



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for monetary compensation for damage to the rental unit and damage or loss under the Act, regulations or tenancy agreement. 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.

### Preliminary and Procedural Matters

Three tenants were identified in this application. I heard the two individual tenants were served with the hearing documents in person and the corporate tenant was served by registered mail. The male tenant in attendance at the hearing confirmed that he was representing all named tenants. The landlord's agent confirmed receipt of the tenants' written response and evidence. I have considered all hearing documents, submissions and evidence before me in making this decision.

The landlord's legal counsel requested an adjournment so that the landlord may provide photographs. I heard that the landlord regained possession of the rental unit and took the photographs in September 2013. The landlord's agent explained that she had been unsuccessful in printing off the digital pictures but in November 2015 she sent photographs to the landlord's legal counsel electronically and the counsellor was able to print them off. Considering the photographs were taken in September 2013, the landlord filed its application in June 2015 and the hearing was set for November 2015 I found the landlord's reasons for requesting an adjournment less than compelling. I was of the view that the photographs could have been printed in a more timely manner had the landlord exercised due diligence. Accordingly, I denied the request for adjournment. The landlord's legal counsel indicated the landlord was prepared to proceed in any event.

The landlord's counsellor requested the monetary claim be amended to withdraw a claim for loss of rent for the month of October 2013. Since the request for amendment is non-prejudicial to the tenants I permitted the amendment and did not consider that portion of the landlord's claim further.

#### Issue(s) to be Decided

Has the landlord established an entitlement to recover the amounts claimed against the tenants, as amended?

#### Background and Evidence

The tenancy commenced in August 2012 for a one-year fixed term that expired July 31, 2013. The monthly rent was \$2,400.00 due on the first day of every month. I heard that the landlord's agent had prepared a move-in inspection report; however, it had not been submitted as part of the landlord's evidence package. I requested the landlord's agent or counsellor read from relevant sections of the move-in report during the hearing.

The parties participated in a previous dispute resolution proceeding on September 17, 2013. The Arbitrator hearing that dispute found the tenants were required to vacate the rental unit when the fixed term ended and provided the landlord with an Order of Possession. The Arbitrator also awarded the landlord loss of rent for the months of August and September 2013 and the landlord was authorized to retain the security deposit by way of that decision.

Subsequent to the issuance of the Order of Possession the tenants vacated the rental unit on or about September 19, 2013. The tenant claims to have tried to contact the landlord's agents to notify them that they had moved out. The landlord's agent appearing at the hearing denied receiving any calls from the tenant. The landlord called the witness to testify as he was another person acting as an agent for the landlord in September 2013. The witness testified that he did not recall receiving any telephone calls or messages from the tenant to say that they had or were moving out. The tenant stated that there was another agent that he had dealt with during the tenancy and the landlord's agent confirmed that there was another agent. In any event, the landlord's agent attended the property on September 20, 2013 and found the unit vacant the keys in the mailbox.

The landlord did not prepare a move-out inspection report with or without the tenant but the landlord's agent took photographs and was accompanied by the witness on September 20, 2013.

Below, I have summarized the landlord's claims, as amended, against the tenants and the tenant's responses.

**Cleaning -- \$302.40**

The landlord submitted that the tenants did not leave the rental unit clean. Two cleaners attended the rental unit at a cost of \$302.40. The landlord described areas that required cleaning as being: the toilets, air vents, floors, mirror, stove, behind the stove and blinds. The landlord produced an invoice for a "move out clean" dated October 9, 2013 along with proof of payment.

The tenant stated that everything in the house was left clean. The tenant took photographs of the rental unit as they left it on September 18 or 19, 2013. The tenant testified that the landlord put the house for sale.

The landlord's witness testified that the rental unit was "not a pigsty but not clean either".

**Carpet cleaning -- \$402.38**

The landlord submitted that the tenants did not have the carpets cleaned and she hired a professional carpet cleaning service. The landlord provided a copy of a quotation dated October 15, 2013 indicating the cost would be \$385.86 plus a surcharge. The landlord provided a credit card slip indicating the carpet cleaning company charged her \$502.13. The landlord reduced the amount charged to her by \$99.75 to reflect scotch guarding she is not seeking from the tenants for a claim of \$402.38.

The tenant testified that he rented a carpet cleaning machine from a grocery store and cleaned the carpets in the rental unit. The tenant pointed out that the carpets were "black" in some areas at the start of the tenancy and that the landlord was selling the house.

**Countertop replacement -- \$1,268.53**

The landlord submitted that the countertop to the right of the stove had been burned during the tenancy. The landlord's agent claimed that the tenant's wife admitted to her that their daughter had put a hot pot on the countertop. The landlord produced a copy of an invoice for replacement countertops dated October 3, 2013 in the amount of \$1,268.53. Proof of payment included credit card statements showing one-half of the new countertops were paid in July 2013 and the second half in October 2013.

Upon review of the photographs of the kitchen provided by the tenant the landlord's agent was asked about the age of the countertops. Initially, she testified that they were probably 12 years old and then she stated she was uncertain of their age. The landlord was asked when the house was purchased to which the landlord's agent stated she did not remember. The landlord's witness also testified that he saw damage on the countertop that appeared to be a burn mark.

The tenant submitted that the countertops were old, had pre-existing damage and were rotting behind the sink from water leaks. The tenant claimed the house was old and there were numerous water leaks at the rental unit. The tenant testified that the landlord was preparing the house for sale.

The landlord denied that the countertops were rotting behind the sink.

The landlord's agent was asked to read from the move-in inspection report as to the condition of the countertops at the start of the tenancy. I heard that the move-in inspection report indicates there was "small damage" in the notation for countertops but that it did not specify where the damage was located or the countertop's overall condition.

**Fridge door rack replacement -- \$25.95**

The landlord submitted that one of the racks in the fridge was found to be cracked when possession of the rental unit was regained and that it was replaced at a cost of \$25.95. The landlord provided a copy of a receipt from an appliance parts store dated October 16, 2013.

The landlord's witness testified that he did not observe any damage except for the countertop burn mark.

The tenant denied that the fridge rack was damaged during the tenancy.

The landlord's agent was asked to read from the move-in inspection report as to the condition of the fridge at the start of the tenancy. I heard that the move-in inspection report was silent with respect to the condition of the fridge.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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.

The landlord's burden of proof is based on the balance of probabilities. 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.

Based upon everything before me, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

### **Cleaning**

Under section 37 of the Act, a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. It is important to distinguish that this standard of cleanliness is less than perfectly clean or impeccably clean.

In this case, I was provided disputed verbal testimony as to the level of cleanliness the tenants left the rental unit. There was no move-out inspection report prepared; thus, I find the photographs provided to me are the best evidence before to establish the cleanliness of the unit.

While the tenant's photographs were not taken very close up or of every square inch of the house, the landlord did not produce any photographs to contradict or provide greater detail than the tenant's photographs. Accordingly, I have relied upon the tenant's photographs.

The tenant's photographs show the rental unit that is devoid of any furniture and most personal possession have been removed. Further, the cupboard doors and drawers are in the open position in many photographs show the inside of the cupboards and

drawers. Based upon what I see in the tenant's photographs, I find the tenants met their burden to leave the rental unit "reasonably clean" at the end of the tenancy.

Of further note is that the landlord's cleaning invoice is dated for more than two weeks after the tenancy ended and I have given the cleaning invoice less evidentiary weight.

In light of the above, I find the landlord did not satisfy me that the tenants left the rental unit less than "reasonably clean" and I deny the landlord's claim to recover cleaning costs from the tenants.

### **Carpet cleaning**

As stated previously, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. Residential Tenancy Policy Guideline 1 provides that where tenants occupy a rental unit for more than one year the tenant is generally held responsible for steam cleaning or shampooing the carpeting.

In this case, the tenants were in possession of the rental unit for more than one year and I find that they were required to have the carpets cleaned to meet their obligation to leave the carpets reasonably clean.

While the tenant asserted that he rented a carpet cleaning machine I note that he did not produce a receipt to corroborate that position. I also noted that a carpet cleaning machine is not visible in any of the photographs the tenants took and the carpeting does not appear to have the typical tell-take marks that carpet cleaning machine leaves on carpeting. Therefore, I find I am unsatisfied that the tenants had the carpets cleaned.

While the tenant asserted that the carpets were stained or dirty at the start of the tenancy, there is no exemption to the tenant's obligation to leave a rental unit reasonably clean at the end of the tenancy.

For the reasons indicated above, I grant the landlord's request to recover carpet cleaning costs from the tenants in the amount claimed of \$402.38.

### **Countertop replacement**

Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation I have referred to Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* which provides that countertops have an average useful life of 25 years.

The landlord asserted that the tenants damaged the countertop during the tenancy and the tenant asserted that the countertops were old, had pre-existing damage and rotting behind the sink. While I could not see signs of rot in the photographs the tenant took, and the landlord denied this allegation, I find that assertion unsupported, although possible. However, upon review of the photographs of the kitchen I find the tenant's submission that the countertops were old to have merit. The painted wood cabinet doors with exposed hinges in the kitchen suggest to me that the kitchen was constructed a number of decades ago. While the countertops may have been replaced more recently, the landlord was unable to provide the age of the countertops with any degree of certainty. Of further consideration is that the move-in inspection report did indicate that there was some pre-existing damage to the countertops.

The landlord has the burden to prove the value of loss incurred and claimed is the result of the tenants' actions or neglect. In this case, I find the landlord has not met that burden when I consider the countertops appear to be old and there was some pre-existing damage on the countertop at the start of the tenancy. As such, I find the landlord's request to recover the entire replacement cost of the countertops from the tenants to be unreasonable and I deny the claim without further considering whether the tenants damaged the countertops during the tenancy.

### **Fridge rack**

I was provided disputed verbal testimony that the fridge rack was broken during the tenancy. Even the landlord's witness did not attest to seeing this damage and there was no move-out inspection report prepared by the landlord to corroborate the landlord's position. Further, the move-in inspection report was silent with respect to the condition of the fridge at the start of the tenancy. Finally, the receipt for a new rack was dated more than three weeks after the tenancy ended. Therefore, I find the landlord did not meet its burden to demonstrate the fridge rack was broken during this tenancy and I deny the landlord's request to recover the cost of a new rack from the tenants.

### **Filing fee and Monetary Order**

As the landlord's application had very limited success, I award the landlord partial recovery of the filing fee, or \$10.00.

In light of all of the above, the landlord is provided a Monetary Order in the amount of \$412.38 for carpet cleaning and partial recovery of the filing fee.

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

Conclusion

The landlord was partially successful in this application and has been provided a Monetary Order in the total sum of \$412.38 to serve and enforce upon the tenants.

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: December 15, 2015

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Residential Tenancy Branch

