



# 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 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, 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, and to recover the filing fee.

Landlord GC and the tenants attended the hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matter

The hearing was adjourned to allow time for the tenants to receive a copy of the condition inspection report which they stated they did not receive prior to the first portion of the hearing held on July 4, 2013. When the hearing reconvened on August 12, 2013, the tenants confirmed that they had the opportunity to review the condition inspection report and that they had not submitted any evidence in response to the landlord's application.

### 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 tenant's security deposit under the *Act*?

### Settlement Agreement

Section 63 of the *Act*, states:

### **Opportunity to settle dispute**

**63** (1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.

(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

During the hearing, the parties agreed to settle on the issue of the carpet cleaning only. The tenants confirmed that the carpets were in a clean condition at the start of the tenancy. The tenants agreed to compensate the landlord **\$31.35** for the cost of the landlord renting a carpet cleaning machine, as the male tenant confirmed that one of the photos submitted in evidence by the landlord supported that the carpet cleaning machine had dirty water in it after the carpets had been cleaned. The landlord agreed to waive the extra cost of the carpet cleaning solution as part of this settlement agreement.

### Background and Evidence

A written tenancy agreement was submitted in evidence. A fixed term tenancy began on November 1, 2012 and was to revert to a month to month tenancy after October 31, 2013. The tenancy ended on April 30, 2013 when the tenants vacated the rental unit.

On May 1, 2013, the tenants provided their written forwarding address to the landlord. The landlord filed for dispute resolution claiming towards the tenants' security deposit five days later on May 6, 2013.

As the parties reached a settlement agreement regarding the cost of carpet cleaning, the only other matter to be considered in the landlord's application is the countertop damage claim of \$533.00, plus the filing fee.

The parties agreed that a move-in condition inspection report was completed on October 30, 2012. The parties disputed the move-out condition inspection report. The tenants stated that on April 30, 2013, the female tenant went through the rental unit with the landlord and inspected the rental unit for damage but that no condition inspection report was presented to her to sign. The landlord stated that as they inspected the rental unit together on April 30, 2013, the landlord wrote on the condition inspection report and that at the end of the inspection, which listed damage to the countertops, the female tenant refused to sign the move-out condition inspection report.

The landlord submitted two photos in evidence which show swelling to the corner seam of laminate countertops to the left of the sink. The female tenant stated that they placed wet dishes to the left of the sink where the seam was but that she was not made aware by the landlord that that would cause damage to the countertop. The female tenant stated that the damage was very minor, about 1 centimetre by 1 centimetre in size. The

landlord disputed the testimony of the female tenant and stated that the damage was several inches long and could be seen very easily. The male tenant later stated that they “always use a towel to put their dishes on” when doing their dishes.

The tenants called a witness, JD, who testified that he has thirty years experience working with cabinets and countertops. The male tenant asked witness JD if there were any defects in the countertops. The witness stated that the countertops are a particle board product wrapped in a laminate covering and that the only vulnerable area would be in the seams or under the countertops where water or other liquids could penetrate. The male tenant asked witness JD if the countertop design would last 25 years in accordance with the Residential Tenancy Branch useful lifespan of building elements. Witness JD confirmed “yes, if water did not get into the seams”. The male tenant asked how large the swelling damage was on the countertops to which the witness replied “three inches long”.

The landlord cross-examined the witness, JD. The landlord asked the witness if there was any way to cut the existing countertops which could save the tenants some money by using the existing countertops. The witness JD stated that you could not cut the existing countertops as the side lengths would not match and there would also be a colour matching issue, and the swelling due to water damage would impact both sides of the countertop so cutting the existing countertops could not be done; they had to be replaced. The landlord asked the witness if there was any other water damage to the countertops besides in the seam and the witness stated “no, there was only water damage in the seam”.

The tenants stated that the landlord should have advised them of the potential of water damage to the seam on the laminate countertops. The landlord responded by stating that the previous tenants had no issues with the countertops in three and a half years. The landlord stated that the countertops were approximately four years old, which the tenants did not dispute.

The tenants alleged that the countertops could have been damaged at the start of the tenancy. The move-in condition inspection report shows the countertops conditions as good in the condition inspection report signed by the parties at the start of the tenancy. The tenants stated that they were unaware that the countertops were damaged until it was pointed out to them by the landlord during the move-out inspection on April 30, 2013. The tenancy lasted approximately six months.

The landlord submitted an invoice for \$533.00 for the countertop repair, several colour photos, a condition inspection report, tenancy agreement, the tenant's written notice, and the tenant's forwarding address in evidence.

### Analysis

Based on the testimony, the documentary evidence 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.

The landlord submitted several colour photos, two of which clearly show damage to the countertop. The tenants' witness, JD, confirmed that the countertops were water damaged and that they had to be replaced and that with proper care, the countertops could last twenty-five years. The move-in condition inspection report supports that the countertops were in good condition at the start of the tenancy.

I find that I prefer the testimony of the landlord over the tenants as the testimony of the landlord was more consistent during the hearing. Firstly, the female tenant claimed the countertop damage was only 1 centimetre by 1 centimetre which I find is not supported by the photos or the testimony of the tenants' witness, JD, who confirmed the damage to the countertops was three inches long due to water damage.

Secondly, the tenants stated that they were not aware that water could damage the seams on laminate countertops. I find a reasonable person would know that water left on the seam of a laminate countertop could lead to water penetration leading to damage.

Thirdly, the female tenant testified that they put wet dishes on the countertops yet later the male tenant stated that they “always used a towel” which is not consistent with the testimony of the female tenant.

Fourthly, the female tenant testified that the landlord did not provide a move-out condition inspection report for her to sign on April 30, 2013. The landlord testified that he did provide the move-out condition inspection report for the female tenant to sign, however, she refused to sign the move-out condition inspection report. I prefer the testimony of the landlord that the female tenant refused to sign the condition inspection report on April 30, 2013 at the end of the tenancy presented to her by the landlord. Given that the parties signed a move-in condition inspection report, I find it reasonable that the move-out portion of that report was completed on April 30, 2013 as supported by the documentary evidence, however, the female tenant refused to sign that document. Therefore, **I find** the tenants breached section 35 of the *Act* by failing to sign the move-out condition inspection report and that the landlord did provide a copy of that move-out condition inspection report to the tenants.

The female tenant also testified that she placed wet dishes to the left of the sink when doing their dishes. The seam in the laminate countertops is to the left of the sink as supported by the photo evidence. Therefore, based on the above, **I find** the tenants are responsible for the damage to the countertops due to water damage as the move-in condition report supports that the rental unit countertops were in good condition at the start of the tenancy. I do not accept that male tenant’s testimony that perhaps the countertops were damaged at the start of the tenancy and that the tenants did not notice.

Based on the above, **I find** the landlord has met the burden of proof and is entitled to compensation for damages to the countertops. In determining the amount of compensation in accordance with section 67 of the *Act*, the landlord stated that the countertops were approximately four years old which was not disputed by the tenants. Residential Tenancy Branch Policy Guideline #40 – Useful Life of Building Elements suggests that countertops have a useful lifespan of 25 years. Taking the amount of the countertop repair of \$533.00 and dividing that by 25 years, equals a value of \$21.32 per year. After deducting four years to account for depreciation to the countertops, I will take four years of \$21.32 per year, which is \$85.28 off of the total amount of the \$533.00 countertop claim. This reduces the countertop amount to \$447.72 after depreciation. Therefore, **I find** the landlord is entitled to **\$447.72** in compensation due to the countertop damaged caused by the tenants.

The landlord submitted his application for damages and claimed towards the tenants’ security deposit on May 6, 2013 which is five days after being provided with the written

forwarding address of the tenants. **I find** that the landlord complied with section 38 of the *Act*. As the female tenant breached section 35 of the *Act* by failing to sign the move-out condition inspection report, and the landlord applied towards the security deposit in accordance with the *Act*, **I find** the landlord is entitled to retain the tenants' full security deposit towards the amount owing for damages under the *Act*.

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

**I find** that the landlords have established a total monetary claim in the amount of **\$529.07** comprised of \$31.35 for carpet cleaning agreed to by way of a settlement agreement between the parties described above, \$447.72 for the depreciated value of the damaged countertops, and the \$50.00 filing fee.

The landlords continue to hold the tenants' security deposit of \$437.50 which has accrued \$0.00 in interest to date. **I authorize** the landlords to retain the tenants' full security deposit of \$437.50 in partial satisfaction of this claim and **I grant** the landlords a monetary order under section 67 for the balance owing by the tenants to the landlords in the amount of **\$91.57**. 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 landlords have established a total monetary claim in the amount of \$529.07. I authorize the landlords to retain the tenants' full security deposit of \$437.50 in partial satisfaction of this claim and I grant the landlords a monetary order under section 67 for the balance owing by the tenants to the landlords in the amount of \$91.57. 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: August 13, 2013

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Residential Tenancy Branch