



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, authority to keep all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord, a witness for the landlord, and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence and testimony is provided below and includes only that which is relevant to the matters before me.

### Preliminary and Procedural Matter

On September 18, 2012, the first hearing was adjourned to allow time for the parties to review the evidence served by each party. The hearing was reconvened on October 25, 2012. Both parties confirmed during the hearing that they received the evidence from the other party and had the opportunity to review the evidence prior to the hearing.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- What should happen to the security deposit and pet damage deposit?

### Background and Evidence

A fixed term tenancy began on June 1, 2005 and reverted to a month to month tenancy after May 31, 2006. Monthly rent in the amount of \$650.00 was due on the first day of each month and was increased over the course of the tenancy to \$805.00. A security deposit of \$325.00 and a pet damage deposit of \$325.00 was paid by the tenants on May 15, 2005, which the landlord continues to hold.

The tenancy ended on June 30, 2012 when the tenants vacated the rental unit. The tenants provided their forwarding address in May 2012 and also on June 30, 2012. The landlord filed their application which included a claim towards the security deposit and pet damage deposit on July 10, 2012.

The landlord originally applied for a monetary claim in the amount of \$5,445.00. The landlord provided details of \$2,740.00 of her total claim of \$5,445.00 and clarified during the hearing that the remaining \$2,705.00 portion was for carpet replacement. During the hearing, the landlord reduced her monetary claim by withdrawing her request for carpet cleaning of \$145.00 as the carpets were not cleaned and were replaced instead. The landlord also reduced her claim for painting from \$750.00 to \$600.00 as the final cost was less than originally quoted. The landlord also clarified that the actual cost of suite cleaning was \$340.00 and not the original \$345.00 amount being claimed. As a result of the above, the landlord's amended claim is comprised of the following:

|   |                   |
|---|-------------------|
| 1. Carpet replacement   | \$2705.00         |
| 2. Suite cleaning (8.5 hours at \$40.00 per hour for 1 cleaner) | \$340.00          |
| 3. Re-painting the rental unit                                  | \$600.00          |
| 4. Repair of countertops  | \$400.00          |
| 5. Repair of kitchen linoleum                                   | \$250.00          |
| 6. Downtime for repairs (One month of market rent at \$850.00)  | \$850.00          |
| <b>TOTAL</b>  | <b>\$5,145.00</b> |

#### *Claim for Carpet Replacement*

The landlord stated that she was unsure of the age of the carpets when the tenants moved into the rental unit, however, she testified that they were in really good condition and were of a "commercial grade". The landlord testified that the building was purchased from the previous owners in 2004 and that the building had undergone a full renovation in 2004. The landlord stated that she believed the carpets to be approximately 8 years old as the carpets looked "pretty new" in 2004, however, she did not have witness testimony, photos or other corroborating evidence to support her claim regarding the age of the carpets at the start of the tenancy.

The tenants disputed the landlord's testimony by stating that the unit next to them did not have the same carpet as they did, which led them to believe that the entire building had not been renovated. The landlord confirmed that the tenants' neighbour was the only unit that was not renovated in the building.

The landlord's witness, a flooring contractor testified under oath that he did not see the rental unit carpets before the tenants moved into the rental unit so was unable to confirm their condition at the start of the tenancy. The witness stated that the carpets, in his opinion, needed to be replaced due to the damage from what appeared to be cats clawing at various places throughout the carpeted area of the rental unit.

The tenants confirmed that they had two cats during the tenancy. The tenants testified that their cats did damage areas of the carpets in the rental unit during the tenancy.

The landlord provided an invoice for laminate flooring to replace the carpet in the amount of \$2,727.20. The landlords claim for carpet replacement was stated as \$2,705.00 during the hearing. The landlord was asked whether they received a quote for carpet installation, as carpet was the original flooring that was replaced. The landlord confirmed that she did not provide or receive a quote for carpet and stated that laminate flooring and carpet flooring are the same cost to supply and install. The landlord testified that they install laminate flooring instead of carpets when carpets are in need of replacement.

#### Suite Cleaning

The landlord testified that that it took one cleaner 8.5 hours to clean the rental unit at \$40.00 per hour. The landlord stated that windows, window sills, mirrors and appliances were in need of cleaning. The landlord did not submit an invoice to prove that \$340.00 was paid for suite cleaning.

The tenants disputed the landlord's testimony by stating that they spent 6 hours cleaning the rental unit with help from relatives and provided photos to support their testimony. The photos provided by the tenants show what appear to be a clean fridge, dishwasher, oven, room and windows. The window sills appeared to be in need of re-painting. The tenants referred to an outside deck photo which they claim shows an empty deck that is clear of debris.

#### Re-painting the Rental Unit

The landlord stated that she paid \$600.00 to re-paint the rental unit. The landlord stated that the interior paint of the rental unit was 8 years old. The tenants stated that they offered to help the landlord re-paint the rental unit; however, the landlord did not accept their offer. The landlord stated that it is their policy to only hire professional painters to re-paint their rental units. The landlord provided several photos showing areas in the

rental unit that the landlord alleges required re-painting such as walls, window sills, baseboards and trim.

### Repair of Countertops

The landlord provided photos of the kitchen countertops and the bathroom countertops and described the damage in the photos. The tenants confirmed during the hearing that the countertops were not damaged when they moved into the rental unit. The tenants agreed that the photos were an accurate representation of the condition of the countertops when they vacated the rental unit. The tenants stated that they did not know how the countertops became damaged during the tenancy.

The landlord estimated that the countertops were 8 years old and looked “brand new” when the landlord purchased the building from the previous owner in 2004. The landlord did not have witness testimony, documents, invoices or other corroborating evidence to support her claim regarding the age of the countertops. The tenants disputed the age of the countertops and estimated the age of the countertops as approximately 20 years old given the material of the countertops.

The landlord has claimed \$400.00 for the repairs to the countertops. The landlord provided a receipt with “cabinets” written by the contractor; however, the amount being charged for the cabinets was not detailed by the contractor and was part of a larger amount listed on an invoice. The landlord testified that the contractor used the word “cabinets”, however, was actually referring to the countertops. The landlord stated that she came up with the amount of \$400.00 by estimating that their value was that amount based on the total of the invoice, however, she did not have a document or other evidence indicating an amount of \$400.00 for countertops.

### Repair of Kitchen Linoleum

The landlord has claimed \$250.00 for repair of the kitchen linoleum flooring. Photos provided by the tenants show what the landlord indicated was staining on the kitchen floor. The landlord did not provide photos of the kitchen before the tenancy but claims based on the move-in condition report, that there were no problems with the kitchen flooring at the start of the tenancy.

The tenants submitted in their evidence that the kitchen floor was used in an ordinary manner throughout the tenancy. The tenants denied allowing water or anything else to pool on the flooring and are not sure what may have caused the staining on the flooring as a result. The male tenant speculated that the staining on the kitchen flooring could be

due to faulty glue underneath the linoleum flooring, faulty flooring material, or perhaps a leak unknown to them from the dishwasher or sink that is resulting in water seeping under the flooring.

The landlord testified that the age of the linoleum flooring is approximately 8 years old. The tenants allege that the flooring was much older and that the bathroom linoleum flooring was damaged at the start of the tenancy, which was indicated on the move-in inspection report. The landlord agreed that the move-in inspection report did indicate bathroom linoleum moisture damage at the start of the tenancy.

#### Downtime for Repairs

The landlord testified that the summer time, when the tenants vacated the rental unit, is their busiest time. The landlord stated that she lost an entire month of rent due to the repairs which took two weeks to complete.

The landlord was asked regarding the amount being claimed of \$850.00. The landlord stated that \$850.00 represents the current market rent for the rental unit, and that the landlord suffered a loss of \$850.00 as a result of the required repairs. The tenants disputed the testimony of the landlord by stating they were willing to help the landlord with any required work prior to the end of their tenancy; however, the landlord did not accept their offer.

#### Analysis

Based on the documentary evidence and the landlord's oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Claim for carpet replacement** – The landlord has claimed \$2,705.00 for the cost of new laminate flooring to replace the damaged carpets in the rental unit. The tenants admit that their cats damaged the carpet, however, they disputed the age of the carpets.

The landlord testified that she was unsure of the age of the carpets. The landlord estimated the age of the carpets to be approximately 8 years old based on a renovation prior to the landlord's purchase of the building in 2004. The landlord stated that in her opinion, the carpets were "commercial grade" carpets and were in very good condition at the start of the tenancy.

Residential Tenancy Branch Police Guideline #40 covers the useful life of building elements. The useful life of carpets is 10 years. The landlord estimates that the carpets were 8 years old which would result in a depreciated value of 80%. The burden of proof is on the landlord to prove the age of the carpets.

The landlord failed to provide corroborating evidence to prove the age of the carpets, and has no evidence other than disputed oral testimony that the carpets "looked pretty new" in 2004. The landlord provided an invoice for laminate flooring to replace the carpets, however, she failed to provide any quotes of what the cost would be to install new carpets.

**I find** that the landlord has provided insufficient evidence to prove the age of the carpets or the value of the damage or loss by providing an invoice for laminate flooring versus carpet flooring. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

**Claim for suite cleaning** – The parties disputed each other's testimony regarding the claim for suite cleaning. The landlord claims that she paid \$340.00 for a cleaner who spent 8.5 hours cleaning the rental unit at \$40.00 per hour. The landlord did not provide an invoice, witness statements or other corroborating evidence to support that the rental unit was left in a dirty state. The photos provided by the landlord were close-up photos showing what appears to be countertop damage, carpet damage, wall and baseboard damage, and floor damage. The landlord stated that the appliances were in need of cleaning.

The tenants testified that they spent 6 hours cleaning the rental unit and provided photos showing various areas of the rental unit. A photo of the fridge, dishwasher and oven shows what appear to be a clean fridge, dishwasher and oven. The photos of the windows, shows what appears to be clean windows. The tenants also provided a photo of the outside deck, which appears to be empty and clear of debris. The window sills do appear to be in need of a re-painting, which will be addressed in the claim for re-painting below.

**I find** that the landlord has provided insufficient evidence to prove that she paid \$340.00 to clean the rental unit, and that the rental unit was in need of 8.5 hours of cleaning. I prefer the evidence and testimony of the tenants in relation to the suite cleaning as the tenants' photos show what appears to be clean appliances and windows, contrary to the testimony of the landlord. Furthermore, **I find** the landlord's claim for cleaning costs at \$40.00 per hour for one cleaner to be unreasonable. At the very least, I would expect the landlord to have provided an invoice for their claim for cleaning costs, and to have provided photos to corroborate what required 8.5 hours of cleaning in support of the claim. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

**Claim for re-painting the rental unit** – The landlord has claimed \$600.00 to re-paint the rental unit. The landlord testified that the interior paint of the rental unit was approximately 8 years old. The useful life of interior paint is 4 years. Therefore, **I find** the interior paint of the rental unit has lasted twice beyond its' useful life. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply, as the landlord has not suffered a loss and to be compensated for interior paint beyond its useful life would result in unjust enrichment.

**Claim for repair of countertops** – The landlord has claimed \$400.00 to repair the countertops. The tenants confirmed that the countertops were not damaged at the start of the tenancy. The landlord submitted photo evidence of scratches and damage to the

countertops, which the tenants confirmed was an accurate representation of the countertops at the end of the tenancy.

The landlord testified that the countertops were approximately 8 years old and looked “brand new” at the start of the tenancy. The tenants disputed the landlord’s testimony and stated that they believed the countertops were approximately 20 years old. The useful life of countertops is 25 years according to Policy Guideline #40. The onus to prove the age of the countertops is on the landlord.

The landlord failed to provide corroborating evidence to prove the age of the countertops. If I were to accept the tenants’ estimate of the age of the countertops at 20 years of age, however, the countertops would have depreciated by 80% of their original value based on 25 years of useful life according to Policy Guideline #40.

**I find** based on the photos provided, that the countertops were more likely than not 20 years old, and not 8 years old, as claimed by the landlord. The sink in the countertop photo of the bathroom appears old and chipped, had an older faucet and faucet handle, and was likely the same age as the countertop itself. **I find** that the amount being claimed of \$400.00 is reasonable. I accept that the receipt which states “cabinets” was for the countertop repairs as the landlord has made no claims regarding this tenancy for cabinet damage. The tenants confirmed to damaging the countertops during the tenancy, although they are unsure what caused the damage. Therefore, **I find** the landlord has established a monetary claim of **\$80.00** which reflects an 80% depreciated value of the original claim of \$400.00 for the repairs to the countertops.

**Claim for repair of kitchen linoleum** – The landlord has claimed \$250.00 to repair the kitchen linoleum. Both parties submitted photo evidence of the damage to the kitchen linoleum. The tenants did not dispute the damage but testified that they did not know how the staining occurred and presented several theories.

Linoleum flooring is not specifically mentioned in Policy Guideline #40. As a result, the closest comparison would be carpet or tile flooring which both have a useful life of 10 years. The parties disputed the age of the linoleum flooring. The landlord testified that the age of the linoleum flooring is approximately 8 years old. The tenants stated that the linoleum was already damaged in the bathroom at the start of the tenancy due to moisture. The landlord confirmed that the bathroom linoleum was listed as having moisture damage at the start of the tenancy.

Based on the above, **I find** that it is more likely than not that both the kitchen linoleum and the bathroom linoleum were installed at the same time and that the bathroom



linoleum was already damaged by moisture at the start of the tenancy. Therefore, I do not accept the landlord's testimony that the kitchen linoleum is 8 years old. **I find** that the linoleum is likely older than 10 years and therefore has been used beyond its' useful life. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply, as the landlord has not suffered a loss and to be compensated for linoleum beyond its useful life would result in unjust enrichment.

**Claim for downtime for repairs** – The landlord has claimed \$850.00 as compensation for the loss of rent for the month of July 2012 due to the required repairs to the rental unit. The landlord testified the rental unit required repairs during their busiest time. The landlord stated that market rent for the rental unit is current \$850.00. The landlord failed to provide evidence to support that the current market rent for the rental unit is \$850.00 such as a current tenancy agreement, copies of rental advertisements etc.

The tenants stated that they met with the landlord in the middle of June 2012 to offer their assistance to the landlord so that any required work could be completed before the end of the tenancy. The landlord refused the tenants offer citing their policy to only hire professional contractors to perform work for the landlord in the rental unit.

Given the above, **I find** the landlord has provided insufficient evidence to prove that the tenants breached the *Act* resulting in the loss of a month's rent for the landlord. The landlord was successful with their claim for a depreciated portion of the countertop repairs, however, failed to provide supporting evidence as to the length of time the countertop repairs to complete. **I do not** accept that the countertops would have taken several weeks to repair. The landlord would have required downtime for re-painting and the replacement of carpets, both of which were beyond their useful years and have been dismissed earlier in this decision. **I find** that is more likely than not that the re-painting and carpet replacement, which are the responsibility of the landlord, would have taken longer to complete than the countertop repairs and as a result, the downtime for countertop repairs becomes moot. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

As the landlord was partially successful with her application, **I grant** the landlord recovery of half of the filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenants' security deposit of \$325.00 and pet damage deposit of \$325.00 which have accrued \$23.02 in interest since May 15, 2005. The total security deposit and pet damage deposit being held by the landlord is **\$673.02**.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$130.00** comprised of \$80.00 for depreciated countertop repairs and \$50.00 of the filing fee and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit.

Conclusion

I find that the landlord has established a total monetary claim of \$130.00. I **authorize** the landlord to retain \$130.00 of the security deposit in full satisfaction of the claim, and I order the landlord to return the balance of the security deposit and pet damage deposit with interest in the amount of **\$543.02** to the tenants within 15 days of receiving this decision.

I **grant** the tenants a monetary order under section 67 for the balance due of **\$543.02**. Should the landlord fail to return this amount, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 29, 2012

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Residential Tenancy Branch