



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and to recover the filing fee from the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed that they did not file any documentary evidence.

I have reviewed all testimony before me and I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

### Background and Evidence

The tenancy began on May 1, 2013. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit and pet damage deposit of \$1,300.00 was paid by the tenant. The tenancy ended on April 19, 2014. The parties agreed that the tenant has received the return of her security deposit and pet damage deposit.

The parties agreed a move-in condition inspection report was not completed. The parties agreed a move-out condition inspection report was completed and that the parties did not agreed with the damage listed in the report. Neither party filed a copy of the report for my review or consideration.

The landlord testified that he was not the property representative at the start of the tenancy. The landlord stated that he was told that there was no damage to the master bedroom sliding door at the start of the tenancy and at the end of the tenancy there was a crack in the glass that travelled from the locking mechanism to the center of the glass.

The landlord testified that the marks on the frame of the door looked like the frame had been chewed or someone tried to pry the door. The landlord stated that they had an estimate completed and the cost of the repair was \$436.08.

The landlord testified that they also seek compensation for 4 hours at the rate of \$50.00 per hour plus taxes for having to deal with the repair and preparing their application.

The tenant testified that she is not sure if the door was damaged at the start of the tenancy as they did not complete a move-in condition inspection report. The tenant acknowledged that there was damage to the exterior sliding door, but denied it was caused by her. The tenant stated that the landlord was to get a professional opinion on the cause of the damage; however, she did not receive that opinion.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The evidence of both parties was that a move-in condition inspection report was not completed at the start of the tenancy. The evidence of the tenant was that she does not deny there was damage to the exterior of the master bedroom sliding door, but does not remember whether it was there at the start of the tenancy. The tenant denied causing any damage to the exterior of the door.

As the onus is on the landlord to prove their claim, I find without further evidence, such as a move-in condition inspection report, or any other documentary evidence that the landlord has failed to provide sufficient evidence to support that the damage was caused by action or neglect of the tenant. Therefore, I dismiss the landlord's claim. The landlord is not entitled to recover the cost of the filing fee from the tenant.

### Conclusion

The landlord's application is dismissed.

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: September 24, 2014

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Residential Tenancy Branch

