because it was silent about pre-existing damages that are now reported by the landlord. She said that the kitchen was already stained, and so were the carpets. She said that the unit was not in the condition claimed by the landlord; she said that it was on older condo, that she did not expect it to be in new condition, and that she naively trusted the landlord when she signed the report. She said that she has since become a licensed property manager and realizes now the significance of these reports.

Concerning the original dishwasher, she said that it dated from the mid 90's; that it was dying and therefore replaced by a new one in January 2011. She referred to the condition inspection report wherein a remark about the dishwasher not starting was scratched. The tenant explained that she had notified the landlord that it needed repair in November 2011, and that the landlord ignored her request and did not make the repair. She said that she did not agree that she should be blamed for the defective dishwasher. She said that it was on that basis that the landlord removed it from the list of damages against the tenant rather than for being nice.

The tenant said that not only did she go without a dishwasher since November 2011, but that she also went without proper heat, and that although she also notified the landlord of that problem, the landlord failed to respond. She said that for these reasons she decided to end the tenancy in a time as awkward as the end of December, and that she also wanted to end it peacefully. She said that she cleaned the unit thoroughly, and that she felt that she was entitled to the return of her security deposit. The tenant said that she did agree to the cracked bathroom sink and the light bulbs, and that there was no other damage beyond reasonable wear and tear. She said that the landlord's claim is grossly embellished and nothing more than an attempt at covering the cost of renovations at her expense.

#### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not necessarily met. In this matter that burden was on the landlord to prove his claim against the tenant.

At the outset of my decision, it should be noted that a hearing was held on April 17, 2012 during which the tenants were awarded a monetary order for double the amount of the security deposit in the sum of \$1950.00. The landlord said that he did not compensate the tenant yet. During that hearing a decision was also reached concerning the light bulbs and the damaged bathroom sink where the landlord was awarded \$114.59. Section 77 of the Act states that, except as otherwise provided in the Act, a decision or an order of the Director is final and binding on the parties. Therefore this aspect of the landlord's application has already been decided; on the basis of "res judicata" I decline to hear previously heard evidence and no subsequent determination will be made. Accordingly the landlord's portion of the application concerning these specific damages is hereby dismissed.

The landlord's claim is therefore adjusted so as not to reflect \$321.44 for the bathroom sink, and \$29.59 for the light bulbs for a new sub-total of \$5961.01.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The landlord's claim was supported by condition inspection reports that identified a broken dishwasher, missing light bulbs, a cracked sink, and four large carpet stains. None of the other items in the landlord's claim were recorded during the move out inspection and the landlord has not proven, on a balance of probabilities, that the tenants were responsible for

these unreported damages. I find the landlord's testimony concerning additional cleaning and repairs of limited value as it does not allow me to determine whether they were caused by these tenants, and to ascribe a monetary value beyond reasonable wear and tear. Therefore I dismiss all aspects of the landlord's claim, other than the claims for the carpet and the dishwasher identified in the report.

The *Residential Policy Guidelines* provide an estimated useful life for various items, including finishes in rental accommodations for reasonable wear and tear. In the case of carpet and a dishwasher that useful life is 10 years. The carpet was 9 years old and the first dishwasher was well beyond its estimated useful life.

According to the move out condition inspection report, the tenant signed and agreed that the carpet was stained. Since the carpet's useful life had nearly ended, I do not find that claiming full replacement cost with laminate flooring consistent with the landlord's statutory obligation to minimize his loss; further, the landlord did not prove that the carpet could not be repaired. Notwithstanding, not all carpets necessarily need replacement after 10 years; therefore I grant the landlord a nominal amount for the balance of the carpet's life in the amount of \$400.00.

Turning to the dishwasher in the report, I find that the landlord did eradicate this claim from the move out condition report and I dismiss this aspect of the claim. As stated earlier the original dishwasher's useful life was long expired and I find no basis to assess this cost against the tenant.

Concerning the loss of rental income; since I am not persuaded that the tenants are responsible for the extent of the damages, I am not persuaded that the tenants are responsible for the loss of rental income resulting from making repairs and I dismiss this aspect of the landlord's claim.

#### Conclusion

The landlord established a claim of \$400.00. Since the landlord was partially successful, I award the landlord \$50.00 as partial recovery of the \$100.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$450.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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 28, 2012.

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Residential Tenancy Branch