



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and confirmed that the landlord's Application for Dispute Resolution made on November 27, 2015 was served by registered mail. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for 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.

### **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 the cost of repair? Is the landlord entitled to recover the filing fee?

Did the landlord comply with section 38 of the Act in respect to the security and pet damage deposits?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 2013, that monthly rent was \$2300 and a deposits of \$2300 for security and pets were paid. It is undisputed that the tenant vacated on October 31, 2015 and did a move out condition inspection report and provided her forwarding address in writing.

The landlord claims for damages as follows:

- 1. \$700 for repainting. The total repaint cost \$3150 and he estimated this claim. The painting was done in October 2012 and the tenant pointed out that the condition inspection report showed only the living, dining and bedroom 2 needed repainting. The house is about 2000 sq. ft. and the landlord estimated these three areas as 800 sq. ft.
- 2. \$500 for replacing damaged carpet and underlay in Room 3. It was bought in 2004. The tenant agreed she was responsible for the damage.

3. \$50 for reinstallation of smoke detectors. The tenant agreed she was responsible.
4. \$18 + 81.08+30 for replacing upstairs shower faucet handle and downstairs bulbs, faucet fixtures and fixing a leaky shower faucet. They were new in 2004.
5. \$20 to clean downstairs dirty oven. The tenant agreed.
6. \$100 to fix defective fireplace thermos-pile and refire fireplace. The tenant said the electric switch had to be fixed at the beginning of the tenancy, then the pilot light was not lighting but she did not bother as she did not use the fireplace. The tenant denied responsibility for this as she said it was just wear and tear and she broke nothing.
7. \$20 to replace a broken light fixture cover; the tenant agreed.
8. \$80 to replace blinds. The tenant agreed
9. \$55 to repair a noisy dryer. It was a used dryer in 2012 when installed (maybe 3-4 years old) but a rotor or tumbler was broken and noisy when the tenant moved. The tenant said she did not break the dryer and it may have broken due to age.
10. \$50 Clean up of dirty rear patio and stairs. The tenant agreed.
11. \$50 Cutting of grass and clean up of cuttings in front yard. The tenant said she was responsible to maintain the front yard in the lease but it was very small. She moved in the fall and the grass was a little long; she does not think it should have cost so much to cut it.

The landlord supplied invoices to support his claim. In evidence is the condition inspection report on move-in and move-out, invoices and letters between the parties regarding the security and pet damage deposits and damages. The landlord has not returned any of the deposits but in an email from the advocate, the tenant agreed the landlord could deduct \$650 to cover carpet repairs, smoke detectors, oven cleaning and blind replacement. 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.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

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. As explained to the parties in the hearing, the Residential Policy Guideline 40 provides a useful life expectancy for items in rented premises. This is designed to account for reasonable wear and tear.

I find the landlord had to repaint about 800 sq. ft. of a 2000 sq. ft. house which is about 40% of the house. He paid \$3150 for the total job and would be entitled to claim 40% of that or \$1260. The weight of the evidence is that the paint was 4 years old at move out. The Guideline provides for a useful life of paint of 4 years. Therefore, I find the landlord not entitled to recover any of his cost of repainting since the existing paint was at the end of its useful life.

I find the tenant agreed she had damaged the carpet but the carpet was 12 years old at move-out. The Guideline provides a useful life for carpet of 10 years. Therefore, I find the landlord not entitled to recover cost of carpeting as it was over the end of its useful life.

I find the landlord entitled to recover \$50 for reinstallation of smoke detectors and \$20 to clean the oven; the tenant agreed with his evidence.

The landlord testified that the plumbing fixtures were done in 2004 which makes them 12 years old at move-out. Plumbing fixtures are assigned a useful life of 15 years in the Guideline so I find the landlord entitled to recover 20% of his cost of replacement/repair or \$25.81 ( $18 + 81.08 + 30 = \$129.08 \times 20\%$ )

In respect to the fireplace, I find insufficient evidence that the tenant damaged the fireplace. I find the weight of the evidence is that the maintenance performed was due to a 'defective faulty fireplace thermos pile' and this is not attributable to the tenant's actions so not an item for her to repay.

Regarding the dryer repair, I find dryers are assigned a useful life of 15 years in the Guidelines and this was a used dryer when installed in 2012. The landlord estimated it was about 3-4 years old in 2012. I find the landlord not entitled to recover costs of fixing the dryer as it is the landlord's responsibility to maintain such items for a tenant according to Policy Guideline 1, Major Appliances, and I find insufficient evidence that the tenant damaged the dryer by her actions. I find it just as probable that it may have reached the end of its useful life and/or needed maintenance.

I find the tenant agreed she broke a light fixture and agreed to the charge of \$20. I find she also agreed she was responsible for installation of new blinds at a cost of \$80 and to cost of \$50 for cleaning up the patio and back stairs. Although the tenant contended the charge for grass cutting of \$50 was too much, I find she did agree she was responsible for cutting the grass and it was a bit long when she left. I find the landlord entitled to recover these costs. I find the landlord's claim well supported by the invoices in evidence. I dismiss the remainder of his claims for the reasons set out above without leave to reapply.

In respect to the security deposit, I find the landlord did not comply with section 38 of the Act. Section 38 requires a landlord within 15 days of the later of the tenant vacating the property and supplying their forwarding address in writing to either return the deposit, less any amount agreed to be retained, or make an Application for Dispute Resolution. The evidence is the tenant vacated the property on October 31, 2015 and provided her forwarding address in writing. The landlord did not file his Application until 27 days later. The tenant did not agree to retention of any of it. Although some offers were made by each party, I find no agreement was reached.

Residential Policy Guideline 17 states that if a landlord does not apply for arbitration within the time required and subsequently applies and has not returned the deposits, any monetary amount awarded will be set off against **double** the amount of the deposits. Therefore, I find the tenant entitled to recover double her deposits less the amount awarded to the landlord.

### **Conclusion:**

I find the landlord and tenant are entitled to monetary orders as calculated below. I find the landlord is also entitled to recover filing fees paid for this application. The Monetary Order is in favour of the tenant and a Monetary Order is issued to the tenant in the amount set out below.

**Calculation of Monetary Awards:**

Smoke detectors, plumbing fixtures allowance (50+ 25.81)	75.81
Light and blind replacement (20+80)	100.00
Clean patio(50), clean oven(20), cut grass (50)	120.00
Filing fee	50.00
<b>Total Monetary Order to Landlord</b>	<b>345.81</b>

**Tenant:**

Original Security and Pet Damage Deposits	2300.00
Doubled pursuant to section 38 of the Act	2300.00
Less amount awarded to landlord	-345.81
<b>Total Monetary Order to Tenant</b>	<b>4254.19</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 24, 2016

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Residential Tenancy Branch