



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MND, MNR, SS, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage to the rental unit, an Order allowing service of documents in a different way that required by the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The hearing process was explained and the parties were able to ask questions about the process. I have considered all of the evidence and testimony provided.

### Preliminary Matters

There was no claim for unpaid rent.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$5,518.42 for damage to the rental unit?

### Background and Evidence

There was no signed tenancy agreement or move-in condition inspection for this tenancy that commenced in November 2007. The landlord said that the unit was new when the tenancy commenced. The tenant and her two children lived in the unit.

The tenant gave notice to end the tenancy effective August 1, 2015. A move-out condition inspection was not scheduled or completed.

The landlord has made the following claim:

Front door lock removed	\$250.00
Four broken bedroom light fixtures	\$100.00
Painting – damage to walls	\$3,844.89
Replace carpeting	\$1,131.90
Carpet cleaning	\$105.00
Electrical charge – install light fixtures	\$86.63

The landlord said that the tenant removed the front door lock; that the whole lock and bolt were missing at the end of the tenancy. This was discovered after the tenant left the rental unit at the end of the tenancy. When asked if the new lock cost \$250.00, even, the landlord said he did not have the invoice before him and he could not recall the actual cost for the replacement.

Four light fixtures in the bedrooms were broken and had to be replaced. The landlord could not recall the exact sum spent on the fixtures and has claimed \$100.00.

The landlord said there was extensive damage to the walls in the rental unit. The walls needed to be patched and repaired. A September 2, 2015 statement of account was supplied for wall repair, sanding and painting the walls in the unit and the garage and one coat of paint on all walls, trim and doors. The landlord confirmed that the unit had not been painted at any time during the tenancy.

The landlord said that the tenants' cat had damaged carpet in the landing and that it had to be replaced. The landlord supplied a copy of an email sent on September 15, 2015 as evidence of an invoice to dispose of existing carpet and pad on the stairs, upper hallway and two linen closets and to replace the pad and carpet. The cost claimed was \$1,078.00 plus \$53.90 tax.

The tenant did not clean the carpets in the home before she vacated. The landlord supplied an August 21, 2015 invoice for carpet cleaning in the sum of \$105.00.

The landlord submitted an invoice dated September 4, 2015 for labour in the sum of \$86.63. The invoice was not detailed, other than the inclusion of 1.5 labour at \$55.00. The landlord said this was the cost of replacing the light fixtures.

The tenants' agent responded that the landlord did not complete any maintenance during the tenancy, outside of items reported by the tenant. The agent said that the costs claimed are the result of normal wear and tear after a seven year tenancy.

The tenant did not remove the lock on the door; but she did replace the lock. The key had broken inside the lock and the tenant had tried to reach the landlord to report the need for repair. The tenant then installed the new lock herself as the landlord was not available. Several weeks ago the tenant drove by the rental unit and was able to see the same lock in the door. The agent stated that the landlord has not supplied an invoice for this item.

The tenants' agent said that there were dome light shades in three of the bedrooms and one in a master closet. There was no misuse and neglect but when the tenant replaced bulbs the fixtures broke. The tenant had to move a tab on the fixtures and the wear and tear and pulling on the tabs over the seven years resulted in the fixtures breaking. The tenant said this is a design problem with the fixtures as they should not have broken so easily.

The tenants' agent questioned the painting, as the garage walls had not been drywall during the tenancy. The rest of the painting was due to the need for painting after seven years. The agent said the landlord should paint at regular intervals and did not. The agent stated there were areas on the walls at the start of the tenancy that showed filler had been used. The tenant did not hang items on the walls and did not cause any other damage to the walls.

In relation to the carpets, the tenant had the carpets professionally cleaned annually. The last cleaning took place in December 2014. The tenant does not accept that the carpets needed to be replaced; they were not destroyed but had been worn over the seven years of the tenancy. The agent questioned the email invoice and wondered if it had been altered.

The tenants' agent said that the landlord has not brought forward any evidence, such as photographs; to support the claim that damage was caused. It is difficult for the tenant to fully respond when the landlord has not supplied any evidence of the damage he says the tenant caused.

The agent disputed the electrical bill and said he was not sure what it was for as the invoice provides no information.

The landlord stated that the garage had been dry-walled at the start of the tenancy.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss. My decision is based on the evidence before me and the balance of probabilities.

The landlord has the burden of proving the rental unit was damaged, in the absence of condition inspection reports completed in accordance with the Act and Residential Tenancy Regulation.

In the absence of any evidence supporting the claim that the front door lock was removed by the tenant I find that it is just as likely that the tenant replaced the lock because it was broken. The landlord did not supply any evidence showing the missing lock or proof a lock was replaced and could not provide information on the actual cost of a lock. Therefore, this portion of the claim is dismissed.

There was no dispute that some light fixtures broke. It is for the landlord to prove that the tenant caused this damage as the result of neglect. I found the tenants submissions just as convincing, that the shades broke due to the use of the tabs, when bulbs had to be replaced and that the design caused all fixtures to break when using the tabs to remove the fixture. I find that the fact that all four shades broke due to a design fault seems, on the balance of probabilities, likely. Further, the landlord could not say how much the shades cost to replace. He estimated the cost and could not provide any detail on the actual cost. Therefore, I find that the claim for lights and electrical work is dismissed.

Residential Tenancy Branch policy suggests that a rental unit should be painted once every four years. This unit had not been painted during the seven year tenancy. Therefore, I find that the unit was due for painting, as a matter of normal maintenance that can be expected. There was no evidence presented in support of any holes or damage that would exceed that expected after seven years of normal daily living. The

landlord did not supply any photographs or other evidence in support of the claim that damage had been caused. Therefore, I find that the claim for painting is dismissed.

In relation to the carpets, again the landlord has not provided any evidence to support the damage he says the tenant caused. I find there was an absence of any evidence that the state of the carpet reflected anything more than seven years of wear and tear. Therefore, I find that the claim for carpet replacement is dismissed.

The landlord did not dispute the tenants' submission that the carpets had been professionally cleaned on an annual basis. The tenant was required to leave the rental unit free of damage, outside of normal wear and tear and reasonably clean. There was no evidence supplied by the landlord to convince me that the carpets were in need of professional cleaning, when they had last been cleaned in December 2014. Therefore, I find that the claim for carpet cleaning is dismissed.

Therefore, I find that the claim is dismissed.

### Conclusion

The claim is dismissed.

This decision is final and binding and 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: April 08, 2016

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Residential Tenancy Branch