



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND MNSD MNDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on January 13, 2016. The Landlords filed seeking a Monetary Order of damage to the unit, site or property; to keep the security deposit; for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords, the Landlords' witness; the male Tenant, and the agent for the female Tenant (the Agent). Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Although both Landlords were present at the hearing all of the submissions for the Landlord were made by the male Landlord. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

On January 13, 2016, the Landlords submitted 21 pages of documents and 13 photographs which included their application for Dispute Resolution. The Landlords affirmed they served each Tenant with copies of the same documents and photographs they had served to the Residential Tenancy Branch (RTB). The Landlords argued they made sure to include copies of the photographs with the entire package sent to the Tenants.

The Tenant and the Agent confirmed receipt of the following from the Landlords: the application for Dispute Resolution; hearing documents; and the Landlords' documentary evidence. However, both the Tenant and Agent denied receipt of any photographs from the Landlords. On August 10, 2016 the Tenants submitted 14 pages of documents, to the RTB, which included 4 pages of photographs. The Tenant affirmed they served each Landlord with copies of the same documents and photographs they had served to the Residential Tenancy Branch (RTB). The Landlords confirmed receipt of the Tenants' submissions and photographs and noted they had received that evidence on August 15, 2016.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Have the Landlords proven entitlement to monetary compensation?
2. If so, are the Landlords entitled to retain the security deposit?

### Background and Evidence

The Landlords' witness (the Witness) testified he was the realtor who had listed the rental property for sale on July 30, 2015. He stated he had the property listed until December 1, 2015 at which time the property had not sold. The Witness stated he had a professional photographer take pictures of the rental unit on July 30, 2015 and those photographs were posted online with the real estate listing.

The Witness asserted there were several areas of the rental unit that they could not photograph due to the volume of the Tenants' possessions inside the rental unit. He asserted the volume of possessions continued to increase during the course of the listing. He testified the yard was very overgrown and unkempt compared to when he saw the property in 2012. He also noted that there were so many possessions inside the garage and house that any damages he could see were general normal wear and tear. He clarified his statement saying that the house was very full and cluttered so he did not have a clear view of all areas.

Each person was provided the opportunity to ask the Witness questions; however, neither the Tenant nor the Agent asked the Witness questions. The Witness provided his testimony, as summarized above and then disconnected from the hearing.

The parties entered into the initial one year fixed term tenancy agreement which began January 1, 2013 and ended on December 31, 2013. Rent of \$1,700.00 was payable on the first of each month. In December 2012 the Tenants paid \$850.00 as the security deposit. The Tenants continued to occupy the rental unit and the parties entered into subsequent written fixed term tenancy agreements with the last agreement ending on December 31, 2015. Rent remained at \$1,700.00 per month throughout the subsequent tenancy agreements. The Tenants returned possession of the rental unit to the Landlords on December 31, 2015 after completion of the move out inspection.

Both Tenants were present at the move in inspection on December 31, 2012 and the move out inspection which was conducted on December 31, 2015. Although both Tenants were present at the inspections only one Tenant signed the condition inspection report form at move in and at move out.

The rental unit was described as being a single detached home that was built in 2007. The Landlords have owned the home since 2009. The interior of the house was fully repainted in December 2012 just prior to the start of this tenancy.

The Landlords submitted evidence that at the end of the tenancy, the rental unit had been left damaged and required additional cleaning, as noted on the move out inspection report. The Landlords now seek \$1,995.65 which is comprised of the following:

1) \$399.00 for labour to repair the hardwood floor by removing damaged pieces of wood and replacing them with the wood pieces the Landlord had in his possession. The Landlord provided photographic evidence of the deep scratches and dents left in the floor. The Landlord indicated his photographs were taken on either December 31, 2015 or January 1, 2016. The Landlord argued the Tenant had an elliptical trainer exercise machine set up directly on the hardwood which caused significant damage to the floor in one of the bedrooms. He noted that she had also screwed a large eye hook into the ceiling joist as part of her rope exercise system.

2) \$609.00 to repair and repaint the ceiling and walls – The Landlords submitted evidence of large holes that had been incorrectly patched. He noted the Tenants had mounted a large screen television to one wall and there were damages to other walls. The Landlord asserted the Tenants had also screwed a large eye hook into the ceiling joist in one bedroom as part of their rope exercise system.

3) \$767.51 to replace the glass cook top – the Landlords stated they sent a text to the female Tenant shortly before the end of their tenancy to check to see if there was anything that needed repair. They asserted the Tenant informed them at that time about a burner that was not working in the cooktop. The Landlord argued that when he went to fix the cooktop he saw the chip / crack on the edge of the cooktop

and that he had cut his finger on it. He asserted the cook top cover cannot be repaired and must be replaced because it is glass and is sharp.

4) \$40.14 to repair the shelf in the freezer section of the refrigerator – the Landlord asserted this shelf was broken during the tenancy.

5) \$180.00 for three additional hours of cleaning (3 x \$60.00/hour) the two Landlords had to complete on December 31, 2015 and January 1, 2016, a statutory holiday. The Landlord argued all the bathrooms had not been cleaned, there was urine on the toilet seat and caked in the toilet bowl; there was hair and stains in the drawers; underneath the sinks were dirty; all of the window tracks were dirty; the walls had marks on them as if someone attempted to wipe them; there was egg yolk on the counter and stove top; the stainless steel appliances were covered with spots and smudges; and there was a pile of debris left in the yard which included rusted out bicycles.

The Landlord asserted they were not claiming for all of the little things or the damages that were found after the move out condition report was completed.

The Tenant and Agent confirmed responsibility for item (4) the \$40.14 to repair the shelf in the freezer. They disputed the remaining items claimed as follows:

1) The Tenant argued the damage to the hardwood floor was “normal wear and tear”. When I asked the Tenant to explain to me what normal wear and tear meant he stated “marks left from a chair moving back and forth on the hardwood”. Upon further clarification the Tenant argued there was no damage caused to the floor; however, there were scuff marks here and there. The Agent testified the Tenants’ exercise equipment was nothing more than ropes attached to the ceiling eye hook. She asserted that bedroom was set up as an office and the exercise ropes would not damage the floor.

2) The Tenant asserted they had verbal permission to “get comfortable” and were allowed to put as many holes in the walls as they needed. He stated he patched the holes and when he opened the paint that was in the garage he found that it had spoiled. The Agent submitted that she overheard her daughter having a telephone conversation with the Landlord who told the Tenant not to worry about painting the walls.

Upon review of his evidence, the Tenant testified the photographs which they submitted into evidence were printed off of the internet from the real estate listing which were taken by the realtor’s photographer in July 2015. He argued those photographs displayed how they kept the rental unit clean and well cared for.

3) The Tenant testified he assisted the Landlord in picking up the glass cook top on December 17, 2015 in order for the Landlord to replace the burner underneath. He asserted there were no cracks in the cook top at that time. The Tenant stated the chips in the cook top were not brought to his attention until the move out inspection. He argued the chips would have been caused by the Landlord when he attempted to pry the cook top up from the counter.

The Agent testified she had been at the rental unit on several occasions. She stated she was assisting the Tenants with moving and cleaning during the last couple of days of December 2015. She asserted she had never seen a crack in the cook top during the tenancy. I then asked the Agent “when was the first time you saw the crack / chip in the cook top?” The Agent responded: “when I saw it in the photographs”.

5) The Tenant testified they had spent six hours over the last two days cleaning the rental unit. He asserted there was “no way” there was an additional three hours of cleaning required. He admitted that he had not seen the toilet in the second bathroom and as far as he was aware everything was clean and in good shape.

The Agent testified the last time she was at the rental unit was on December 31, 2015 at 2:00 p.m. She asserted her daughter was still cleaning the rental unit at the time the Landlord showed up to conduct the inspection. She admitted that her daughter, the female Tenant, had missed cleaning a drawer or two and continued to clean them as they were pointed out by the Landlords. The Agent randomly argued that the Tenants did not normally wear shoes in the rental unit.

The Tenant initially stated that he felt bullied into signing the condition inspection report form. He then stated the female Tenant was the only person who signed the form and that he was never given an opportunity to sign it. He argued the Landlord bullied them to the point the female Tenant began to cry.

The Landlord refuted the Tenant and Agent's submissions. He stated that he did not use threats or intimidation during the move out inspection. He argued that both Tenants had the opportunity to sign the move out inspection; and in fact, the male Tenant was standing right beside the female Tenant looking at the report when she signed it. He said the male Tenant could have easily signed it if he had wanted to. The Landlord pointed out how the female Tenant was well aware of the *Tenancy Act* as she quoted it to him several times during their tenancy.

The Landlord reminded the Tenant and Agent that there was an elliptical machine set up in the second bedroom and there were boxes and food in that room, as if that room was used as an exercise room and pantry. He asserted that room was not set up as an office as alleged by the Agent.

The Landlord denied ever using a screw driver to pry the cook top up from the counter. He stated he used the screw driver to remove the screws from under the counter and then simply picked up the cooktop.

In closing, the Landlord submitted the move out inspection was originally scheduled to be conducted on December 30, 2015. However, the Tenants were not finished moving so it was scheduled for December 31, 2015 at 1:00 p.m. at which time the Tenants were still moving. The inspection was then pushed to December 31, 2015 at 5:00 p.m. which was the latest time the Landlords could conduct the inspection. The Landlord argued the Tenants were so busy moving all of their possessions during that time there was no way they had time to conduct six hours of cleaning, as submitted by the Tenant.

### Analysis

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 32 (3) of the *Act* provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

I favored the Landlords' submissions over the submissions of the Tenant and Agent as the Landlords' submissions were forthright; consistent; credible; and supported by documentary evidence, photographic evidence, and the Witness' testimony.

I favored the Landlords' submissions over the Tenant's and Agent's submissions, in part, because the Tenant's and Agent's submissions were inconsistent. The Tenant initially submitted the floors were not damaged and then stated they only had scuff marks on them. He then went on to explain any "damage" was considered normal wear and tear which he described as being similar to marks left on the floor by a chair sliding across it. I find, pursuant to section 62 of the *Act*, by the Tenant's own submission he confirmed the floor had suffered some damage.

Furthermore, both the Tenant and Agent argued the glass cook top had not suffered damage during the tenancy. The Tenant later argued the glass cook top was damaged on December 17, 2015, the day he assisted the Landlord with lifting the cook top up from the counter so the Landlord could replace the burner underneath. The Agent testified the first time she saw the damage was when she saw the photographs.

Upon review of the photographs submitted by the Landlords, I note the Landlords had not submitted a photograph of the cook top. Upon review of the photographs submitted by the Tenants, which they testified were copied from the on-line July 2015 real estate listing, there was a photograph of the cook top which clearly showed the damaged edge.

In addition, in consideration that the Landlords had submitted all of their documentary and photographic evidence at the same time they completed and submitted their application for Dispute Resolution; I find, pursuant to section 62 of the *Act*, the Landlords' submissions that they served each Tenant with copies of their application for Dispute Resolution, hearing documents, documentary and photographic evidence in one complete package, to be reasonable given the circumstances presented to me during the hearing.

I further accept the move in and move out condition inspection report form fairly represents the condition of the rental property on December 31, 2012 and on December 31, 2015, pursuant to section 21 of the Regulations. I do not accept the Tenant's assertion that they were bullied or coerced into signing the condition inspection report form. Accordingly, I accept the Landlords' submissions that the rental unit had been left with some damage and required additional cleaning at the end of the tenancy, in breach of sections 32 and 37 of the *Act*.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], 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.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*. I concur with this policy and find it is relevant to the matters currently before me.

From their testimony the Landlords claimed for labour only to remove and replace the damaged hardwood floor. The Landlords stated they did not seek compensation for the actual cost of the hardwood. Depreciation of an item is not applicable when the request is solely for labor costs. I accept the Landlords' submissions that the floor in the bedrooms was badly gouged and was scratched in other areas which required the boards to be replaced, as recorded on the condition inspection report form. Accordingly, I grant the labor costs, as per the quote provided in evidence, in the amount of **\$319.00**, (\$300.00 + \$19.00), pursuant to section 67 of the *Act*.

Policy Guideline 40 provides that the normal useful life of interior paint is 4 years. In this case the walls had been last painted in December 2012, three years prior to the end of this tenancy. Therefore, I find there was one year of useful life (depreciated value) of the interior paint remaining. That being said, the existence of unrepaired or improperly repaired damages that were caused to the walls during a tenancy does not depreciate.

Upon review of the \$609.00 quote for repairs and painting of the rental unit provided by the Landlords, I note the quote states the quote was to prepare (fill all holes); paint four walls; a ceiling; and seal all cracks. The amount quoted included all labour, paint, and supplies and did not show the amount for labour and supplies for painting separate from the amount for repairs.

Notwithstanding the Tenants argument that there were pre-existing cracks in the walls, I find, pursuant to section 62 of the *Act*, the aforementioned quote fairly represents the damages as listed on the move out condition inspection report form and displayed in the Landlords' photographic evidence.

After consideration of the above, I grant the application for labour and supplies for wall and ceiling repairs in the amount of **\$200.00**. That amount is comprised of \$150.00 for wall repairs plus \$50.00 for the ceiling repair, pursuant to section 67 of the *Act*.

In addition, I grant the application for labour and supplies to paint the 4 walls and the one ceiling in the depreciated amount of **\$102.25**. The depreciated amount was calculated based on one remaining year out of the four years of useful life for the remaining amount of the quote ( $1/4 \times \$609.00 - \$200.00$ ), pursuant to section 67 of the *Act*.

*Residential Tenancy Policy Guideline #16* states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where the loss does not affect the operation of an item, what can be considered a minimal loss, but they are an affirmation that there has been an infraction of a legal right. I find this policy relevant to the claim for replacement of the cook top.

It was undisputed that the glass cook top had been damaged. As indicated above, I favored the Landlords' submissions over the Tenant and Agent's submissions. That holds true in relation to the submissions regarding how and when the glass cooktop was broken. The Landlords' submissions were the cooktop was installed in 2007. The normal useful life of appliances based on Policy Guideline 40 is approximately 15 years. Therefore, I conclude there was approximately 8 years or more remaining in the normal useful life of the cooktop.

After consideration of the foregoing, I find that despite the cooktop being minimally cosmetically less appealing, and sharp at one edge, it can still be safely used for its intended purpose, as supported by the fact that it has not been repaired or replaced and is continuing to be used. Therefore, I find the Landlords are entitled to nominal damages in the amount of **\$204.67**, pursuant to section 67 of the *Act*. That amount was determined based on 8 out of the 15 years remaining of the normal useful life of the quoted price ( $8/15 \times \$767.51$ ) and then half of the remaining replacement cost for cosmetic and minimal damages ( $1/2 \times \$409.34$ ).

Based on the photographic evidence plus the condition of the rental unit as listed in the move out condition inspection report form; I find, pursuant to section 62 of the *Act*, the Landlords' claim for 3 hours

of cleaning at \$60.00 per hour for 2 people cleaning to be reasonable given the circumstance presented to me during the hearing. Accordingly, I grant the application for cleaning in the amount of **\$180.00**, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

**Monetary Order** –The Landlords' award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$850.00 security deposit since December 2012.

Labour to replace the floor	\$ 319.00
Wall and Ceiling repairs	200.00
Wall and Ceiling painting	102.25
Cook Top cosmetic damages	204.67
Cleaning labour	180.00
Filing Fee	<u>100.00</u>
<b>SUBTOTAL</b>	<b>\$1,105.92</b>
<b>LESS: Security Deposit \$850.00 + Interest 0.00</b>	<b><u>- 850.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 255.92</u></b>

The Tenants are hereby ordered to pay the Landlords the offset amount of \$255.92 forthwith.

In the event the Tenants do not comply with the above order, the Landlords have been issued a Monetary Order in the amount of **\$255.92** which may be enforced through Small Claims Court upon service to the Tenants.

### Conclusion

The Landlords were primarily successful with their application and were granted a monetary award of \$1,105.92. That award was offset against the Tenants' security deposit leaving a balance owed to the Landlords of \$255.92.

This decision is final, legally 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: August 31, 2016

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**Residential Tenancy Branch**