



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and agreed they received each other's documents. The hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for rental loss and/or utilities and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

**Preliminary Issue:** Two tenants' names were on the Application. The parties agreed that there was only one tenant and the second name was a name that she was 'also know by (a.k.a.)'. The tenant said both names were incorporated in her birth certificate. The name on the application was amended to note this change.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. This matter has been in contention for over a year as the landlord first tried to negotiate, and then seek remedy in Small Claims Court which refused jurisdiction after pre-trial. The parties agreed the tenancy commenced in September 2010, rent was \$1375 a month and a security deposit of \$687.50 was paid. Relations between the upper and lower tenant became contentious and in January 2014, the tenant was served a 10 day Notice for non payment of rent. She vacated on January 31, 2014.

The parties agree there was only \$225.67 balance of the security deposit as the tenant agreed to have amounts deducted for outstanding utilities. She also contributed a

further \$250 towards any damages so she has \$475.67 in trust with the landlord until this claim is settled.

The premises are a basement apartment which was constructed in 2003 by the landlord. She said doors, woodwork and other items were all new in 2003 but the refrigerator was older. She said the unit was last painted in mid 2008. In evidence is a bank ordered appraisal done in 2013 which I find states the unit is in good condition. The landlord said the unit deteriorated after that as the tenant was in disputes with the upstairs tenant and she banged on the ceiling and pulled cupboard doors off the wall and broke a light fixture. The landlord supplied photographs as evidence of the damage and invoices. The landlord claims as follows:

1. Invoice for repairs as detailed by contractor: \$2453.24 (less \$846.05 which is 50% of the painting cost and supplies). The tenant agrees she installed a cupboard for shoes and coats without written permission although the landlord did not object to it when she saw it.
2. Cost of replacement refrigerator (used plus delivery): \$100 (the tenant said the plastic was old so she had to put duct tape on the shelving. The landlord said she tore off the inside when she was angry.
3. Loss of income for February 2014 as unit had to be repaired for rental: \$1375.00

The tenant contends she only hit the ceiling with a soft child's stool so it did not do so much damage. She was very frustrated as the upstairs tenant had homestay students who made noise late at night and disturbed her family. She said the light fixture just fell off and any holes in the plaster were very minor. She provided an estimate from a company quoting \$400 for the necessary repairs. However, she agrees this contractor never saw the premises and was quoting based on what she told him.

In evidence are many photographs, statements from the parties, a professional appraisal with comments and photographs dated June 28, 2013, a contractor's invoice and cheque for payment and written requests to the tenant to do a move-out report. The tenant provided a professional estimate and costs of various products from the internet. The tenant contended that the landlord had not scheduled a move-in report contrary to the Act. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 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.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused damage as the tenant stated that she did hit the ceiling with a soft stool and installed a cupboard without written authorization. However, I find the Residential Policy Guideline # 40 provides for a useful life of building elements to account for reasonable wear and tear. I find paint is assigned a useful life of four years in rented premises and the paint in this unit was 6 years old when the tenant vacated. As it was beyond its useful life, I find the landlord not entitled to compensation for repainting. The contractor's invoice was not broken down but in her written statement, the landlord said that 50 % of the painting costs would be \$658.13+\$130.57+\$57.35 (total \$846.05). Therefore, I find she is not entitled to \$1692.10 of her total costs which is 100% of the painting cost.

I find the doors were 11 years old at move-out and the Guideline assigns doors a useful life of 20 years. The tenant agreed she damaged at least one door and her quote from the items she described to her contractor noted two interior doors. I find the landlord would be entitled to recover 45% of the cost of the doors and labour but her contractor did not separate out this price. The tenant's contractor quoted \$129.90 to replace these doors as described to them.

I find most of the remainder of the \$2453.24 quote from the landlord's contractor was for repair of drywall, lights and drawer and cupboard door repairs plus rubbish removal. I find it credible that the tenant did significant drywall damage as she had a cupboard installed and screwed to the wall and she admitted she hit the ceiling with a soft stool to attract the upstairs tenant's attention. It was a popcorn ceiling and I find that even if the stool was soft, it likely to caused damage to the ceiling. I find it most probable also that these actions of the tenant were the cause of the ceiling light fixture falling off and breaking.

In respect to other items included in the global estimate from the contractor, I find the plastic switches and plates and cupboards were 11 years old and would have a useful life of 20 years like similar items in the Guideline so the landlord would be entitled to recover 45% of the cost of replacing these items. I find the landlord had to replace a new refrigerator as she could not re-rent with drawers duct taped in; I find she is entitled to her cost of \$160 for this used refrigerator and delivery.

To calculate individual items based on a global estimate is difficult but in the interests of settling this long standing matter for the parties, I have attempted to separate the invoice and make a monetary order based on the evidence before me. I find the landlord entitled to recover costs as follows:

\$2453.24 (estimate) less the disallowed \$1692.10 for paint and supplies leaves \$761.14 for the rest of the work including items which had only 45% of useful life remaining. As these types of items such as doors, cupboard and other work would cost about \$400 according to the tenant's contractor, I find the landlord entitled to recover 45% of \$400 or \$180. Therefore \$400 is deducted from \$761.14 and \$180 is added. I therefore find the landlord entitled to recover **\$541.14** of the contractor's global bill for repairs.

I find the landlord also entitled to recover \$1375 for loss of income for February 2015 as repairs had to be done and the weight of the evidence is that they were necessitated by the tenant's actions.

In respect to the tenant's submissions regarding the lack of a move-in condition and move out inspection report, I find that the landlord has an obligation to do this report and her right to claim against the security deposit is extinguished pursuant to sections 23 and 24 if she does not give the tenant two opportunities to do this with her. However, I find the tenant had agreed in writing that the landlord could subtract unpaid utilities and damages from the security deposit and the landlord did not have to pursue her right to claim against the deposit under section 38. In fact, the tenant sent her an additional \$250 for damages. I find it is irrelevant to consider whether the landlord's right to claim against the deposit is extinguished at this point for even if the right to claim against the deposit is extinguished, the landlord retains the right to claim for damages within the limitation period of two years.

### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Recovery of costs from global repair invoice as specified above	541.14
Rent for February 2014	1375.00
Used refrigerator	160.00
Filing fee	50.00
Less amounts in credit with landlord	-475.67
Total Monetary Order to Landlord	1650.47

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: November 10, 2015

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Residential Tenancy Branch

