



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord gave undisputed sworn testimony that on June 1, 2013, the tenant provided her oral notice to end this tenancy by June 28, 2013. The landlord said that on June 4, 2013, the tenant sent written confirmation that she was intending to vacate by June 28, 2013. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 24, 2013. I am satisfied that the landlord served the above documents and her photographic and written evidence in accordance with the *Act*. The tenant provided no written evidence.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy commenced on April 1, 2011. Monthly rent was set at \$900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$450.00 security deposit, paid on March 10, 2011.

The parties conducted a joint move-in condition inspection on March 10, 2011. Although there was no signed copy of the report created by the landlord regarding that inspection, the tenant did not dispute the accuracy of the report of that inspection the landlord entered into written evidence. The parties did not conduct a joint inspection of the rental unit, although arrangements had been made whereby they would meet to conduct an inspection on June 28, 2013, the last day of this tenancy. The tenant confirmed that she and her husband were not ready to inspect the premises at 2:00 p.m., the time when they were to meet with the landlord because they had not yet finished packing their belongings for their move to another community. The tenant said that when the tenants were ready to conduct their joint move-out condition inspection later that day, the landlord could not be available for another hour. As the tenants needed to be travelling to their new destination by then, they did not wait to participate in the joint move-out inspection with the landlord. Although the landlord did conduct her own move-out condition inspection and entered photographs of that inspection, she did not prepare a move-out condition inspection report.

The landlord lowered her original application for a monetary award of \$1,229.49 to \$1,018.71 shortly before this hearing. The revised application was for the following items, which she maintained were damaged during this tenancy and had to be replaced:

<b>Item</b>	<b>Amount</b>
Replacement of Damaged Vanity	\$783.99
Replacement of Taps in Vanity	161.28
Smoke Alarm, Toilet Roll Holder and Light Bulbs	25.13
Change of Locks	48.31
<b>Total Monetary Order</b>	<b>\$1,018.71</b>

The landlord testified that water damage occurred during this tenancy to the vanity in the washroom that could not be repaired. She said that she was unaware of problems to this vanity until the last month of this tenancy when the tenant advised her that there had been leakage problems that had damaged the vanity. The landlord said that due to the odd size of the original vanity she believed that she would need to have it custom built at considerable cost. However, she said that she was able to locate a vanity at the local Costco outlet enabling her to replace the vanity for far less than her original estimate. She said that she also had to replace the taps as the taps were not the correct size for this vanity. She testified that she looked after the cost of the installation of the vanity. She said that she understood that she might have to absorb some of the cost of the new vanity, but thought that the tenant should also be partially responsible

for this damage. She also applied for the replacement of the locks, smoke alarm, toilet roll holder and light bulbs.

The tenant agreed that the vanity had been damaged during the tenancy. However, she maintained that the only portion of the vanity that needed to be replaced was the wood at the bottom of the vanity. She said that she did not notice the leak until the last month of her tenancy and immediately notified the landlord. She said she and her husband had intended to replace the board at the bottom of the vanity, but did not have time to do so. She maintained that the landlord's photographs exaggerated the extent of the damage to the vanity and there was no real need to replace the whole vanity.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The best way to assess the condition of premises between the beginning and end of a tenancy is by a comparison of the joint move-in and move-out condition inspection reports. However, the parties have not disputed that the vanity was damaged during this tenancy. The extent of the damage to the vanity is in dispute as is the landlord's claim that the tenant is responsible for this damage and the landlord's need to replace it.

Residential Tenancy Branch Policy Guideline #40 provides arbitrators with guidance as to the useful life of building elements that may be damaged during a tenancy. In the case of a vanity, the useful life during a residential tenancy for counters and cabinets is estimated at 25 years. The useful life of faucets is estimated at 15 years.

In this case, the landlord testified that the vanity and faucets had not been changed for 18 years. Based on this evidence, I find that the taps that she replaced would likely have been due for replacement by the time this damage arose. Consequently, I dismiss the landlord's application to replace the taps without leave to reapply. Using the same approach from Policy Guideline #40, I find that the landlord is entitled to recover 7/25 of her expenses to replace her vanity as 18/25 of the useful life of the previous vanity had

expired by the time she replaced it. This results in a monetary award in the landlord's favour in the amount of \$219.52 ( $\$783.99 \times 7/25 = \$219.52$ ) for the landlord's replacement of the damaged vanity.

Based on the undisputed evidence before me, I allow the landlord's application for \$25.13 to replace the smoke alarm, toilet roll holder and light bulbs. I dismiss the landlord's application for reimbursement of her costs to replace the deadbolt in this rental unit without leave to reapply as the *Act* assigns the costs of rekeying to landlords before a net tenancy begins. As the landlord has been successful in this application, I allow her to recover her filing fee from the tenant.

I allow the landlord to retain the above amounts totalling \$294.65 ( $\$219.52 + \$25.13 + \$50.00 = \$294.65$ ) from the tenant's security deposit. I order the landlord to return the remaining \$155.35, plus relevant interest, to the tenant forthwith. No interest is payable.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the landlord to retain a portion of the tenant's security deposit so as to recover damage arising out of this tenancy and the landlord's filing fee.

Item	Amount
Recovery of Partial Costs of Replacing Damaged Vanity	\$219.52
Smoke Alarm, Toilet Roll Holder and Light Bulbs	25.13
Less Security Deposit	-450.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>(\$155.35)</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 28, 2013

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Residential Tenancy Branch

