



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF O

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the filing fee, and "other" although details of "other" were not provided in the landlord's application.

The landlord, the female tenant, and the female tenant's mother and father appeared at the teleconference hearing and gave affirmed testimony. The tenants confirmed that they received evidence from the landlord prior to the hearing and had the opportunity to review the evidence prior to the hearing. The tenant confirmed that the tenants did not serve their evidence on the landlord. The tenant was advised that the tenants' evidence was served late and as a result, the tenants' evidence would be excluded from the hearing due to the tenants not complying with the rules of procedure referred to on the Notice of a Dispute Resolution Hearing document. The female tenant stated the male tenant was unable to attend the hearing; however, she would be representing both tenants at the hearing.

The parties were given the opportunity to provide testimony and speak to the landlord's evidence. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

During the hearing, the landlord requested to amend his monetary claim down from \$2,191.18 to \$1,842.71. As the landlord's request to amend his application to a lower

monetary amount does not prejudice the tenants, the landlord was permitted to reduce his monetary claim to \$1,842.71.

At the outset of the hearing, the landlord confirmed that although he failed to submit any photographs in evidence in support of his claim, he wished to proceed with the hearing.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

A fixed term tenancy agreement began on May 1, 2012 and was to revert to a month to month tenancy as of May 1, 2013. Monthly rent in the amount of \$690.00 was due on the first day of each month. The tenants paid a security deposit of \$345.00 at the start of the tenancy. The parties agreed that the tenants vacated the rental unit on November 15, 2012, however, paid December 2012 rent in full.

The landlord has submitted a monetary claim for \$1,842.71 consisting of the following:

Item 1. Carpet replacement	\$604.80
Item 2. Replacement and repair of two doors	\$320.00
Item 3. Repair of damaged vanity	\$341.59
Item 4. Repair of broken countertop	\$376.32
Item 5. Cleaning costs – including steam cleaning carpets, wash walls, fill and paint holes in walls and clean stove	\$200.00
<b>TOTAL</b>	<b>\$1,842.71</b>

Item 1 relates to a claim of \$604.80 to replace carpets allegedly damaged by the tenants that the landlord claims was new in 2011. The landlord alleges that the tenants burned holes in the carpets; however, the landlord did not submit any photo evidence in support of this portion of his claim. The tenant denied under oath that she or her co-tenant damaged the carpets by burning them but did state that the carpets were dirty and were not steam cleaned before they vacated the rental unit. The tenant stated that there was normal wear and tear from wearing shoes. The landlord submitted a quote

from a carpet company in the amount of \$604.80 to replace the carpets. The landlord stated that he has not yet had the carpets replaced to date.

Item 2 relates to \$320.00 in costs submitted by the landlord related to the replacement of a special wood interior bedroom door. According to the invoice submitted, the wood door costs \$178.00 plus tax, while the other portions making up the total amount of \$320.00 include parts for an exterior door that the landlord claims the tenants damaged. The female tenant did confirm that the door was damaged as a result of her not being able to unlock the door. The tenant alleges that the door was locked by the landlord but did not have any supporting evidence other than to state the landlord was the only other person to have a key to the rental unit. The tenant confirmed the door jam or edging was damaged and stated that it could be "glued" as a means of repairing the damage. The tenant also confirmed that they damaged the interior wood door so they removed it from the rental unit but left the hardware for it on the top of the fridge. The landlord stated that he was unable to find any hardware for the door that the tenant was referring to. The quote submitted by the landlord is in the amount of \$320.47. There were no photos submitted in evidence to support this portion of the landlord's claim.

Item 3 is comprised of \$341.59 to repair a damaged vanity in the rental unit bathroom. The landlord stated that the tenants damaged the vanity due to smoke burns. The tenant stated that she does not smoke and that her boyfriend, who does smoke, would only smoke outside of the rental unit where the landlord placed a can for his cigarette ashes. The tenant denied damaging the vanity. The landlord did not submit any photos in support of this portion of his claim but did submit a quote for a vanity in evidence.

Item 4 is comprised of \$376.32 to repair a broken countertop. The tenant confirmed that the countertop was damaged during the tenancy but was of the opinion that the corner of the countertop could just be glued back on but did not have evidence in support of that statement. The tenant stated that a piece about three or four inches in size broke off the corner of the countertop. The tenant stated that she does not remember how the countertop became damaged. The landlord did not submit photos in evidence in support of this portion of his claim but did submit a quote supporting the amount of \$376.32.

Item 4 is comprised of \$200.00 which the landlord indicates is for cleaning costs related to steam cleaning the carpets, cleaning the oven, washing the walls and fixing and repainting the holes in the walls. The landlord stated that there were several holes in the walls, however the tenant stated was a small hole in the living room which was damaged when they were moving furniture out of the rental unit. The landlord disputed the tenant's testimony by stating that the damage to the wall was approximately four inches by two inches and was large.

The invoice submitted by the landlord for this portion of his claim indicates that the \$200.00 being claimed is comprised of:

- 2 hours to wash walls at \$20.00 per hour for a total of \$40.00.
- 4 hours to fill and paint holes in walls at \$20.00 per hour for a total of \$80.00.
- 3 hours to steam clean carpets at \$20.00 per hour for a total of \$60.00.
- 1 hour to clean the stove at \$20.00 for a total of \$20.00.

The landlord stated that the work was performed by his girlfriend who was not available for the hearing. The landlord submitted an invoice which supports the \$200.00 being claimed for this portion of the landlord's claim.

The tenant questioned the landlord as to why the carpets required cleaning if they were damaged and required replacement. The landlord responded to the tenant by stating that he attempted to clean the carpets but they would not come clean due to the burn marks and that the carpets have not been replaced yet, as he could not afford to replace the carpets.

The landlord stated that he made a list of items damaged after the tenants vacated the rental unit. The list of damaged items was submitted in evidence with his application. The landlord did not indicate any unpaid rent or unpaid utilities as part of his monetary claim.

### Analysis

Based on the 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/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 \$604.80 to replace damaged carpet. The landlord failed to provide any photos to support that the carpets were burned or damaged by the tenants. The female tenant disputed that the tenants damaged the carpets beyond normal wear and tear with their shoes. As a result, and without supporting evidence, **I find** the landlord has failed to meet the burden of proof to prove this portion of his claim. Therefore, **I dismiss** this portion of the landlord's claim in full due to insufficient evidence, without leave to reapply.

**Claim for repair to two doors** – The landlord has claimed \$320.00 for this item which is comprised of the replacement of a special wood interior bedroom door and parts for an exterior door that the landlord claims the tenants damaged. The female tenant did confirm that the door was damaged as a result of her not being able to unlock the door. The tenant alleges that the door was locked by the landlord but did not have any supporting evidence other than to state the landlord was the only other person to have a key to the rental unit. The tenant confirmed the door jam or edging was damaged and stated that it could be “glued” as a means of repairing the damage. The tenant also confirmed that they damaged the interior wood door so they removed it from the rental unit but left the hardware for it on the top of the fridge. The landlord stated that he was unable to find any hardware for the door that the tenant was referring to. The quote submitted by the landlord supports the amount of \$320.47. There were no photos submitted in evidence to support this portion of the landlord's claim.

Although there were no photos of the two doors, the female tenant confirmed through her testimony that the tenants damaged the doors and related exterior door frame. I find the amount being claimed by the landlord is reasonable and that the landlord has met the burden of proof for this portion of his claim. Therefore, **I find** the landlord is entitled

to compensation in the amount of **\$320.00** as claimed by the landlord for the replacement of special interior wood door and the repair to the exterior door including hardware.

**Claim for damaged vanity** – This item is comprised of \$341.59 to repair a damaged vanity in the rental unit bathroom. The female tenant disputed that the tenants damaged the vanity and the landlord failed to submit photo evidence supporting that the vanity was damaged. As a result, and without supporting evidence, **I find** the landlord has failed to meet the burden of proof to prove this portion of his claim. Therefore, **I dismiss** this portion of the landlord's claim in full due to insufficient evidence, without leave to reapply.

**Claim for broken countertop** – The landlord has claimed \$376.32 to repair a broken countertop. The tenant testified under oath that the tenants damaged the countertop during the tenancy. The female tenant claims the countertop could just be glued back together but provided no evidence to support her statement. I do not accept that gluing a corner of a laminate countertop back together is a reasonable repair. Although the landlord did not submit photo evidence of the damage, the tenant confirmed that the countertop was broken during the tenancy and that the damage was a piece that was three to four inches in size. **I find** the landlord has met the burden of proof and is seeking a reasonable amount to repair the laminate countertop. The quote submitted by the landlord support the amount being claimed. Therefore, **I find** the landlord is entitled to compensation in the amount of **\$376.32** to repair the broken countertop.

**Claim for cleaning costs** – The landlord submitted an invoice for \$200.00 for cleaning costs related to steam cleaning the carpets, cleaning the oven, washing the walls and fixing and repainting the holes in the walls. The female tenant confirmed that the tenants did not steam clean the carpets and that the carpets were dirty when they vacated the rental unit. The tenant also testified that they damaged a wall when they were moving out their furniture. The tenant did not dispute the oven cleaning costs during the hearing or for washing the walls.

The invoice submitted by the landlord states that it took two hours to wash the walls, four hours to fill and paint holes in the walls, three hours to steam clean the carpets, and one hour to clean the stove, at \$20.00 per hour. **I find** that the amount being claimed is reasonable. Section 37 of the *Act* requires that the tenants leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenant failed to provide documentary evidence in accordance with the rules of procedure showing that the rental unit was left in a reasonably clean condition and admitted to damaging the walls while moving out furniture and that the carpets were dirty. On the

balance of probabilities, and given that the tenant did not dispute whether the oven or walls required cleaning, I find that the landlord has met the burden of proof, and that the amount being claimed is reasonable. Therefore, **I find** the landlord is entitled to compensation in the amount of **\$200.00** for cleaning costs.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenant's security deposit of \$345.00, which has accrued \$0.00 in interest since the start of the tenancy.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$946.32** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit as follows:

Item 2. Replacement and repair of two doors	\$320.00
Item 4. Repair of broken countertop	\$376.32
Item 5. Cleaning costs – including steam cleaning carpets, wash walls, fill and paint holes in walls and clean stove	\$200.00
Recovery of half of filing fee	\$50.00
<b>Subtotal</b>	<b>\$946.32</b>
<i>Less tenants' security deposit of \$345.00 plus \$0.00 in interest</i>	<i>-(345.00)</i>
<b>TOTAL OWING TO THE LANDLORD</b>	<b>\$601.32</b>

**I authorize** the landlord to retain the tenants' full security deposit of \$345.00 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord in the amount of **\$601.32**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I find that the landlord has established a total monetary claim of **\$946.32**. I authorize the landlord to retain the tenants' full security deposit of \$345.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord in the amount of **\$601.32**. This order must be served on the tenants and 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: March 04, 2013

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Residential Tenancy Branch



