



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the tenant's security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit and if so, the amount claimed?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

### Background and Evidence

The tenancy commenced on April 23, 2013 and ended at the end of November 2014. The tenant paid a security deposit of \$625.00 at the start of the tenancy. The tenant was permitted to have one dog on the property at the start of the tenancy. The tenancy agreement includes an addendum which included the following term:

"It has been agreed that one field/work dog may occupy the home when the tenant(s) are home. Please keep pet localized to one spot of the home to avoid any damage/nail scratches to hardwood floors. It is advised the pet be kept outside when possible."

[reproduced as written]

During the tenancy the tenant gained the landlord's permission to have a second dog on the property and a \$300.00 pet deposit was paid at that time.

The parties participated in a move-in and move-out inspection together and the landlord gave the tenant copies of the inspection reports.

By way of this application the landlord seeks compensation for damage to the hardwood flooring in the living room. The landlord submitted that the hardwood flooring was scratched beyond normal wear and tear at the end of the tenancy and suspects that it was largely due to the dogs in the house and not localized to one area as recommended in the addendum.

The landlord described the flooring as being bamboo that was installed approximately one year prior to the start of this tenancy. The landlord acknowledged that there was an area of pre-existing damage to the flooring near the window that was caused by the previous tenant.

The landlord provided photographs purportedly taken on the day the tenancy began and shortly after it ended. The pre-existing damage is visible in the photographs. Additional scratches also appear in the photographs taken after the tenancy ended.

On the move-out inspection report the living room floor is marked as being damaged and scratched and in the comments section the landlord wrote: "Dog nail marks in hardwood will get repair quote for living room." The tenant indicated that he agreed that the report fairly represented the condition of the property and signed the report but he did not authorize a specific amount to be deducted from the deposits. Rather, right above the tenant's signature is the comment: "will get quote".

The landlord obtained a quote in the amount of \$2,974.00 to sand and refinish the flooring on December 5, 2014.

Originally, the landlord sought the tenant's consent to retain the security deposit and pet damage deposit as compensation for the flooring damage; however, the tenant was not in agreement and the landlord filed this application. By way of this application, the landlord seeks compensation from the tenant in the amount of \$2,974.00.

The landlord acknowledged that the previous tenant compensated him \$100.00 for the damage caused during that tenancy but the landlord explained that he did not reduce his claim to reflect previous damage as he requested the flooring company quote on bringing the floor back to the condition it was before the subject tenancy started. The landlord did acknowledge; however, that the quote of \$2,974.00 likely included

refinishing of the entire living room. The landlord has not yet had the flooring re-finished and the unit is currently tenanted.

The tenant submitted that the scratches in the flooring were the result of wear and tear after 19 months of use and that the scratches were likely from the movement of furniture and ordinary living activities. The tenant acknowledged that his dogs had beds in the living room and bedroom and that they walked across the floor.

The tenant submitted that there were marks in the flooring when he moved in other than the documented damage caused by the previous tenant.

The tenant pointed out that the photographs provided by the landlord were not taken in his presence during the move-out inspection. The landlord acknowledged that he took the photographs approximately two weeks after the tenancy ended when it was apparent that the parties were in dispute with respect to this matter but the landlord claimed that the unit had remained vacant in the month of December 2014.

I pointed to the move-out inspection report to the tenant as it would appear that the tenant did not dispute that the flooring was marked by dog nail marks at that time. The tenant responded by stating that at the time he believed the marks in the flooring were greater than wear and tear but since then he has come to the belief that they are marks consistent with wear and tear only.

Despite his position that the floor has suffered from wear and tear only during his tenancy the tenant submitted that he thinks it would be fair to offer the landlord some compensation. The parties were given the opportunity to negotiate a settlement and after a few offers were made it was apparent the parties were too far apart.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

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 section 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.

Under the Act, a tenant is required to leave a rental unit undamaged. If the tenant, or persons the tenants permit on the property, damages the property by their actions or neglect, and the rental unit is left damaged after the tenancy ends the landlord may pursue the tenant for the landlord's losses associated to the damage. Neglect is the failure to do something that a reasonable person would in the circumstances. Further, damage caused by a tenant's pet is attributable to the tenant.

The Act also stipulates that reasonable wear and tear is not considered damage. In interpreting legislation each word must be given meaning as it is assumed that every word was purposely inserted into the legislation. I interpret the inclusion of the word "reasonable" in this provision to mean that a person cannot argue that damage is wear and tear because of their particular way of living. Rather, the result of a person's actions must be measured against what would result if a reasonable person were to reside in the unit in a way it was intended.

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence as to the condition of a rental unit unless there is a preponderance of evidence to the contrary.

In this case, the tenant indicated that he agreed with the landlord's assessment that the living floor was damaged and scratched at the end of the tenancy as evidenced by the move-out inspection report. The move-out inspection report also indicates the damage was attributable to dog nail marks. The landlord provided photographs of the flooring before and after the tenancy. The evidence the tenant offered in an attempt to contradict the move-out inspection report was that the marks were from wear and tear. I find the tenant's testimony does not sufficiently contradict the landlord's photographs and the move-out inspection report that the tenant signed acknowledging that he agreed with the landlord's assessment.

Upon review of the photographs and upon consideration of the condition inspection report I find the landlord has satisfied me that the flooring suffered damage that is greater than wear and tear during the subject tenancy. While I accept that some marks will occur from reasonable wear and tear, I note that the amount of scratches and the

large area that was scratched during the subject tenancy was significantly greater than the previous tenancy.

The tenant denied that the scratches were from his dogs and pointed to the possibility they were from furniture. However, I find that argument does not lessen his liability. In my view, a reasonably prudent person would ensure that furniture placed directly on hardwood flooring and not on a rug either: ensures the furniture does not move or if it does move that the flooring is adequately protected, such as by applying felt pads to the bottom of the furniture. Thus, if the scratches were from furniture I would find the tenant was negligent with respect to allowing furniture to move on the hardwood flooring while unprotected.

In light of the above, and upon consideration that the tenant had offered to compensate the landlord, I find the real issue in this case is determining the amount of compensation the landlord is entitled to recover from the tenant. Accordingly, the remainder of this decision focuses on determining the amount of compensation the landlord is entitled to recover for damage caused by the tenant, persons he permitted on the property, and the dogs in the rental unit.

I find the landlord's request to recover the entire cost of refinishing the flooring from the tenant to be unreasonable for the following reasons.

Hardwood flooring has a limited useful life and, as I informed the parties during the hearing, awards for damages are intended to be restorative. Where an item has a limited useful life, it is appropriate to reflect depreciation of the original item. In order to estimate depreciation of the hardwood flooring I have referred to Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* which provides that hardwood flooring has an average useful life of 25 years. The flooring in the rental unit was approximately 2.5 years old at the end of the subject tenancy and I find the landlord should expect that the flooring is going to show some signs of wear after that amount of time. Therefore, I find the quote of \$2,974.12 would bring the floor to a better condition that it would have been at the end of the tenancy with a reasonable amount of wear and tear; and, the tenant is not responsible for the portion attributable to repairing wear and tear from 2.5 years of use.

I reject the landlord's submissions that he instructed the hardwood flooring company to provide a quote to reflect bringing back the flooring to its condition before the tenancy started as not supported by the quote provided and something that is likely not achievable. The quote indicates that the price is for "Scratched wood flooring" and there is no indication that the pre-existing scratches were excluded from the quote. The

quote does not specify the area that will be re-finished and I find it likely that for nearly \$3,000.00 it would be for the entire living room as hardwood floors are not usually re-finished in spots as the result would be unacceptable. Therefore, I find the quote of \$2,974.12 includes refinishing of the pre-existing damage for which the tenant is not responsible.

Considering the damage caused by the previous tenant and the subject tenant is quite visible and the landlord will benefit from removal of the damage caused by both tenants when the floor is refinished I hold the tenant responsible for 50% of the cost to repair the damage.

In light of the above, I estimate the losses for which the tenant is responsible as follows:

Quote to re-finish floor	\$2,974.12
Less: wear and tear (2.5 / 25 years = 10%)	<u>(297.41)</u>
Sub-total	\$2,676.71
Less: pre-existing damage (50%)	<u>(1,338.36)</u>
Award for flooring damage	\$1,338.35

I award the landlord \$1,338.35 as calculated above. I further award the landlord recovery of the \$50.00 filing fee to the landlord as I am satisfied the landlord had made a reasonable proposal to the tenant prior to filing this application.

I authorize the landlord to train the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

Based on the foregoing, the landlord is provided a Monetary Order calculated as follows:

Award for flooring damage	\$1,338.35
Filing fee	50.00
Less: security deposit and pet damage deposit	<u>(925.00)</u>
Monetary Order for landlord	\$ 463.35

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and pet damage deposit and the landlord has been provided a Monetary Order for the balance of \$463.35 to serve and enforce.

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: August 07, 2015

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Residential Tenancy Branch

