



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for damages to the rental suite, and to recover the filing fee for making this Application.

The Landlord and Tenants appeared for the hearing and provided affirmed testimony. Both parties also provided documentary evidence prior to this hearing. No issues in relation to the service of the Landlord’s Application under *the Residential Tenancy Act* (the “Act”) and the parties’ documentary evidence were determined at the start of the hearing.

The parties were informed of how the proceedings would be conducted and no questions were raised in relation to these instructions. The parties were given an opportunity to make submissions, present their evidence and to cross examine each other on the evidence.

### Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for damages to the unit?

### Background and Evidence

Both parties agreed that this tenancy started on July 1, 2013 on a month to month basis. A written tenancy agreement was completed and rent was established at \$775.00 payable by the Tenants to the Landlord on the last day of each month. The tenancy ended at the end of November, 2013.

The Landlord testified that although a walk through at the start and end of the tenancy was completed with the Tenants, no Condition Inspection Report was completed by the Landlord as required by the Act.

The Landlord testified that at the end of the tenancy the Tenants had failed to clean the rental suite and left garbage inside the house which he had to remove. The Landlord testified that the Tenants had left gouges in the walls as a result of heavy furniture and a mirror on the wall which he had to remove, fill in the holes and gouges, which then had to be sanded and painted.

The Landlord testified that the Tenants had not cleaned the stove and fridge freezer including the cupboards which had mice droppings in due to a mice infestation which the Landlord claimed was caused by the Tenants leaving the basement door open.

The Landlord testified that he spent two days cleaning the rental suite and doing repairs at a cost of \$10.00 per hour, but claims a total of \$210.00 from the Tenants. As supporting evidence the Landlord took the Tenant's photographic evidence submitted for this hearing, wrote a number of comments on the photographs and re-submitted these as his evidence for this hearing. The Landlord confirmed that he had not taken any photographs himself and relies on the Tenant's photographic evidence to support his claim. The Landlord makes written comments on the photographs of areas which he claims to be damaged and not cleaned.

The Tenants denied the Landlord's testimony and causing damage to the rental suite. The Tenants submitted that they cleaned the rental suite at the end of the tenancy, apart from the stove which they did not clean because it was provided to them dirty at the start of the tenancy. The Tenants also admitted to gouges in the living rooms walls caused by their reclining chairs but denied all of the other marks and scuffs submitting that these were present at the start of the tenancy.

The Tenants explained that they had cleaned the rental suite to a satisfactory standard including the fridge and freezer and submitted that why would they take photographs of a rental unit that the Landlord claims to be unclean.

### Analysis

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged when they vacate the rental suite.

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

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

In relation to the Landlord's claim for damages to the rental suite, the Act states that the Tenants and Landlord together must complete a Condition Inspection Report at the start and end of the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a Condition Inspection Report can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary.

In assessing the Landlord's claim for damages to the rental suite, I find that the failure of the Landlord to complete the Condition Inspection Reports requires the Landlord to prove, using other evidence, that the Tenants caused the damages and that they were not in existence at the start of the tenancy, which would have otherwise have been indicated on these reports.

The Landlord relies heavily on his oral evidence provided during the hearing as evidence of damages and cleaning not completed by the Tenants and the Tenant's photographic evidence. I have examined the Tenant's photographic evidence and there is no indication of any damage or lack of cleaning pointed out by the Landlord in his

written comments on them. Therefore, I find that the photographic evidence is not reliable in determining the Landlord's claim. I find that the oral evidence provided by the Landlord is no more compelling than the Tenants' evidence and that the Landlord has failed to meet the burden of proof for me to award the costs claimed.

As a result, I turn my mind to the Tenant's testimony and I find that the Tenants admitted to causing some gauges in the walls but only in the living room and to not cleaning the stove at the end of the tenancy which they were required to do, irrespective of the condition they received it in at the start of the tenancy which should have been take up with the Landlord at that point in time.

The Landlord's claim comprises of his time that was taken up for which he claimed \$10.00 per hour. Therefore, I find that it is appropriate to award the Landlord two hours for the repair to the living room walls and two hours for the cleaning of the stove which was admitted to by the Tenants. I also award the Landlord another two hours for the time it would have taken to remove the mirror left on the wall, as indicated in one of the photographs provided for this hearing, and to repair the resulting holes this would have caused.

Therefore, the total amount awarded to the Landlord is \$60.00 which is the extent to which the Landlord has proved his claim. As the Landlord has only been awarded a fraction of his original claim, I am only prepared to award the Landlord \$25.00 of the filing fee paid. Therefore the total amount awarded to the Landlord is \$85.00.

### Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of \$85.00. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims).

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 04, 2014

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Residential Tenancy Branch

