



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FF, MNR, MND, MNSD & MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The hearing was originally adjourned as there was not sufficient time for the parties to present all of the evidence. The hearing was adjourned the second time as a second set of documentary materials produced by the tenant had not reached the arbitrator's file.

The original Application for Dispute Resolution filed by the landlord claimed the sum of \$25,000. The landlord subsequently filed an amendment and the landlord is now claiming the sum of \$20,133.

### Preliminary Issues:

The tenant sought an order dismissing the claim against respondent SE on the basis that he is not a tenant. SE is named as a tenant in each of the fixed term tenancy agreements. However, he was 14 at the time the first agreement was entered into. SE did not sign the original tenancy agreement or any of the successive agreements. The only signatory on each of those agreements is GK (his mother) and the landlord. The landlord testified it was his understanding that GK was signing on behalf of SE. Further SE lived in the rental unit since August 2009 and had a key. He said he would not have entered into the tenancy agreement if SE was not bound. SE did not pay the rent. The landlord acknowledged that the rent was always paid by cheque by GK.

After hearing the disputed testimony of the parties I determined that SE was not a tenant and I ordered that the claim against SE be dismissed for the following reasons:

- a. SE did not sign the original or any subsequent fixed term tenancy agreement.
- b. SE did not pay rent to the landlord.
- c. While the Residential Tenancy Act allows a minor to enter into a tenancy agreement it does not provide that all occupants of the Residential tenancy unit are tenants.
- d. The landlord prepared the tenancy agreements. The fact that he identified SE as a tenant does not make SE contractually bound. It was open to the landlord to ensure SE signed the tenancy agreement.
- e. The landlord may have understood SE was bound and that his mother was signing on his behalf. However, there is no indication in the tenancy agreements that she was signing on his behalf. A determination of whether a party is contractually bound by a tenancy agreement is not based on one party's understanding but is based on whether the parties conducted themselves in such a way to be contractually bound. There is no evidence that SE entered into an agreement with the landlord that he would be bound by the tenancy agreement signed by his mother.

SE was called as a witness and was cross examined by the solicitor for the landlord. The landlord was called as a witness for the purpose of providing evidence relating to whether SE was a witness. While the landlord is still under cross-examination, Counsel for the tenant waived his right restricting the landlord right from conferring with his counsel until the next hearing in order for this preliminary matter to be heard.

The landlord objected to the introduction of some 30 pages of documents which the tenant produced a short time after the adjournment of the previous hearing. Counsel for the tenant stated that while they were aware the landlord intended to list and sell the property they were not aware that the prior had been listed prior to February 18, 2015. Once they became aware the property had been sold they requested the landlord produced the listing agreement and associated material including photographs. The landlord refused. The tenant then obtained the materials from the Multiple Listing Service and provided the landlord's solicitor with it around the third week of February. The landlord objects to the production of these documents late for the following reasons:

- a. The tenant was aware of the landlord's intention to sell since the end of the tenancy and had ample opportunity to obtain this evidence.
- b. The evidence is being produced late
- c. The applicant allowed the respondent to serve her first set of materials late.
- d. The delay in producing the documents will prejudice the landlord as the landlord would have presented this evidence to their witnesses during examination in chief on the date of the first hearing.

Counsel for the tenant submits the documents should be admitted for the following reasons:

- a. The condition of the rental property goes to the merits of the claims being made in this hearing. The tenant submits the landlord has upgraded the property in order to facilitate a sale.
- b. The property was listed by the landlord in December 2014. These documents including photographs were in the possession of the landlord or could have easily been obtained by the landlord.
- c. The landlord should have produced these documents at the start of the hearing.

After hearing the submission of the parties I determined that the production of these documents was critical to the making of a decision based on the merits and that the tenant be permitted to introduce these documents into the hearing. I determined that while this would amount to a delay in the hearing such a delay was necessary in order for the matter to be adjudicated on the merits.

While the documents had been provided to the Residential Tenancy Branch they had not reached the arbitrator's file. I determined that an adjournment was necessary. Further, I determined that the landlord be given the opportunity to recall his witnesses so that the documents could be produced to them.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on August 5, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

#### Background and Evidence

On July 28, 2009 the landlord and GK entered into a one year fixed term tenancy agreement that provided that the tenancy would start on August 5, 2009 and end on July 31, 2010. The tenancy agreement provided that the tenant(s) would pay rent of \$2700 per month payable on the first day of each month. The tenants paid a security deposit of \$1350 on August 5, 2009. The parties entered into 5 subsequent fixed term tenancy agreements.

The tenancy ended on July 28, 2014. A move out inspection was conducted on July 28, 2014.

#### Landlord's Evidence:

##### Landlord's Witness #1

Landlord's Witness #1 testified he is a self-employed painter with 13 years experience as a painting contractor. He repainted the rental unit in 2009 and charged the landlord \$2310 at that time. In 2014 he was asked by the landlord to re-paint the rental unit. There was damage to the walls including anchor holes above the fireplace. The baseboards were water soaked and there was a black streak on the baseboard. The hardwood flooring had heel marks and scratches. There was a burn mark on the carpet in the second bedroom.

##### Landlord's Witness #2

Landlord's witness #2 testified this she is a representative of the decking company which replaced the floor of the balcony for a charge of \$1571. There was a significant rust discoloration in one area. The work involved the removal of the flooring and replacing with a new membrane. One would expect the life of decking would be 15 to 20 years old. The damage was more than reasonable wear and tear.

##### Landlord's Witness #3

Landlord's Witness #3 was employed by the flooring company. He testified there was water damage to the hardwood floor in three areas including the front of the laundry machine, in and

near the kitchen and third area in the living room. He also testified as to damage and discoloration to the hardwood in general and damage to the carpet in the second bedroom. The replacement of the hardwood floor cost \$6941. The replacement of the carpet cost \$2391.

Landlord's witness #3 further testified that the entire carpet had to be replaced because a match could not be found. The life of the carpet is about 20 years. He produced a document that stated the cost to replace the carpet in the second bedroom was \$862

#### Landlord's Witness #4

Landlord's Witness #4 testified that there was significant water damage to the kitchen cabinets in particular damage to the lower kitchen drawers, discoloration and wearing of wood around the kitchen island and damage to the baseboards. He testified he thought the tenant must have cleaned the cabinets with chemicals which caused the damage.

#### Landlord:

The relevant testimony of the landlord is as follows:

- He purchased the property in 2005. The tenancy began in 2009. The tenancy ended in 2014. The rental unit was in good condition when the tenant took possession. It was in deplorable condition when the tenant vacated.
- After he regained possession work was done on the rental property and it was subsequently sold. He testified he was not able to sell as expeditiously as possible as significant repairs needed to be done.
- The deck on the balcony needed to be replaced because of the rust discoloration.
- The landlord referred to before photos and after photos
- The washer/dryer had not wheels.
- There was a tear in one of the blinds and a claim is made.
- The floor was scratched.
- There was significant damage to the walls where the cablevision was located.

#### Tenant's Evidence:

The solicitor for the tenant acknowledged responsibility for certain claims although often disputed the amount of the claims. He relied on Policy Guideline #40.

The tenant testified as follows:

- The tenant testified she did not use harsh chemicals to clean the rental unit. Any discoloration to the kitchen cabinets was caused by the sun.
- She had a problem with the garburator and was told that it needed to be replaced.
- The television was professionally mounted on the wall at a cost to the tenant of \$1201.
- She never placed wet clothes on the floor.
- The landlord visited the rental unit from time to time and never noticed any problems.

### Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Section 32 of the Residential Tenancy Act provides as follows:

#### **Landlord and tenant obligations to repair and maintain**

- 32** (2) 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.
- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

Policy Guideline #1 includes the following

“Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets

reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.”

Policy Guideline #16 includes the following:

“If a claim is made by the landlord for damage to property the normal measure of damage is the cost of repairs, with some allowance for loss of rent or occupation during repair, or replacement (less depreciation), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.”

The landlord claims the sum of \$20,133. The tenant has acknowledged responsibility for some of the claims but disputes others. The tenant submits many of the claims made by the landlord are an effort on behalf of the landlord to recoup the cost of bettering the rental property to put it in a condition that he can maximize the sale value onto the tenant. The rental property was constructed in 2005. The tenancy began in 2009 and ended in 2014. The Condition Inspection Report dated July 27, 2009 indicates the rental unit was in good condition with the exception of a mark in the carpet, a tear on the patio screen. The landlord has identified a number of deficiencies in the Condition Inspection that took place on July 28, 2014.

#### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The landlord claimed the sum of \$1575 for the cost of repairing the deck. The tenant acknowledged responsibility for the rust stain on the balcony. It is unclear whether the original decking was a membrane or waterproof covering. In the absence of evidence to the contrary I determined the decking was original dating back to 2005 when the building was constructed. Policy Guideline 40 – Useful Life Building Elements provides that the life expectancy of membrane is 15 years and sealant is 5 years. I am satisfied that the negligence of the tenant caused the staining and it was reasonable for the landlord to make the repairs. After considering depreciation and reasonable wear and tear I determined the landlord is entitled to \$600 for this claim.
- b. The landlord claimed the sum of \$6941.66 for the cost of replacing the hardwood floors. In the absence of evidence to the contrary I determined the decking was original dating back to 2005 when the building was constructed. I am satisfied the floors were damaged by the neglect of the tenant in three areas. Policy Guideline 40 – Useful Life

Building Elements provides that hardwood floors have a useful life of 20 years. After considering depreciation and reasonable wear and tear I determined the landlord is entitled \$3817.55 of this claim ( $11/20 \times \$6941 = \$3817.55$ ).

- c. The landlord claimed the sum of \$2391.66 for the cost of replacing the carpets. Policy Guideline 40 – Useful Life Building Elements provides interior carpets have a useful life of 10 years. I determined the carpets were original to the rental unit and were 9 years old as there is no evidence to the contrary. The tenants acknowledged responsibility for the burn in the one bedroom. However, they dispute the need of the landlord to re-carpet the entire rental unit. The cost to re-carpet the one bedroom is \$862. I determined the landlord is entitled to the depreciated value of the carpets or the sum \$240
- d. Policy Guideline #1 includes the following:

#### **RENOVATIONS AND CHANGES TO RENTAL UNIT**

- 1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

I determined the landlord is entitled to \$997.50 for the cost of filling the wall hole including the removal of large wall anchor screws, repainting the apartment baseboards, repainting the northwest balcony wall and replacing select baseboards in the Master Bathroom and laundry room.

- e. The landlord claimed the sum of \$3920 and \$2205 for the cost of replacing the kitchen cabinets. After carefully considering all of the evidence presented including the before and after photographs I determined the landlord has failed to prove the tenant is responsible for these claims. There is not a sufficient difference between the before and after tenancy photos. The differences can be explained by better lighting or a difference location of the camera. Further, I am not satisfied that the condition of the kitchen cabinets as evidenced by the photographs taken after the tenant vacated the rental unit amounts to anything more than reasonable wear and tear. The landlord has the burden of proof. There is no evidence that the tenant used harsh chemicals to wash the cabinets. As a result this claim is dismissed.
- f. The landlord claimed the sum of \$1716.75 for the cost of cleaning dirty grout on the tile floor, cleaning extensive grease marks on the kitchen back-splash, and removing



etching on limestone counter tops. The Condition Inspection Report indicates there is a problem in this area. I determined the landlord has proven this claim.

- g. I dismissed the claim of \$221.11 for the cost of kitchen parts as the landlord failed to prove the damage was caused by the negligence or intentional act of the tenant. .
- h. I determined the landlord is entitled to \$102.90 for the repairing the blinds damaged by the tenant.
- i. I dismissed the landlord's claim of \$61.59 for the cost of repairs made to the bathroom as the landlord failed to prove this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$7474.70.plus the \$100 filing fee for a total of \$7574.70.

#### Security Deposit

I determined the security deposit plus interest totals the sum of \$1350. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$6224.70.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order 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: June 14, 2015

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Residential Tenancy Branch

