



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNDC, MND, MNSD

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for the cost of replacing a damaged countertop.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for damages?

### **Background and Evidence**

The tenancy began on October 1, 2012 and ended on June 30, 2013. Rent was \$1,450.00 and a security deposit of \$725.00 and pet damage deposit of \$725.00 were paid. Both move-in and move-out condition inspection reports were completed and signed by the parties. No written forwarding address was given but the landlord returned a portion of the pet damage deposit in the amount of \$675.00 to the address of the tenant's father, who had co-signed the lease. The remaining \$775.00 still being held in trust for the tenant.

The landlord testified that when the move-out condition inspection report was completed, it confirmed that the rental unit was left reasonably clean and undamaged.

The landlord testified that they later discovered significant damage to the counter that was overlooked during the move out condition inspection. The landlord submitted photos of the damage. According to the landlord, the damaged spots were hidden

under cleaning products that were placed on the counter so the damaged spots were not evident until later. The landlord pointed out that, the fact that the tenant did not dispute that the counter had been damaged in later texts and email communications, supports the landlord's claim that the damage was done by the tenant during the tenancy.

The landlord also submitted a written statement from the cleaner indicating that the damage on the counter was evident when the cleaner first attended to do final professional cleaning of the suite. This individual did not attend the hearing.

The tenant argued that the counter already had evidence of some damage when the tenancy started as evidenced by notations on the move-in condition inspection report. The tenant does not agree with the claim and feels that they had the unit professionally cleaned, and participated in the move out condition inspection in good faith, after which it was signed by both parties. The tenant's position is that the move-out condition inspection report should be considered as the best evidence, not later claims of damage made by the landlord. The tenant also pointed out that the witness evidence that the landlord obtained from the cleaner was suspect, as the cleaner they had engaged was an associate of the landlord's agent.

The landlord testified that they had also later found that additional cleaning was required as the new renters found that they had an allergic reaction to some areas of the unit. The landlord testified that they retained \$50.00 from the tenant's pet damage deposit to cover the costs.

The tenant disputed this claim, pointing out that the unit was professionally cleaned and this is verified in the move-out condition inspection report.

### **Analysis**

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began, with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, I find that the parties had conducted both of the required condition inspections and signed the reports without any incidents or disagreement.

With respect to the landlord's claim that the damaged counter top was obscured during the move out inspection by items placed on the surface, I find that section 14 of the Residential Tenancy Regulations states:

*"The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] **when the rental unit is empty of the tenant's possessions**"* (My emphasis)

I find that, if there were items still remaining in the rental unit impeding the process, as the landlord contends, the landlord should have ensured that the unit was vacant before proceeding with the inspection. I find that the landlord was particularly remiss, as it would be obvious that the countertop was partly obscured by items such that it could not be properly inspected. At the very least, I find that, there is an expectation that the items should have been moved off the counter to permit proper inspection.

Section 21 of the Residential Tenancy Regulations provides that, in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is evidence of the state of repair and condition of the rental unit or residential property

on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. (My emphasis)

While I accept that the landlord does have some credible evidence that an error was made during the move out condition inspection, I do not find that this fact qualifies as a “*preponderance of evidence*” sufficient to justify the landlord’s position that the move-out condition inspection report should be disregarded in favour of disputed testimony about the state of the counters.

Accordingly, I find that there is insufficient evidentiary support for the landlord’s monetary claim for reimbursement of the cost of the new counter and this portion of the application must be dismissed.

In regard to the landlord’s testimony that the tenant also owes a further \$50.00 for cleaning costs, based on a complaint that was made after-the-fact by the new renters, I find that the move-out condition inspection report does not indicate that the tenant left the unit anything less than reasonably clean. I find no evidentiary support justifying this later claim.

Therefore, I find that this portion of the landlord’s claim must also be dismissed.

Given the above, I hereby dismiss the landlord’s application in its entirety without leave to reapply. I find that the landlord must refund the remainder of the tenant’s security deposit and pet damage deposit, totaling \$775.00.

I hereby grant a Monetary Order in favour of the tenant in the amount of \$775.00. This order must be served on the landlord and may be enforced through an order form Small Claims Court if unpaid.

### **Conclusion**

The landlord is not successful in the application and the monetary claims are dismissed. The tenant is granted a refund the remaining security deposit and pet damage deposit still being held by the landlord.

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: October 23, 2013

