



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD and FF

### Introduction

This hearing was convened on an application by the landlord on September 7, 2012 seeking a monetary award for damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claim submitted and, if so, in what amount.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable.

### Background and Evidence

This tenancy began on August 1, 2011 when the female tenant (along with two others) assumed a new tenancy in the rental unit that she had occupied with her parents from May of 2006. The tenancy was for a fixed term set to end on July 31, 2012.

One of the co-tenants left the tenancy as of December 1, 2011 by written amendment to the agreement signed by all parties on November 18, 2011.

During the hearing, the landlord submitted photographs showing a small hole of an inch or less in diameter in the counter top laminate with some adjacent bubbling.

The landlord stated that a local specialist firm had advised her that the countertop could not be repaired, and she contracted for replacement of the whole countertop at a cost of \$1,444.24 which she now claims from the tenants. It was 15 years old.

The landlord stated that she had not done move-out/move-in condition inspection reports at the end of the last tenancy or beginning of the present tenancy as the female tenant had lived in the unit with her parents from the beginning of their tenancy in 2006 to the present.

The landlord submitted photos showing the countertop in 2006 and at the end of the subject tenancy, but none from the time of the change of tenants in 2011.

The tenants stated that the subject tenancy had begun under a new fixed term agreement with a new security deposit and a new rental rate and that the landlord had not done a move-in condition inspection with them at the beginning of the tenancy and did not do a move-out condition inspection report at the end of the tenancy.

The female tenant stated that the small hole had been in the countertop for some time before the present tenancy began, but the landlord said she had not seen it when the previous tenancy ended.

### Analysis

As a matter of note, standard depreciation tables place the useful life of a countertop at 25 years, meaning that after depreciation, the remaining 10 years of life was valued at \$577.79, which is 40 per cent of the landlord's cost of \$1,444.24.

However, addition to the disqualification of the landlord to claim against the security deposit for failure to conduct the move-in/move-out condition inspection reports under section 24 and 36 of the Act, I see nothing in the landlord's photographic evidence that would substantiate abuse of the countertop by the tenants beyond normal wear and tear.

The small hole and bubbling area originates no more than inch from the lip of the sink, indicating that it is entirely possible that a pinhole defect in the seal allowed moisture entry at the edge of the laminate resulting in its detaching from the wood base and making it vulnerable to cracking. If a heavy object had been dropped on it, it would almost certainly struck the sink which appears unmarked in the photographs.

Under such circumstances, I find it quite possible that the hole may have been an unnoticeable hole or crack at the end of the previous tenancy when the landlord looked around the rental unit.

In the absence of the condition inspection reports, third party corroborating evidence or photographic evidence taken at the beginning of the subject tenancy, I must find that the landlord has not met the burden of proof required to warrant a monetary award against the tenants.

The application is dismissed without leave to reapply and the landlord must now return the security deposit to the tenants.

### Conclusion

The applicant landlord has failed to prove that replacement of the kitchen countertops was made necessary by misuse by the tenants and the application is dismissed without leave to reapply.

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: November 21, 2012.

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Residential Tenancy Branch