



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Management (2001) Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing by registered mail. The tenant testifies that he did not receive the landlords evidence however as it was served by registered mail the tenant is still deemed to have been served five days after the evidence was posted. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the tenants security deposit?

### Background and Evidence

The parties agree that this tenancy started on March 01, 2012 for a fixed term of one year ending February 28, 2013. The tenant vacated the rental unit on that date. Rent for this unit was \$575.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$575.00 on March 01, 2013. Both parties attended a move in and a move out condition inspection of the unit and the tenant provided a forwarding address in writing on February 28, 2013.

The landlord testifies that the tenant caused damage to the unit which went beyond normal wear and tear. The landlord testifies that the condition inspection report and accompanying photographs show the damage caused to the following areas:

Wall, baseboards and trim scratched, dented and dinged

Toilet roll and towel holder damaged in two bathrooms

Screen door damaged

Carpets and underlay in two bedrooms damaged beyond cleaning with dog urine stains

Wooden engineered flooring badly scratched

Silicone in tub and shower required replacement.

The landlord testifies that during a six month inspection scratches were noted on the flooring then and the tenant was advised to put down pads under furniture which the tenant failed to do. The floors had to be sanded and refinished however due to the nature of the flooring some areas of scratches could not be sanded and the floor will have to eventually be replaced. The landlord testifies that the carpets were cleaned but the pet urine stains could not be removed. The tub and shower had to have new silicone and a repair made above the shower. The computer desk and closet doors had to be removed and replaced for the floor work and carpet. The bathroom fixtures had to be replaced and holes in the walls were filled and repainted. The baseboards and window casings were repaired and repainted and the base of the kitchen had new moulding installed and stained. Numerous light bulbs were also replaced and a new screen door was installed.

The landlord seeks to recover the labour costs for this work as described on two separate invoices for \$640.00 and \$340.00. The landlord also seeks to recover costs for the carpeting of \$1,240.00, costs for materials of \$210.00 and supplied shop fittings of \$15.00 and \$10.86. The landlord also seeks to recover the HST charges on both invoices of \$253.20 and \$17.54. On top of these charges itemized on the invoices provided the landlord also seeks compensation for the damage to the engineered flooring of \$1,200.00 and has taken into account depreciation of the floor; \$300.00 for a large dent in the fridge; plus \$100.00 for cleaning the unit. The landlord testifies the carpets and flooring were all new in 2009 after the unit was restored after a previous flood.

The landlords claim on the application was for \$3,600.00 however now the work has been completed this amount has increased to \$4,326.60. The landlord seeks to keep the tenants security deposit of \$575.00 in partial satisfaction of their claim. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant disputes the landlords claim. The tenant testifies that some of the described damage is normal wear and tear. The walls and baseboards had scratches and dings caused by moving around the unit and with furniture through normal living. The tenant testifies that the towel rail and toilet roll holder came off because they had only been screwed into drywall and not studs and when wet towels were hung on the towel rails it pulled them off the wall.

The tenant testifies that the dent in the fridge was there when they moved in to the unit and the screen door did not work properly and became bent so the tenant removed it. The tenant testifies that the carpets had some normal spills on them and this was not pet urine. The tenant testifies that he cleaned the carpets a few days before moving out and again the day before moving out. The tenant testifies that he has no idea what was wrong with the silicone in the tub or shower as it was not damaged. The tenant testifies that they had a flood during the tenancy and a hole was cut in the ceiling by the restoration company and the tenant is not responsible for this damage. The tenant

agrees in part with the landlords claim for damage to the wooden flooring and states he did but pads under the furniture but the floor still became scratched.

The landlord testifies that there was not a flood in the tenants unit during the tenancy there was just a small water escape and a hole was cut in the ceiling two by two feet.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 32 (3) of the *Act* which states:

*A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

With regard to this I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of

the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied that the wood flooring was damaged with multiply scratches which were not repaired by the tenant at the end of the tenancy. I therefore find the landlord is entitled to recover some compensation for this damage. The landlord has requested the sum of **\$1,200.00** towards replacing the flooring at a later date. As the tenant agrees that some responsibility for this damage lies with the tenant I find in favor of this section of the landlords claim. Furthermore I find in favor of the landlords claim for labour costs to sand and stain the flooring and to remove and replace the computer desk to enable this work. As the invoice has not been broken down into separate areas I award the landlord the sum of **\$150.00**.

I am satisfied that the tenant is also responsible for damage to the carpet and although the landlord has not shown that the carpet was damaged by pet urine the landlords photographic evidence does show numerous stains on the carpet typical of urine staining. However as the carpets are three years old I must limit the landlords claim by 30 percent (\$375.50). I therefore find the landlord is entitled to a monetary award for replacement carpets of **\$973.84** which includes HST. I further award the landlord the sum of **\$100.00** for labour costs in removing the damaged carpets and for the removal and replacement of the closet doors during this work

I am satisfied that the tenant caused damage to the screen door and although the landlord has not provided an actual receipt showing the cost of the door I must limit the landlords claim to **\$25.00** I am also satisfied that the tenant did not replace all the burnt out light bulbs and again as I have no receipt I must limit the landlords claim to **\$15.00**.

I am satisfied from the evidence presented that the fridge door was not damaged prior to this tenancy and was left with a dent in the door at the end of the tenancy. As the landlord has not replaced the door I find the landlord is entitled to some compensation for this damage and award the landlord the sum of **\$200.00**.

I am satisfied from the evidence presented that the tenant failed to leave all areas of the unit reasonable clean at the end of the tenancy I therefore find in favor of the landlords claim for cleaning to the sum of **\$100.00**.

With regard to the reminder of the landlords claim for damage to the bathroom fixtures, the walls and baseboards and trim; the molding in the kitchen and to silicone the tub and shower and repair above the master shower. I am not satisfied from the evidence presented that this damage is more than normal wear and tear associated with normal living in a unit for a year or that the ceiling repair was not required as a result of the water leak. Therefore the reminder of the landlords claim is dismissed.

The landlord has therefore established a claim to keep the tenants security deposit of \$575.00 pursuant to s. 38(4)(b) of the Act. The landlord is also entitled to recover the \$50.00 filing fee pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord pursuant to s. 67 of the Act for the following amount:

Compensation for flooring including labour costs to sand and stain	\$1,350.00
Replacement carpets plus labour and HST	\$1,073.84
Screen door	\$25.00
Light blubs	\$15.00
Dent in fridge door	\$200.00
Cleaning	\$100.00
Subtotal	\$2,763.84
Plus filing fee	\$50.00
Less security deposit	(-\$575.00)
Total amount due to the landlord	\$2,238.84

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,238.84**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 11, 2013

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Residential Tenancy Branch

