



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MND, FF

### Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord to retain the tenant's security deposit and a monetary order for cleaning, repairs and painting.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents in person on August 15, 2013 and being served with the landlord's evidence package on November 4, 2013, the respondent did not appear and the hearing was therefore conducted in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss?

### Background and Evidence

The landlord testified that the tenancy began on October 1, 2011 and ended on July 31, 2013. A security deposit of \$475.00 was paid.

The landlord submitted into evidence copies of photos, a CD disc, copies of invoices and estimates, a copy of the tenancy agreement and a list of expenditures being claimed.

The landlord also submitted a signed copy of the move-in condition inspection report.

The move-out condition inspection report was not signed at the bottom by either the tenant or the landlord. According to the landlord, the tenants verbally expressed disagreement with the report at the time. However, the form verified that the tenant indicated agreement with the contents of the move-out inspection as the tenant did sign in the space where the tenant could note whether they agreed or disagreed with the

end-of-tenancy report inspection, and this showed that the tenant agreed with the report. The landlord speculated that it may have been an error on the tenant's part.

The landlord stated that the tenant left the rental unit in need of cleaning and repairs and the landlord is claiming the following:

- \$19.97 for missing doorbell receiver
- \$49.47 for replacement of oak trim along countertop damaged by cuts
- \$60.00 to repair cabinet doors scratched
- \$400.00 for replaced flooring (previous floor cost \$558.66)
- \$68.97 for products to repair driveway
- \$49.99 cost of new front entry latch
- \$18.97 for replacing family room door handle
- \$54.87 to replace 5-to-6-year-old blinds
- \$115.37 cost of paint
- \$69.00 for damaged 4-year old folding door
- \$13.35 wall repair cement cost

The total claim for purchased items is \$1,125.62. In addition to the above, the landlord is claiming \$1,450.00 for labour including:

- 16 hours for cleaning at \$25.00 per hour
- 8 hours to install new flooring,
- 8 hours to repair the countertop
- 14 hours for repainting.

### **Analysis**

I find that the landlord's claims reflected in the move out condition inspection report and signed by the tenant, that also showed "D" for damage or "M" for missing, include the doorbell receiver, the countertop, the driveway, the front entry latch, family room door handle and the blinds. Walls, floors, trim and windows are shown as "DT" indicating that they were found to be dirty or stained except the family room flooring that was shown as dirty and damaged.

The landlord supported the above with photographs submitted into evidence, estimates and receipts for the purchases.

With respect to claims for compensation, 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, and
4. Proof that the claimant followed section 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, that being the landlord, to 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 respondent.

In regard to the cleaning and repairs, I find that under section 32 of the Act a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While 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, a tenant is not required to make repairs for reasonable wear and tear. Section 37(2) of the Act also 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.

I also find that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value.

With respect to the replacement value, reference can be made to Residential Tenancy Policy Guideline 40 in order to accurately assess what the normal useful life of a particular item or finish in the home should be.

### Painting

In regard to the landlord's claim for \$115.37 in painting supplies and the 14 hours labour for painting, I find that the Guideline sets the average useful life of an interior paint finish at 4 years, and the finish on these walls was approximately 2 years old. Accordingly, I find that the pro-rated value of the finish, based on age, is \$58.00 for supplies and 7 hours of labour.

However, based on the evidence presented, I also find that some of the repainting was done to enhance the aesthetic appearance of the unit, going beyond the standard of basic restoration. I find that a further reduction in value is warranted on this basis. Accordingly, I find that the landlord is entitled to 66% of the reduced pro-rated value, which is \$38.28 for the materials and 3.5 hours labour paid at \$20.00 per hour for \$70.00.

In regard to the \$60.00 to repair scratched cabinet doors, I find that the paint finish was at least 2 years old and the landlord is entitled to the 50% pro-rated value of \$30.00.

I find that the total entitlement for painting is \$138.28.

### Counter Trim

The landlord testified that the trim along the counter is made out of oak that has been painted with a thick plastic coating. I find that evidence confirms that this trim was compromised by chips and gouges in both the paint and in the wood.

I accept the landlord's testimony that the trim needed to be replaced and could not be repaired. The landlord's claim is for \$49.47 for the supplies and 8 hours for the labour.

I find that the trim is at least 2 years old, and, while the average useful life of a counter top is 25 years, the longevity of wood trim is set at 10 to 15 years and, as mentioned, the useful life of paint is set at 4 years. I find that placing wood alongside a food preparation area also would likely make it somewhat more vulnerable to damage. Accordingly, I grant the landlord a 50% portion in the amount of \$24.74 towards the supplies and \$80.00 for labour representing 4 hours of labour at a rate of \$20.00 per hour, for total compensation of \$104.74 for the counter repairs.

### Blinds

I accept the evidence proving that the blinds were damaged. The average useful life of window coverings is set at 10 years and I find that the blinds were approximately 5 years old. Accordingly I find that the 50% prorated replacement value of the \$54.87 blinds is reduced to \$27.44 and I grant the landlord this amount.

### Flooring

The landlord has submitted photos of the flooring in the family room showing scratches and is claiming that the floor had to be completely replaced. The landlord's position is that the damage goes beyond normal wear and tear. The

landlord is claiming \$400.00 for the purchase of the flooring and 8 hours of labour at \$25.00 per hour for the installation. I note that, with the exception of the basement floor, there is no mention of damage or scratches, to any other flooring in the unit noted in the move-out condition inspection report. According to the landlord this particular vinyl flooring was 2 years old. I find that the average useful life of floors is set at 10 years. Accordingly I grant the landlord an 80% portion of the claim, amounting to \$320.00 towards the flooring purchase and 6.4 hours of labour at \$20.00 per hour totaling \$128.00 for the installation. I find that the landlord is entitled to total compensation \$448.00 towards the cost of new flooring.

### Cleaning

With respect to the landlord's claim of 16 hours for cleaning at \$25.00 per hour, I find that the tenant is only required, under section 37, of the Act to leave the rental unit "*reasonably clean*". While I accept that the landlord did spend the amount of time quoted, I find it is a normal practice for a landlord to clean a unit to a higher standard than that of being "*reasonably clean*" in preparing a unit for re-rental or for marketing a property.

In addition to the above, I find that some of the cleaning would be necessary, in any case, prior to and after painting, re-flooring and other renovations. However, I find it appropriate to grant the landlord a portion of the cleaning costs for the interior and exterior of the unit and set this amount at \$100.00.

### Other Claims

I accept the landlord's claim for the missing door chime and grant the landlord \$10.00 as compensation.

In regard to the damage to the driveway, the front entry latch, and the family room door handle, I find that all of these items are likely of a vintage that is original to the home and, as such, were likely affected by normal wear and tear over the years that exceeded the average useful life.

However, with respect to the driveway, I find that the landlord is entitled to some compensation due to the tenant's heavier use of the surface to work on vehicles. I find that the landlord is therefore entitled to \$60.00 towards the cost of labour and materials to patch the surface.

In regard to the claim of \$69.00 being claimed for the damaged folding doors, I find that, while the average useful life set for regular doors is 20 years, folding doors are subject to more wear and tear and contain parts that frequently fail if

not gently used. These doors were approximately 4 years old and I therefore grant the landlord \$40.00 towards the replacement cost.

I also accept the landlord's claim for \$13.35 to purchase wall repair cement.

Based on the testimony and evidence I find that the landlord is entitled to total monetary compensation in the amount of \$991.81, comprised of \$138.28 for the painting, \$104.74 for counter trim, \$27.44 for blinds, \$448.00 for flooring, \$100.00 for cleaning, \$10.00 for the lost door chime, \$60.00 for driveway refurbishment, \$40.00 pro-rated value of the folding doors, \$13.35 for wall repair supplies and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$475.00 security deposit in partial satisfaction of the claim, leaving a balance of \$516.81. I hereby grant a monetary order in the amount of \$516.81 to the landlord. This order must be served on the tenant and may be enforced in small claims court if necessary. The remainder of the landlord's application is dismissed without leave.

### **Conclusion**

The landlord is partially successful in the monetary claim and is granted an order to retain the tenant's security deposit and a monetary order for the remainder.

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: November 13, 2013

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Residential Tenancy Branch

