



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

- a) A monetary order for twice the security and pet damage deposits pursuant to section 38;
- b) A rebate of rent for 25 months at \$50 a month for lack of the use of a dishwasher

### **SERVICE**

Both parties attended and confirmed they had received each other's Application for Dispute Resolution. I find that the documents were served according to section 89 of the Act.

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

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that she is entitled to twice her security and pet damage deposits returned and that the landlord failed to provide a working dishwasher for 25 months.

### **Background and Evidence:**

Both parties and witnesses attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy began on December 22, 2008, that monthly rent was \$1315 after the last increase and a

security deposit and pet damage deposit each of \$635 were paid. The tenants vacated on January 31, 2015.

Both parties submitted considerable documentary evidence and photographs. The premises are an approximately 30 year old duplex which the landlord said they lived in and substantially renovated about two years before the tenancy began in 2008. The landlord claims as follows:

\$652.80 replacement of damaged floor in basement with laminate. The replaced carpet was about 8 years old and had been damaged with pet smells and traffic. The tenant acknowledges the carpet was in poor condition when she left but said the stains and damage were from a leaking washer and dishwasher. The landlord said that only about 8% (40 ft. of 500 ft.) of the carpet at the bottom of the stairs was affected by the leaks and the tenant had installed the washing machine that leaked. The tenant said it was the tap that leaked, not the hoses.

\$319.51 to repair and replace original (30 year old) doors that were damaged with holes.

\$448.80 to replace a bedroom carpet that was new in 2008.

\$118.72 to replace a closet organizer that was new in 2008. The tenant said it was on the wall when she moved out. The landlord said all the brackets and supports were broken so he had to buy a new one.

\$80 to replace two missing mirrored closet doors. The tenant said she bought a gift certificate for the cost but the landlord would not accept it. The landlord said it did not cover the cost.

\$1170 in labour costs to do the work as listed. The landlord said he earns \$40 an hour as an experienced tradesperson. For this work, he itemized his hours and charged \$35 an hour (for example 2 hours to install a closet organizer x \$35 = \$70).

The landlord submitted as evidence a move-in and move-out condition inspection report but the tenant said these were false and pointed to the form which was noted on the bottom as current in 2011. The landlord said they could not find the original move-in report and completed this second one from memory. The tenant said at move-in, the landlord wanted them to do a report and he to do a second report. She said they brought this report to the move-out but the landlord did not want to use it. The landlord said he put check marks beside items and the tenant had noted some things as "F" (fair). They said they did the move out report with the tenant but the sister and witness of the tenant supported the tenant's testimony that the landlord did not have any condition inspection report available at move-out. She said the landlord had walked through the house with the tenant and made notes only. She agreed with the landlord that the tenants had only inspected the upper floors at move-out and refused to go into the lower area.

The tenant claimed the damage to the lower area was done by flooding. The landlord said there was a roof drain that was removed so some water went into the house; however, he said it dried out quickly and did not cause the damage to the floor. He noted that much of the damage was caused by a child of the tenant who had some issues. In evidence there is a letter from the tenant in the neighbouring duplex that attests to the landlord's good maintenance of the property and notes this tenant's children's behaviour led to stains, broken furniture and messes. He said he had done some repair work on the home but was surprised by the amount of wall and floor damage and pet odour on the property when the tenants vacated. The tenant claimant wrote a letter to the landlord on her Notice to End her tenancy saying it had been a wonderful place to live and they had been great landlords.

The tenant claims double her security and pet damage deposits as she states the landlord did not comply with the timeline in section 38 of the Act. Apparently, the Application she received is dated February 17, 2014 but the one on file is dated February 14, 2015. She agrees one bedroom door was damaged and the mirror doors were missing but denies the other claims of the landlord. She also requests a rent rebate of \$50 a month as she said she was without a dishwasher since December 2012 (25 months). The landlord agrees that the dishwasher broke down but said the tenant said it was fine and she liked washing dishes by hand. He asserts the tenants made no follow up requests for repair. The tenant denies this and said she spoke to the female landlord many times but was told that they could not afford it or that it was coming soon but finally, the landlord became irate; the landlord said he was irate over the lack of maintenance in the yard and referred me to the letter from the neighbour about this. The landlord estimates that the tenant was without a dishwasher for about 14 months. He said the tenant called the tenant next door about repairs because they did not want to contact him due to the child behavioural issues. In his letter, the neighbour notes he did some repairs and gave some advice.

Both the tenant and her witness said that the tenants gave their forwarding address to the landlord on scraps of paper as there was no report to sign and to record a forwarding address. The tenant also provided evidence that she had telephoned her new landlord on that date to confirm her new address. The landlord denied receipt of the forwarding address until it was served by registered mail on February 4, 2015.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

As discussed in the hearing, the onus is on each party to prove on the balance of probabilities their claim. The onus is on the landlord to prove that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. Both parties submitted a significant amount of evidence late; however, I considered all their evidence in the interests of fairness as both parties were late.

I find the landlord's evidence credible that some damage was caused by this tenant and/or her children. In viewing the photographs of the landlord on the USB, I find there was significant staining on the carpets and it does not appear to be from some water leaks as alleged by the tenant. The same or worse staining appears on the bedroom 3 carpet. Although the tenant also provided photographs on a USB, I find they mostly related to cleaning and the landlord is not claiming for costs of cleaning. I give little weight to the condition inspection reports as the weight of the evidence is that they were not completed by both parties at the same time; however, I note that the landlord's move out report is supported by his photographic evidence concerning the condition of the premises. Although the tenant noted the carpets were not new or in fair condition on her copy, I find the landlord did not assert they were new carpets and agreed that a small portion was damaged by water. The Residential Policy Guidelines assign a useful life to elements in rented premises which are designed to account for reasonable wear and tear. I find carpets are assigned a useful life of 10 years and these basement carpets were 8 years old at move out. They cost \$652.80 to replace and the landlord agreed that 8% of the damage (\$52.22) was caused by a leak. I find the tenant's evidence credible that this was due to a leaky tap which is the landlord's responsibility to maintain. Therefore, I find him entitled to 20% of \$600.57 for the two years of useful life remaining in the carpets damaged by the tenants; this totals \$120.11.

Respecting the carpet in bedroom 3, I find the landlord entitled to recover 40% of the cost of replacement as I find their evidence credible that it was new in 2008 so 6 years old at move-out. I find him entitled to recover \$179.52 which is 40% of \$448.80.

In regards to his claim of the costs of door replacement, I find his evidence was that they were approximately 30 years old (original). Although they may have been in good condition, the Guideline assigns a useful life of 20 years for doors. As the doors were beyond their useful life, I find the landlord entitled to no compensation for the cost of the doors. I find the landlord's evidence credible that the closet organizer was damaged by the tenants; the photographs of both parties illustrate that brackets are damaged as it

does not appear to be solidly fastened to the wall as the landlord claims. Items like this are assigned a useful life of 20 years in the Guidelines; as the evidence is that this was 6 years old at move-out, I find the landlord entitled to recover 70% of the cost or \$83.10.

I find the weight of the evidence is that the landlord had to expend a considerable amount of labour to restore the premises. I find his evidence credible as it is well supported by photographs showing dents in ceilings, destruction on walls and doors and carpets and is supported by the letter from the neighbour. I find he is a professional tradesman who usually earns about \$40 an hour and he has documented carefully the amount of time he spent on each item and charged \$35 an hour for his time only. I find the hours he listed to do each item are not excessive and are indicative of a skilled person doing the work. I find him entitled to recover \$1470 as claimed for labour.

I find the landlord submitted his Application for Dispute Resolution to the office on February 14, 2015. The tenant objected and said her copy showed a later date and relies on this to claim twice her security and pet damage deposits returned. However, it was verified online by Audit notes that the correct date the Application was filed is February 14, 2015. The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

*38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the weight of the evidence is that whether the tenant provided their forwarding address in writing on January 31, 2015 when they vacated or later by registered mail, the landlord filed their Application in time to comply with section 38 (d). Therefore, I do not find the tenant entitled to double the deposits.

In respect to her claim for \$50 for loss of use of the dishwasher, I find the dishwasher was included in her lease and the loss of it was significant to a family of four. Whether or not the tenant complained continually, I find the weight of the evidence is that the landlord was well aware of the non functioning dishwasher for many months and chose, for whatever reason, not to repair or replace it. I find this devalued the tenancy by \$50 a month. Although the tenant claimed it was lost for 25 months, I find insufficient evidence to support her calculation. However, the landlord agreed that it was lost for about 14 months so I find the tenant entitled to a rent rebate of \$700 (14 months x \$50).

### **Conclusion:**

The result of the parties' claims is outlined in the calculation below. I find both parties entitled to recover their filing fee as both claims had merit. The balance of \$116.97 is in favour of the tenant and I find the tenant is entitled to a monetary order as calculated.

### **Calculation of Monetary Award:**

Carpet Replacement basement	120.11
Carpet Replacement bedroom 3	179.82
Closet organizer	83.10
Labour to restore home	1470.00
Filing fee	50.00
Less Tenant original deposits	-1270.00
Less rent rebate for dishwasher loss	-700.00
Less tenant filing fee	-50.00
Total Monetary Order in favour of tenant	-116.97

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: April 14, 2015

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Residential Tenancy Branch

