



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's spouse provided testimony on behalf of the landlord. The tenant's daughter acted as the tenant's agent. Neither party raised any issue with service of documents.

The landlord testified that he served the tenant with the dispute resolution package on 9 March 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The agent confirmed receipt of the landlord's dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and loss arising out of this tenancy? Is the landlord entitled to retain a portion of the tenant's security deposit in satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began on 7 January 2013 and ended 28 February 2015. Monthly rent was \$1,300.00. The landlord continues to hold a security deposit in the amount of \$650.00, which was collected on 30 December 2012. The landlord continues to hold a deposit in respect of utilities in the amount of \$300.00, which was also collected at the beginning of the tenancy. The tenancy agreement includes a handwritten addendum. The addendum sets out that the rental unit was newly renovated at the beginning of the tenancy. Page two of the addendum sets out "no nail on wall".

I was provided with a copy of the condition move in inspection report. There is nothing remarkable about that report.

The landlord's spouse testified that the tenant did not return two keys. The agent testified that the tenant could not recall whether or not she returned all keys. The landlord provided a receipt for the cost of three replacement keys dated 2 March 2015 in the amount of \$13.48. Two thirds of this cost is \$8.99.

The counter overhangs the cabinetry. The landlord's spouse testified that the tenant would leave water on top of the kitchen counter. The agent testified that the counter top was slanted and that as a result of the slant it was inevitable that the damage would occur to the cabinet. The agent testified that the tenant would place towels on the counter in an attempt to mitigate the water accumulation. The agent submitted that the tenant did as much as possible to mitigate the damage to the cabinet. The landlord's spouse denies that the counter was slanted. The landlord's spouse testified that approximately one year ago the landlord noted the damage to the kitchen cabinet. The agent testified that the landlord told the tenant at this time that she should keep an eye on it.

I was provided with photographs of the damage to the cabinet door. The particle board is swollen and has split the laminate. The photograph also includes the cabinet. There is no obvious slope in the photograph. The cabinets are recessed from the lip of the counter. I was provided with a receipt for the new cabinet door. The receipt is dated 2 March 2015 and sets out a total cost of \$20.00. The landlord testified that the labour cost for this repair was \$53.90.

The agent testified that the tenant and other occupants only used the tiles in the hallway for walking and there was no heavy furniture on those tiles. The landlord's spouse testified that she believes that the damage to the tile was caused by the tenant on move out. The agent testified that she observed that the tile was uneven. The agent testified that she observed a hollow sound behind the tile when it was knocked on.

I was provided with a photograph of the broken tile. The tile is cracked in half. The crack extends across two tiles. There is no obvious impact mark.

The landlord's spouse testified that the mark in the closet was grease. The agent denies that the mark in the closet was grease. The agent testified that she observed the mark in the closet to be mould. The agent admits that the marks on the wall were caused by the headboard to her bed. The landlord's spouse testified that she tried to clean the marks off the bedroom wall. The landlord's spouse testified that she could not clean off the marks and that it was necessary to repaint the rental unit. The agent submitted that the tenant did not put an excessive number of nail holes in the walls. The landlord testified that it was necessary to repaint the entire rental unit so that the paint would match. The agent submitted that she was not sure if the landlord did actually repaint the rental unit as the new tenant moved in shortly after the tenant vacated.

I was provided with a photograph of the marks on the bedroom wall. The marks are very noticeable and stretch across a considerable portion of the wall. I was provided with a photograph of the mark in the closet. It is not possible to tell from the photograph whether it is grease or mould. I was provided with a receipt for painting. The receipt is dated 23 March 2015 and sets out a total cost of \$682.50.

The agent testified that she and the tenant spent an extra four hours cleaning deficiencies at the landlord's spouse's direction. The landlord's spouse testified that she had to clean the exterior deck, the walls, and the washroom. The landlord's spouse testified that there was leaf litter on the exterior deck. The agent testified that the tenant attempted to clean up the exterior deck as much as possible and to pick up all the leaves that they could. The landlord's spouse testified that there was mildew on the window tracks. The agent testified that she tried to clean the window tracks but that she could not take care of the mould. The landlord's spouse valued her total cleaning time at \$30.00.

I was provided with a photograph of the deck. The photograph is of very low quality and blurry. There are spots visible in the photograph but it is not possible to tell whether it is

leaf litter or paint. I was provided with a photograph of the window in the bathroom. There is visible mildew on the window track.

The landlord's claim for photographs and mailing costs are disbursements incurred in respect of this application.

The landlord claims for \$838.60:

Item	Amount
Two Keys	\$8.99
Cabinet Door	20.00
Labour to Repair Cabinet	53.90
Floor Tiles (x4)	20.00
Painting	682.50
Cleaning	30.00
Photographs for Arbitration	9.61
Registered Mail and Stamps	13.60
<b>Total Monetary Order Sought</b>	<b>\$838.60</b>

### Analysis

The landlord claims for the cost of recutting two keys.

*Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) sets out the tenant's responsibilities for keys:

The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

I find, on a balance of probabilities, that the tenant did not return two keys to the landlord. The landlord is entitled to recover the cost of the replacement keys. The landlord has proven that it cost \$13.48 to have three new keys cut. The landlord is entitled to recover the cost of two thirds of this amount.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord submits that the tenant caused damage to the cabinet door. The tenant submits that the damage was an inevitable result of poor design. Based on the corroborating photographs, I find that the cabinet design was not deficient in such a way that the damage was inevitable. I find that the damage was caused by the tenant's failure to ensure that water did not accumulate on the counter and drip onto the cabinet. I find that the landlord chose the least costly repair by replacing only the one cabinet door. On this basis, I find that the landlord has proven his entitlement to the costs associated with repairing the broken cabinet.

*Residential Tenancy Policy Guideline "40. Useful Life of Building Elements"* (Guideline 40) provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of cabinetry is twenty five years. The landlord testified that the cabinet was two years old at the end of the tenancy. As such, the capital value of the carpet had depreciated by 8%. On this basis, I find that the landlord is entitled to recover 92% of the cost of the cabinet replacement: \$18.40 for the door and \$49.59 for the associated labour.

The landlord submits that the tenant caused damage to the tile floor. The tenant submits that this damage was the result of settling on an uneven floor. Based on the photographs that do not show any obvious impact and show that the crack spread evenly across two tiles, I find that it is more likely than not that the damage to the tiles was a result of wear and tear. Accordingly, pursuant to subsection 32(4) of the Act, the tenant is not responsible for this repair.

The landlord submits that the tenant caused damage to the walls that required repainting. The landlord submits that he had to repaint the entire rental unit so that the walls would match. The agent admits to causing the marks on the wall with her headboard. The agent admits that she tried to clean the marks and could not. The tenant submits that there was not an excessive number of nail holes in the wall. The tenant questions whether the repainting actually occurred.

Guideline 1 provides helpful instruction in determining the claim for repainting:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

...

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The addendum to the tenancy agreement specifically set out that no nails were permitted in the walls. Accordingly, the tenant was responsible for repairing any nail holes put in the walls. As the tenants did not, they are responsible for the damage caused as a result. Further the agent admits that she caused the damage to the walls in her bedroom. As the tenant and occupants the tenant permitted to be in the rental unit caused the damage to the walls, they are responsible for the cost of repairs.

The landlord claims that he had to repaint all the walls in the rental unit in order to match the paint. The landlord did not provide any corroborating evidence that shows that the paint for the rental unit was unique or special in such a way that would substantiate this claim. I find that the tenant was only responsible for the painting costs associated with the nail repairs and bedroom wall. I find that the tenant did not cause damage to the remainder of the rental unit. Accordingly, I find that the landlord's entitlement is reduced by half as approximately one half of the damaged paint is attributable to the tenant's actions.

Further, Guideline 40 provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of interior paint is four years. The landlord testified that the interior paint was two years old at the end of the tenancy. As such, the capital value of the paint had depreciated by 50%. On this basis and the causation issue mentioned above, I find that the landlord is entitled to recover 25% of the cost of the interior paint: \$170.63.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

The landlord claims for the cost of cleaning the rental unit. The tenant claims that she cleaned the rental unit. The landlord claims that the rental unit was not left in a standard that complied with subsection 32(2) of the Act. The landlord has provided three photographs in support of his claim for cleaning. Mould is clearly visible on the window in one photograph. The landlord submits that the closet wall was covered in grease; the tenant submits that the closet wall was covered in mould. A stain is visible on the closet wall in a photograph.

Guideline 1 sets out:

2. The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould.

...

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping. ...

The tenant failed to clean in accordance with Guideline 1. The tenant is liable for the landlord's cost in cleaning the window tracks. The landlord failed to substantiate that the balcony was not appropriately cleaned. The photograph provide is of too low a quality to determine the source of the marks. The photograph shows that the tenant failed to clean a mark in the closet. The tenant was responsible for cleaning the wall whether the wall was covered in grease or mould unless the tenant could show that the texture of the wall prevented it. The tenant did not show that the texture of the wall prevented cleaning. Accordingly, the tenant was responsible for remediating the closet stain. As such, the landlord is entitled to two thirds of his costs of cleaning: \$20.00.

The landlord has claimed for his costs associated with providing photographic evidence the costs associated with serving documents in these proceedings. These costs are best characterized as "disbursements" incurred in the course of these proceedings.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional and includes disbursement costs.

Furthermore, I find that disbursements are not properly compensable pursuant to section 67 of the Act as the tenant's contravention of the Act is not the proximate cause of the expense.

I find that the landlord is not entitled to compensation for the landlord's disbursement costs as disbursements are not a cost that is compensable under the Act.

The landlord has proven a total monetary entitlement in the amount of \$317.61:

<b>Item</b>	<b>Amount</b>
Two Keys	\$8.99
Cabinet Door	18.40
Labour to Repair Cabinet	49.59
Painting	170.63
Cleaning	20.00
Filing Fee	50.00
<b>Total Monetary Entitlement</b>	<b>\$317.61</b>

The landlord's total monetary entitlement is less than the total amount of the deposit held by the landlord. *Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the deposit
 unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenant's right to the security deposit has been extinguished. As there is a balance in the amount of \$632.39, I order that the balance of the tenant's security deposit shall be returned to the tenant forthwith.



Conclusion

I issue a monetary order in the tenant's favour in the amount of \$632.39 under the following terms:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$650.00
Return of Hydro Deposit	300.00
Offset Landlord's Monetary Entitlement	-317.61
<b>Total Monetary Order</b>	<b>\$632.39</b>

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this 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 subsection 9.1(1) of the Act.

Dated: September 25, 2015

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Residential Tenancy Branch

