



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for damages to the unit – Section 67
2. An Order to recover the filing fee for this application - Section 72.

As preliminary, the evidence in this matter supports the landlord is also seeking to retain the security deposit in partial satisfaction of their monetary claim.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to the landlord's claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord's claim *on application* is as follows:

1. Damaged refrigerator crisper drawer	\$116.48
2. Damaged toilet tank	\$62.00
3. Bedroom door damage	\$90.00
4. Damaged blinds	\$72.00
5. Carpet stains and burns	\$225.00
6. Missing shower curtain	\$25.00
7. Carpet cleaning	\$80.00
8. Wall repair / paint - re. gouge	\$85.00
9. General cleaning	\$300.00
<b>Total of landlord's claim <i>on application</i></b>	<b>\$1055.48</b>

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

**Background and Evidence**

The following is undisputed. The tenancy began on December 01, 2009 and ended March 31, 2012. Rent in the amount of \$1040.00 was payable in advance on the first day of each month. At the outset of the tenancy the landlord did not conduct a mutual start of tenancy inspection. The landlord also collected a security deposit from the tenant in the amount of \$525.00, which they still hold. An end of tenancy inspection was mutually conducted but the parties did not complete the inspection and did not agree on the administration of the security deposit, and the landlord did not complete a condition inspection report. The landlord made an application for damages on April 11, 2012.

The balance of the relevant evidence in this matter is as follows. The tenant does not dispute the landlord's claim for items 1,2,3 and 4. The tenant agrees with a portion of the landlord's claim that the blinds were damaged during their tenancy. The tenant disputes the remainder of the landlord's claim and testified all other charges claimed by the landlord are charges which are attributable to reasonable wear and tear – for which the tenant is not responsible.

The parties disagree on the existence of a shower curtain at the outset of the tenancy - claimed by the landlord to be missing at the end of the tenancy. The tenant does not recall a shower curtain supplied by the landlord at the outset of the tenancy.

The landlord testified that the carpeting at the end of the tenancy contained a quantum of stains and burns which they had repaired and for which they provided evidence. The tenant testified that the stains and burns are reasonable wear and tear for a 2 year tenancy.

The landlord testified that the carpeting was left unclean at the end of the tenancy and they provided an invoice for cleaning and photographic evidence of the carpet's condition. The tenant claims they vacuumed the carpet that the carpeting at the end of the tenancy represented reasonable wear and tear for a 2 year tenancy.

The landlord provided photographic evidence of the claimed damage to the blinds. The landlord testified that they have not replaced the blinds, but that they are available for the claimed amount. The tenant claims reasonable wear and tear for a 2 year tenancy.

The landlord testified that a 'gouge' in the wall required repair and repaint for which they provided evidence. The tenant did not provided testimony in this regard.

The landlord testified that at the end of the tenancy the rental unit was left unclean – for which they provided a series of photographs, and a receipt for cleaning in the amount of \$100.00 – representing 4 hrs. of cleaning. The landlord testified that they expended double that amount of time of their own – for a general cleaning claim of \$300.00. The tenant testified that in their opinion they left the rental unit reasonably clean

### **Analysis**

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing. On preponderance of the evidence in this matter I have arrived at a Decision.

I must emphasize that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant (landlord) must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification / proof of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

Therefore, the claimant bears the burden of establishing a claim on the balance of probabilities. However, the claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify *the actual monetary amount of the loss or damage*. Finally, the claimant must show that reasonable steps were taken to address the situation and to reasonably mitigate the damage or losses that were incurred.

On the balance of probabilities and on the preponderance of all the evidence before me, I find the landlord has sufficiently met the test for their claim of damages and loss in respect to some portions of their claim.

The tenant acknowledged they were responsible for the broken refrigerator crisper, oven door, toilet tank, and damaged bedroom door. Therefore, I grant the landlord the claimed amount for these claims in the sum of **\$268.48**.

The landlord has not met the test for their claim of a missing shower curtain, or the claimed amount for the blinds. As a result, **I dismiss** the landlord's claim for these items, without leave to reapply.

I find that the evidence provided by the landlord respecting their claim for general cleaning aptly supports their receipt for 4 hours of cleaning at \$100.00. I find the landlord has not provided sufficient evidence to support that an additional 8 hours of cleaning was required to address their claim for \$300.00. I grant the landlord only the receipted amount for general cleaning of **\$100.00**, without leave to reapply.

I find that the landlord's evidence respecting their claim for remediation of stained and burned carpeting is proof of damage rather than reasonable wear and tear. I grant the landlord **\$225.00** for these repairs. In addition, I find, on balance of probabilities, that at

the end of the tenancy, the remainder of the carpeting was also likely unclean, as claimed by the landlord. The landlord's photographic evidence does not sufficiently support the need for carpet cleaning; but, I prefer the overall evidence of the landlord over that of the tenant, that the carpeting was left unclean beyond reasonable – given the length of the tenancy. As a result, I grant the landlord **\$80.00** for carpet cleaning.

I find the landlord's evidence aptly supports their claim for wall repairs. I find that the repairs were required to address damage - beyond reasonable wear and tear. I grant the landlord their claim of **\$85.00** for wall repairs and repaint.

As the landlord was partly successful in their claim, I grant the landlord recovery of the filing fee in the amount of **\$50.00**. As for the monetary claim calculation, I find that the landlord has established entitlements as follows:

1. Damaged refrigerator crisper drawer	\$116.48
2. Damaged toilet tank	\$62.00
3. Bedroom door damage	\$90.00
4. Damaged blinds	0
5. Carpet stains and burns	\$225.00
6. Missing shower curtain	0
7. Carpet cleaning	\$80.00
8. Wall repair / paint - re. gouge	\$85.00
9. General cleaning	\$100.00
10. Filing fee	\$50.00
11. Minus security deposit held	-\$525.00
<b>Total of landlord's claim on application</b>	<b>\$283.48</b>

### **Conclusion**

**I Order** that the landlord may retain the security deposit in the amount of \$525.00 and **I grant** the landlord a Monetary Order under Section 67 of the Residential Tenancy Act for the amount of **\$283.48**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: June 06, 2012

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Residential Tenancy Branch