



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, for unpaid rent or utilities, and to recover the cost of the filing fee.

The hearing began on April 26, 2016 and after 63 minutes was adjourned to allow additional time for the parties to present their evidence. An Interim Decision dated April 27, 2016 was issued which should be read in conjunction with this Decision. The hearing was reconvened on June 1, 2016 and after an additional 40 minutes, the hearing concluded.

Attending both dates of the hearing were the landlords T.M. and R.P., and tenant R.W. Attending only on April 26, 2016 was tenant K.B. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns about the documentary evidence submitted in evidence.

### Issue to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The parties agreed that the written tenancy agreement was signed by the parties. A copy of the tenancy agreement was not submitted in evidence. The parties agreed that a fixed term tenancy began on February 15, 2012 and as of February 15, 2013 the tenancy reverted to a month to month tenancy. The parties also agreed that the tenancy ended on March 31, 2015 when the tenants vacated the rental unit.

The parties agreed that originally monthly rent in the amount of \$1,350.00 was due on the first day of each month and that in either December 2012 or January 2013, the landlords reduced the monthly rent to \$1,150.00. The security deposits have already been addressed in a previous Decision so will not be considered in this Decision.

The landlords have applied for a monetary claim in the amount of \$2,160.00 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fridge handle	\$97.00
2. Paint (supplier 1)	\$58.78
3. Paint and paint supplies (supplier 2)	\$68.19
4. Bedroom carpet	\$850.00
5. Travel to Sechelt for repairs	\$432.20
6. Cost to replace couch	\$500.00
7. Remove tenants' garbage	\$19.50
8. Drywall repair and cleaning	\$48.59
9. Cleaning supplies	\$86.03
<b>TOTAL</b>	<b>\$2,160.00</b>

The landlords submitted a copy of a condition inspection report that they added on the bottom of an Addendum to the tenancy agreement. The condition inspection report does not comply with section 20 of the *Residential Tenancy Regulation* and is only a four sentence summary of the condition of the rental unit.

Regarding item 1, while there is not dispute between the parties that the handle was broken, the tenants stated that it came off in their hand. The tenants stated that they could not recall advising the landlords the handle of the fridge broke during the tenancy and was found inside a drawer of the rental unit after the tenants vacated the rental unit.

The landlords stated that the amount being claimed for item 1 of \$97.00 is for the part only as the landlords are not claiming for their labour to repair the fridge handle. The tenants stated that the fridge handle broke off during the last year of their tenancy in 2014. The landlords submitted an invoice in support of this portion of their claim. The tenants did not agree to this portion of the landlords' claim.

Regarding items 2 and 3, the landlords are claiming \$58.78 and \$68.19 respectively which relate to repairs to the drywall which the landlords claim were caused by the tenants. The tenants stated that any wear and tear was reasonable wear and tear and included wear and tear from whoever was there before them. The landlords confirmed that previous tenants had lived in the rental unit between October 2011 and January 2012. The landlords testified that the interior paint was last painted in 2007 which make the interior paint approximately five years old before the tenancy began in February of 2012. The landlord referred to several photos submitted in evidence in support of this portion of their claim. The tenants did not agree to this portion of the landlords' claim.

Regarding item 4, the landlords submitted an invoice for the amount of \$850.13 in support of this portion of their claim. The landlords confirmed that they had no before photos submitted in evidence to support the condition of the carpet at the start of the tenancy. The landlords testified that in 2012 at the start of the tenancy, the carpets were five years old. The tenants responded by stating that the carpets were "bubbly" and not installed correctly when they moved into the rental unit. The landlord referred to a photo submitted in evidence which was an example of staining. The tenants did not agree to this portion of the landlords' claim.

Regarding item 5, the landlords have claimed \$432.20 for their travel costs and explained that it was cheaper for them to charge for their travel costs and perform the labour themselves than hiring contractors and to pay the contractors' labour charges. The landlords did not submit any quotes or documentation to support what the alternative labour costs would be versus the travel costs being claimed for this item. The tenants stated that they don't agree with this cost and that the landlords made the decision to have a rental property that far away from their own residence.

Regarding item 6, the parties reached a mutually settled agreement of \$300.00 for the tenants to compensate the landlords for a couch. As a result, this item will not be analyzed further in this Decision until accounted for later in this Decision.

Regarding item 7, the landlords have claimed \$19.50 for dump fees related to the garbage left over after cleaning the rental unit. A copy of a receipt in the amount of \$19.50 was submitted in evidence in support of this portion of the landlords' claim. The

landlords stated that outside there were parts left from a ball game and bags of garbage left at the front door including a crib and playpen which the tenants' alleged was from previous tenants. The landlords confirmed that they did not submit photos in support of this portion of their claim.

For items 8 and 9, the landlords claim that the tenants left the rental unit dirty which required 10 hours of cleaning and are claiming \$48.59 to repair damaged drywall and cleaning supplies. The landlords testified that they are not claiming for their labour for these portions of their claim. The landlords also submitted receipts to support these items and referred to several colour photos which showed drywall patches, what appears to be a dirty fireplace and flooring. The tenants do not agree with these portions of the landlords' claim.

### Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

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.

Firstly regarding the condition inspection report, I afford no weight to the condition inspection report that was added as a four sentence summary to the Addendum of the tenancy agreement as it does not comply with section 20 of the *Regulation*.

Furthermore, **I caution** the landlord comply with sections 23 and 35 of the *Act* in the future which requires both an incoming and outgoing condition inspection report to be completed in accordance with section 20 of the *Regulation*.

**Item 1** – The landlords have claimed \$97.00 for the cost of the broken fridge handle and are not charging labour costs to replace the fridge handle. The tenants confirmed that the fridge handle was not broken when they moved into the rental unit and two years later in 2014, the fridge handle broke. I find that this is not reasonable wear and tear and I find that the landlords have met the burden of proof as a result and are entitled to compensation in the amount of **\$97.00** as claimed for this portion of their claim.

**Items 2 and 3** – Regarding items 2 and 3, the landlords have claimed \$58.78 and \$68.19 respectively for paint costs. According to Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements, the useful life of interior paint is four years. The landlords testified that the interior paint was last painted in 2007 which I find results in the interior paint of the rental unit being beyond its useful life by being five years old at the start of the tenancy. As a result, I find the landlords are not entitled to any compensation for these portions of their claim which **I dismiss** as a result, **without leave to reapply**.

**Item 4** – Regarding item 4, as the landlords failed to complete an incoming or outgoing condition inspection report and the tenants did not agree to damage to the carpets, I find the landlords have failed to meet the burden of proof. I find the photo submitted in evidence does not support that the carpets were stained and required replacement. Given the above, **I dismiss** this portion of the landlords' claim **without leave to reapply** due to insufficient evidence.

**Item 5** - Regarding item 5, the landlords have claimed \$432.20 for their travel costs and explained that it was cheaper for them to charge for their travel costs and perform the labour themselves than hiring contractors and to pay the contractors' labour charges. The landlords did not submit any quotes or documentation to support what the alternative labour costs would be versus the travel costs being claimed for this item. The tenants stated that they don't agree with this cost and that the landlords made the

decision to have a rental property that far away from their own residence. Firstly, I agree with the tenants in that the landlords chose this rental unit location and as a result, the tenants are not liable for landlord costs for travel to and from the rental unit.

Furthermore, other than the fridge handle which the tenants agreed to, the landlords breached the *Act* by failing to complete an incoming and outgoing condition inspection report and due to a majority of their claim being dismissed, I find that this portion of their claim must fail due to the lack of supporting evidence submitted in evidence. I also have considered that the landlord did not provide any other quotes to support that labour charges would have exceeded their travel costs in terms of the items that the landlords were successful in proving for their claim. Therefore, **I dismiss** this portion of the landlords' claim **without leave to reapply** due to insufficient evidence.

**Item 6** – As indicated above, the parties reached a mutually settled agreement of \$300.00 for the tenants to compensate the landlords for a couch. Pursuant to section 63 of the *Act* **I order** the parties to comply with this term of their mutually settled agreement which includes the tenants agreeing to compensate the landlords in the amount of **\$300.00** for the couch provided by the landlords to the tenants.

**Item 7** - Regarding item 7, the landlords have claimed \$19.50 for dump fees related to the garbage left over after cleaning the rental unit. A copy of a receipt in the amount of \$19.50 was submitted in evidence in support of this portion of the landlords' claim. The landlords stated that outside there were parts left from a ball game and bags of garbage left at the front door including a crib and playpen which the tenants' alleged was from previous tenants. The landlords confirmed that they did not submit photos in support of this portion of their claim. I find that without a valid condition inspection report and photographic evidence, I am left with disputed verbal testimony and that this portion of the landlords' claim fails as a result. Therefore, **I dismiss** this portion of the landlords' claim due to insufficient evidence **without liberty to reapply**.

**Items 8 and 9** – Although the landlords failed to complete a valid condition inspection report, section 37 of the *Act* requires that tenants leave a rental unit in reasonably clean and undamaged condition less reasonable wear and tear. I find the photos presented support that the tenants breached section 37 of the *Act* by leaving the rental unit reasonably clean and undamaged. As a result, for these items I prefer the evidence of the landlords over that of the tenants and I find the landlords have met the burden of proof as a result. Therefore, I grant the landlords a total of **\$134.62** which is the amounts as claimed of \$48.59 for item 8 and \$86.03 for item 9.

As the landlords were only successful with a portion of their claim, I grant the landlords the recovery of one-half of the cost of the \$50.00 filing fee in the amount of **\$25.00**.

**Monetary Order** – I find that the landlords have established a total monetary claim in the amount of **\$556.62** comprised of \$97.00 for item 1, \$300.00 for item 6, \$134.62 for items 8 and 9, plus \$25.00 of the cost of the filing fee. I grant the landlords a monetary order under section 67 in the amount of **\$556.62** accordingly.

Conclusion

The landlords' claim is partially successful. Items 2,3,4,5 and 7 are dismissed. Items 1, 8, and 9 are successful and item 6 is resolved by way of a mutually settled agreement.

The landlords have established a total monetary claim in the amount of \$556.62 as described above. The landlords have been granted a monetary order under section 67 in the amount of \$556.62. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: June 27, 2016

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Residential Tenancy Branch