



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing with both tenants being represented by the tenant KG. In this decision where I refer to the tenants in the singular form, it is KG to whom I refer.

The landlord submitted evidence to the Residential Tenancy Branch just 2 business days before the hearing. At the hearing, the landlord advised that he had mailed the evidence to the tenants, but the tenant stated that she did not receive the evidence. As the landlord did not comply with the requirements of the Residential Tenancy Rules of Procedure and serve his evidence no later than 14 days before the hearing and as the tenants did not receive that evidence, I have not considered that evidence in my deliberations.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy lasted approximately 4 ½ years and that it ended on November 30, 2014. They further agreed that the tenants paid a \$612.50 security deposit at the outset of the tenancy.

The landlord testified that the tenants failed to adequately clean the rental unit including kitchen appliances and light fixtures; they damaged the carpet in the family room and left the remaining carpet unreasonably dirty; they damaged an area on the ceiling requiring stipple to be replaced; they damaged the drywall which necessitated the walls being patched, sanded and repainted; they created a hole in the kitchen flooring; they created a hole in the laundry room door; and they installed drywall in place of

suspended ceiling tiles after flood damage but did not tape and repaint the drywall even though the landlord compensated them \$150.00 for that labour.

The tenant testified that she cleaned the rental unit, including the carpet, although she may have overlooked the light fixtures and acknowledged having torn the carpet in one room and created a hole in the laundry room door, but testified that the landlord told her “not to worry about it.” She denied having damaged the stipple on the ceiling and testified that she mudded the holes in the wall but the landlord had arranged for another party to re-paint the unit and when she spoke with that person, they told her not to sand or paint the walls. The tenant acknowledged that a hole was created on the kitchen but testified that this occurred when a water line to the refrigerator broke and flooded the kitchen and the tenants pulled the refrigerator away from the wall to determine the source of the leak. She further testified that the flooding caused by the refrigerator leaked through the ceiling downstairs, and that the landlord reduced their rent by \$150.00 for one month to compensate them for cleaning up after the flood, removing the ceiling tiles and installing drywall. She stated that they made it clear to the landlord that they could not sand and finish the drywall and that he understood that their work would end once the drywall was in place.

The landlord did not respond to most of the tenant’s rebuttal but stated that the \$150.00 in compensation was designed to fully compensate the tenants for completely restoring the ceiling in the basement.

### Analysis

The landlord bears the burden of proving his claim. I cannot consider the additional evidence he submitted on July 16 and therefore find he did not submit invoices or photographs showing the condition of the rental unit.

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction; and
3. Proof of the value of that loss.

Section 37(2) of the Act requires tenants to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The tenants claimed that they thoroughly cleaned the rental unit and carpet although they acknowledged they may

have forgotten to clean the light fixtures. In the absence of evidence from the landlord showing the condition of the unit and carpet and proving that the unit was not reasonably clean, I find that the landlord has not met his burden of proving that the tenants breached their obligation under the Act and I dismiss the claim for the cost of cleaning.

The tenant denied having caused any damage to the stipple and in the absence of evidence to corroborate the landlord's claim that the stipple was damaged by the tenants or at all, I dismiss the claim for the cost of cleaning.

Tenants are expected to hang pictures from the walls of a rental unit and a reasonable number of holes are to be expected. The landlord did not provide photographs or evidence to corroborate his claim that there is an unreasonable amount of damage to the walls and in the absence of such evidence, I dismiss the claim for the cost of repairing the drywall and painting.

The tenants acknowledged having torn the carpet in the family room. However, the landlord provided no evidence to show that he incurred a cost repairing or replacing the carpet and in the absence of evidence showing a compensable loss, I dismiss the claim for the cost of repairing the carpet.

The landlord agreed that the kitchen flooded in the rental unit and I find the tenants' explanation that the linoleum tore when they moved the refrigerator to be plausible. As the tenants were working with the landlord to locate the source of the leak and attempt to repair the refrigerator, I find they cannot be held responsible for the damage caused by moving the refrigerator. Further, the landlord provided no evidence showing that he incurred a compensable loss as a result of the damage. I therefore dismiss the claim for the cost of repairing the linoleum.

The tenants acknowledged having damaged the laundry room door, but again, the landlord provided no evidence showing that he incurred any cost repairing or replacing the door and in the absence of such evidence, the claim must fail. I dismiss the claim for the cost of repairing the door.

The parties appear to agree that the damage to the basement ceiling tiles was caused by the leak from the refrigerator. I find that the tenants cannot be held responsible for damage resulting from that leak as there is no evidence to show that they caused it. The landlord provided the tenants with compensation during the tenancy for their labour in replacing the ceiling tiles with drywall. There is no evidence that the landlord expressed to the tenants during the tenancy that they had not completed the labour for which he paid them by reducing their rent for one month and as the tenants were of the

understanding that they were not required to tape and paint the drywall and in the absence of a written agreement showing the scope of the work, I find that the landlord has not proven his claim. I dismiss the claim for the cost of repairing and repainting the ceiling tiles.

The landlord's claim has been dismissed in its entirety. As the landlord has no claim on the security deposit, I order him to return the deposit in full to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$612.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord's claim is dismissed and the landlord is ordered to return the security deposit in full to the tenants. The tenants are granted a monetary order for \$612.50.

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: July 20, 2015

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Residential Tenancy Branch

