



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, 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 the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenant confirmed receipt of the landlord's notice of hearing package and for 2 documentary evidence packages. The tenant did not submit any documentary evidence. I accept the undisputed evidence of both parties and find pursuant to sections 88 and 89 of the Act that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and to recover the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### 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 respective submissions and / or arguments are reproduced

here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlord seeks a monetary claim of \$14,804.00 which consists of:

\$400.00	Professional Cleaning
\$105.00	Carpet Cleaning
\$881.22	New Carpet Replacement
\$915.25	Replace Glass Stovetop
\$2,100.00	Replace Damaged Kitchen and Bathroom Cupboards
\$7,482.44	Replace Damaged Wood Flooring
\$227.10	Painting/Repair Wall Damage
\$50.00	Repair Desk

The landlord relies upon:

- A copy of the signed tenancy agreement dated November 18, 2011.
- A copy of a completed condition inspection report for the move-out dated March 1, 2015.
- A copy of a letter dated November 20, 2015 from the previous tenant prior to this tenancy beginning who provided a description of the rental unit at the end of her tenancy in October 2011.
- A copy of a handwritten invoice dated March 5, 2015 for Cleaning Services.
- A copy of a Quote dated October 8, 2015 for:
  - Installation of new flooring
  - Refacing vanity and kitchen cupboards
  - Removal of old floor and dump fee
- A copy of an invoice dated March 2, 2015 for carpet cleaning.
- A copy of an invoice dated September 21, 2015 for replacement of Glass Ceran Stovetop.
- A copy of an invoice dated April 17, 2015 for painting/patching holes.
- A copy of invoice dated March 24, 2015 for Replacement of Stained Carpets.

The landlord stated that at the end of tenancy the tenant left the rental unit dirty and damaged beyond normal wear and tear. The landlord stated that the rental unit was left dirty and has provided photographs of the rental unit at the end of tenancy. The tenant has disputed this claim alleging the submitted photographs were of another of the landlord's rental units and that the signature on the condition inspection report for the

move-out was a forgery. The landlord disputed this claim stating that the tenant was not correct. The tenant did not provide any other evidence to support these allegations.

The landlord claimed that after the tenant vacated the rental unit the carpets were left dirty that could not be cleaned. The landlord stated that a professional carpet cleaner was unable to clean the carpet requiring the carpets to be replaced. The tenant argued that the stains in the carpet were present at the beginning of the tenancy. The landlord relies upon submitted photographs of the carpet at the end of tenancy and the submitted invoice dated March 2, 2015 which stated that "carpets may wick, coffee stains will not come out". The landlord also relies upon the letter from the previous tenant who stated that,

*I have attached the inspection report that was done upon my move out, showing everything was left in an as new condition as to when I had moved in. All carpets were professionally cleaned and a cleaning service was hired, and once I had moved out all the appliances were cleaned in and out. All the floors were washed, all windows cleaned on the inside and outside for the balcony windows. Bathrooms and appliances were all cleaned as well. The office furniture that J. supplied was left in good condition and dusted and emptied. All the blinds were dusted by the cleaning company as well...*

The attached copy of the inspection report was incomplete, but signed by the tenant. The condition inspection report for the move-out is dated October 31, 2011 and noted that the general condition of the rental premises were "good" and that "no damage to note".

The landlord claimed that the tenant left the stovetop damaged at the end of tenancy. The tenant disputed the landlord's claims. The landlord relies upon photographs of the damaged stove on page 20 of the submitted photographs. The landlord also referred to copies of a fire department report dated October 5, 2013 which shows that the fire department responded to an alarm. The report details, "the unit owner of 210 advised us that he has been cooking and fallen asleep with items on the stove. Crew inspected the area and confirmed that to be the source of the smoke." The landlord stated that during the tenancy the tenant never informed them of this damage.

The landlord claimed that the tenant caused excessive damage to the kitchen and bathroom cupboards that required repair. The tenant disputes this claim stating that there are no notations of damage on the condition inspection report for the move-out. The tenant also claims that the landlord never informed them of these damage issues at the end of the tenancy. The landlord relies upon the submitted photograph page #16

which show one set of cabinets that appear to be very worn/distressed. The landlord has also submitted an estimate for the cost of repairs for the cupboards.

The landlord claimed that the tenant left the hardwood floors very scratched that could not be repaired. The tenant disputed this stating that scratches in the flooring were present at the beginning of the tenancy. The landlord relied upon the submitted photograph page #19. The photographs show scratches on various sections of the hardwood flooring. The landlord stated that at the end of tenancy the age of the flooring was approximately 6 years old. The landlord relies upon a handwritten estimate for \$2,000.00 plus tax totalling, \$2,100.00.

The landlord claimed that the tenant left damage to the walls in the rental unit requiring repair and re-painting. The tenant disputed this claim stating that the walls were damaged by one of the landlord's technicians during an inspection during the tenancy. The landlord relies upon the submitted photograph on page #18, which shows drywall damage on two walls. The landlord stated that the current paint on the walls were approximately 3 years old. The landlord has submitted a copy of a paid invoice dated April 17, 2015 to "patch holes, spot prime and apply 1 coat of paint to 2 bathrooms, 2 walls in spare bedroom, m. bed, hallway, foyer, living room kitchen".

The landlord also seeks recovery of \$50.00 for repairs to a desk where holes were drilled into it. Both parties confirmed that a desk was left as part of the rental furnishings. The tenant disputed the landlord's claims stating that no damage occurred that was not due to normal wear and tear. The landlord has not provided any photographic evidence, invoices/estimates for repair. Both parties confirmed that there is no notation in the condition inspection report for the move-out.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Although the landlord failed to complete a condition inspection report for the move-in, I note the landlord's submitted documentary evidence (an incomplete condition inspection report for the move-out dated October 31, 2011 of his former tenant who has confirmed the condition of the rental unit preceding the beginning of this tenant's tenancy which began on November 1, 2011. This report noted in general that the condition was "good" and that there was "no damage to note".

Both parties confirmed that no condition inspection report for the move-in was completed by both parties. The landlord has alleged that the tenant left the rental unit dirty and damaged. The tenant has disputed the landlord's claims stating that damage to the flooring was present at the beginning of the tenancy and that some damage was caused by the landlord's technician during an inspection. The landlord has disputed this claim. The tenant did not provide any supporting evidence. The tenant also claims that the landlord's submitted photographs are of another unit and that the signature on the condition inspection report for the move-out was forged. The tenant has not provided any supporting evidence to confirm these allegations.

I find that the landlord has established a monetary claim for the following portions of the application:

\$400.00	Professional Cleaning
\$105.00	Carpet Cleaning
\$881.22	New Carpet Replacement
\$915.25	Replace Glass Stovetop
\$2,100.00	Replace Kitchen/bathroom cupboards
\$4,401.47	Total

Residential Tenancy Branch Policy Guideline #40, Useful Life of Building Elements states,

*This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases<sup>1</sup> and determining damages<sup>2</sup> which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.*

*If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.*

The useful life expectancy of wood flooring is 20 years and the useful life of interior walls for painting is 4 years.

The following portions of the landlord's claims have been established, but the landlord is only partially successful in recovery of these claims pursuant to Policy Guideline #40.

\$7,482.44	Replace Damaged Wood Flooring / 20 years = $\$374.12 \times 6 =$
-\$2,244.73	
\$5,237.71	Total Claim Established after credit for 6 years is given to tenant.

\$2,270.10	Painting/Repair Wall Damage / 4 years = $\$567.52 \times 3 \text{ years} =$
-\$1,702.57	
\$567.52	Total Claim Established after credit for 3 years is given to tenant.

The landlord's claim for recovery of \$50.00 for repair to the desk is dismissed for lack of evidence. The landlord has not provided any supporting evidence that the desk was damaged during the tenancy nor of the cost/estimate for repair of the desk. This portion of the landlord's claim is dismissed.

The landlord having been substantially successful in his application is entitled to recovery of the \$50.00 filing fee.

Using the offsetting provisions of the Act, I find that the landlord may retain the \$600.00 security deposit in partial satisfaction of the claim.

Conclusion

I issue a Monetary Order in the landlord's favour under the following terms, which allows the landlord an award, less the security deposit currently held, plus the recovery of his filing fee

<b>Item</b>	<b>Amount</b>
Professional Cleaning	\$400.00
Carpet Cleaning	105.00
New Carpet Replacement	\$881.22
Replace Glass Stovetop	\$915.25
Replace Damaged Wood Flooring	\$5,237.71
Repair/Paint Damaged Walls	\$567.52
Less Returned Portion of Security Deposit	-600.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$7,556.70</b>

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: March 1, 2016

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Residential Tenancy Branch

