



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Code MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit and to recover the filing fee from the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Are the landlords entitled to monetary compensation for damages?

### Background and Evidence

The parties agreed that the tenancy began on October 1, 2013. Rent in the amount of \$950.00 was payable on the first of each month. The tenant paid a security deposit of \$475.00. The tenancy ended on October 1, 2014.

The landlords claim as follows:

a.	Damage stair	\$1,312.50
b.	Refrigerator repair	\$ 98.94
c.	Repair to drywall	\$ 220.50
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$1,681.94</b>

The landlord testified that the tenant caused damage to the stair. Filed in evidence is a estimate for repair in a form of an email.

The landlord testified that the refrigerator was new at the beginning of the tenancy and at the end of the tenancy there was damage to the appliance. Filed in evidence is a receipt

The landlord testified that the tenant caused damage to the drywall, which had to be painted and sanded. Filed in evidence are photographs of the walls, and a receipt for repairs.

The tenant testified that the landlords have provided no photographs of any damage to the stair. The tenant denies that they caused any damage to the stair.

The tenant testified that the plastic bar that hold s the food in the refrigerator door broke from normal wear and tear. The tenant stated that there was always a small crack in the plastic bar.

The tenant testified that they did no cause damage to the walls. The tenant stated that there was no hole in the wall when they left. The tenant stated that they did leave screws in the wall which held a shelf. The tenant stated that they also had a calendar on the wall and the tack marks are from hanging the calendar.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The evidence of the landlord was the tenant caused damage to the stair. The tenant denied causing any damage. I find without further evidence, such as photographs, that the landlords have failed to provide sufficient evidence. Therefore, I find the landlords are not entitled to compensation for the stair.

The evidence of the landlord was the tenant damage the refrigerator. The tenant acknowledged that the plastic bar in the door broken, but denied it was caused by neglect as they stated it broke under normal use. I find both versions are probable. I find without further evidence, such as photographs that the landlords have failed to prove the damage was caused by the neglect of the tenant. Therefore, I find the landlords are not entitled to compensation for the repair.

The evidence of the landlord was that the tenant caused damage to the walls. The tenant denied causing any hole in the wall. The tenant acknowledged that they hung a shelf and did not remove the screws from the wall at the end of the tenancy. The tenant acknowledged using tacks to hang a calendar on the wall.

I find without a move-in condition inspection report or a move-out condition inspection report that the landlords have failed to prove the wall had a hole when the tenancy ended as this was denied by the tenant.

Under the Residential Tenancy Policy Guidelines #1 Landlord & Tenant – Responsibility for Residential Premise 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.

I find that the tenant is responsible for the removal and the repair of the wall where the screws were left in the wall. I further find that the tenant is responsible for the damage caused to the wall where they hung their calendar as the photographs show an excessive number of holes. Therefore, I find the tenant breached the Act, when they failed to make the repairs. I find the landlords are entitled to compensation.

As the receipt filed in evidence by the landlord also includes the repair of a hole, which I have found the landlord failed to prove was caused by the tenant. I find it appropriate to grant the landlords half the amount claimed in the total amount of **\$110.25**.

I find that the landlords have established a total monetary claim of **\$160.25** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the landlords an order under section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlords are granted a monetary order in the above amount.

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: October 02, 2015

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Residential Tenancy Branch

