



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

On May 10, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord's Application indicates the Landlord is seeking a monetary order in the amount of \$1,050.00 for damage to the rental unit. The Landlord provided a monetary order worksheet which contains two separate cost estimates to have the repairs completed by handyman services. Other than a receipt for carpet cleaning, the Landlord did not provide a breakdown of the amount of money she is claiming for each specific item in the unit that she alleges was damaged.

The Landlord's Application includes a claim that she is seeking to keep all or part of the pet damage deposit or security deposit.

The Tenant identified that the parties participated in a previous hearing where the return of the security deposit was decided.

I find that the security deposit issue was already decided in a previous hearing and the Landlord is barred from including the claim for the security deposit in this hearing. The Landlord's request to keep all or part of the deposit is dismissed.

#### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties testified that the tenancy commenced in August 2012. The Tenant is to pay the Landlord monthly rent in the amount of \$1,100.00. The Tenant paid the Landlord a security deposit of \$500.00. Neither party provided a copy of the tenancy agreement.

The Landlord testified that when the Tenant moved out on December 1, 2015, and there was lots of cleaning needed in the rental unit.

The Landlord is requesting compensation for the following items:

Carpet cleaning	\$114.45
Kitchen sink and counter	
Fridge	
Kitchen faucet	
Oven	
Storage door	
Washroom	
Screen door	

The Landlord provided two quotes for the repair of the items listed above. One quote provides a cost of \$640.00 for labour. The other quote provides a cost of \$1,469.10 for materials and labour. Neither quote provides a breakdown of the cost to repair the items listed above.

#### Carpet Cleaning

The Landlord testified that the Tenant lived in the rental unit for three years and the carpets needed to be cleaned. The Landlord testified that she used the carpet cleaning

service that the Tenant arranged. The Landlord provided a receipt in the amount of \$114.45 for carpet cleaning.

The Tenant testified that the Landlord brought up the issue of carpet cleaning on the last day.

#### Kitchen Sink Counter

The Landlord testified that the Tenant is responsible for burn marks/ damage to the counter by the kitchen sink. The Landlord testified that she has not repaired the counter. The Landlord provided photographs of damage to the counter tops.

The Tenant testified that he did not damage the unit and does not know about the marks on the counter top.

#### Kitchen Faucet

The Landlord testified that the Tenant is responsible for cleaning and repair of the kitchen faucet. The Landlord provided two photographs of the kitchen faucet.

In response the Tenant testified that he has no idea what happened to the faucet.

#### Fridge

The Landlord testified that the Tenant is responsible for the missing door handle of the fridge. The Landlord provided two photographs of the fridge.

In response the Tenant testified that the handle broke off the fridge in the first year. He testified that the fridge is old and that he had been looking for a part.

#### Oven

The Landlord testified that the Tenant is responsible for damage to the oven. The Landlord testified that the oven does not turn on and two elements on the stove top do not work. The Landlord testified that the oven is 10 years old. The Landlord provided a photograph of the oven.

In response the Tenant testified that he never used the oven. He testified that he never baked. He testified that he only used two of the elements as the other two elements never worked.

Storage Door

The Landlord testified that the storage door has fallen off. The Landlord testified that the paint on the door is chipped. The Landlord testified that the interior of the rental unit was last painted four years prior.

The Tenant did not provide a response to this claim.

Washroom

The Landlord testified that the Tenant is responsible for a missing shower door handle. The Landlord testified that she had to purchase a new handle and install it at a cost of approximately \$250.00.

In response the Tenant testified that the handle came off during the tenancy.

Screen door

The Landlord testified that the Tenant is responsible for damage to the screen door. The Landlord testified that the entire screen needs to be replaced.

In response the Tenant testified that the screen door was already damaged. He testified that he does not recall damaging it, but he did put duct tape on it.

A witness for the Landlord who is the new tenant in the rental unit provided affirmed testimony regarding damage in the rental unit. G.K. testified that she moved into the unit on January 1, 2016. She testified that the fridge was missing a handle; the oven was not working; elements on the stove were not working; the storage door was broken; the kitchen counter was burned; and the kitchen tap is loose.

The Tenant provided photographs of the state of cleanliness of the rental unit and text messages between the parties after the Tenant gave notice he was moving out of the rental unit.

A copy of two text messages from the Landlord states:

*"You and your girls have kept the place well, so the condition is still good and the house is still new compared to other rental properties nearby....."*

*“OK. Please remember to get a handyman to fix the broken door. It may be worthwhile to get a cleaner in as well if you and the girls don’t get enough time to clean thoroughly. Thanks for being considerate of taking care of our place, your home for the last 3 years.”*

The Tenant submitted that the Landlord did not perform a move out inspection on November 30, 2016, so he left the keys with the Landlord’s mother.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 21 of the Residential Tenancy Regulation states:

*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.*

I find that the Landlord failed to perform a move in and move out inspection with the Tenant as required by the Act. The Landlord has testified about damage and has provided documentary evidence of damage to the rental unit after the Tenant moved out, but I find there is no evidence to establish the condition of the rental unit at the time the Tenant moved in.

The Landlord is seeking compensation for specific items that she alleges were damaged, however the Landlord did not assign a monetary value to each item of her claim, and her estimates for repair do not indicate the cost to repair each item.

Section 2.5 of the Residential Tenancy Branch Rules of Procedure states an applicant must submit:

- *a detailed calculation of any monetary claim being made*

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

#### Carpet Cleaning

The Residential Tenancy Policy guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

I find that the Tenant lived in the rental unit for more than three years and is responsible for the cleaning of the carpets at the end of the tenancy. I accept the Landlord's evidence that a professional carpet cleaning company cleaned the carpet. I find that the Tenant is responsible to pay the Landlord \$114.45 for the cost of the carpet cleaning.

#### Kitchen counter

The Tenant testified that he did not cause damage the counter. While the Landlord's photographic evidence shows damage, I find that due to the Landlords failure to complete a move in inspection report at the start of the tenancy, there is no evidence to establish when the damage occurred.

The Landlords claim for compensation for damage to the counter is dismissed.

Kitchen faucet

There is insufficient evidence to establish that the kitchen faucet is damaged. The witness testimony indicates the faucet is loose. The Tenant is not responsible for reasonable wear and tear to the rental unit or site and the Landlord has a responsibility to maintain the premises.

The Landlords claim for compensation for damage to the counter is dismissed.

Fridge

I find that the Tenant is responsible for the damage to the fridge door handle. The Tenant testified that the handle came off and he was seeking a replacement part. The Landlord did not provide evidence of the value of the damage or loss. I award the Landlord a nominal amount of \$20.00 for the fridge door handle.

Oven

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states that the Landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the Tenant.

There is insufficient evidence before me to prove that the problem with the oven was due to deliberate actions or neglect by the Tenant. The Landlord's claim for compensation for repair of the oven is dismissed.

Storage door

The Residential Tenancy Policy Guideline # 40 Useful Life of Building Elements states that the useful life of interior paint is 4 years.

The Tenant is not responsible for reasonable wear and tear to the rental unit or site. I find that due to the Landlord's failure to complete a move in inspection report at the start of the tenancy, there is no evidence to establish when the damage to the door occurred. With respect to chipped paint, the Landlord testified that the interior paint was four years old. I find that the Landlord is not entitled to compensation for painting.

The Landlord's claim for compensation for repair of the door is dismissed.

Screen door

I find that due to the Landlord's failure to complete a move in inspection report at the start of the tenancy, there is insufficient evidence to establish when the damage to the screen door occurred or who caused the damage.

The Landlord's claim for compensation for repair of the screen door is dismissed.

Washroom shower

The Tenant testified that the shower door handle came off during the tenancy. The Landlord testified that she had to purchase a new handle because it was missing. The Landlord is claiming \$250.00 for the purchase and installation of the door handle. I find that there is insufficient evidence to prove that the Tenant was responsible for the shower door handle falling off. However, I find that the Tenant is responsible for the loss of the door handle. I accept the Landlord's testimony that she purchased a new shower door handle. I award the Landlord \$125.00 in compensation for the replacement cost of a shower door handle.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with her application, I order the Tenant to repay the \$50.00 of the fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$309.45. I grant the Landlord a monetary order in the amount of \$309.45. The order must be served on the Tenant and may be enforced in the Provincial Court.

Conclusion

I find that the Tenant owes the Landlord the amount of \$309.45. I grant the Landlord a monetary order in the amount of \$309.45.

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: November 24, 2016

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Residential Tenancy Branch