



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

On June 6, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent; for damage to the rental unit; for money owed or compensation for damage or loss under the Act, Regulations, or tenancy agreement; to keep all or part of the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. The Tenant confirmed she received the Landlord's documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Landlord entitled to keep all or part of the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began on July 1, 2014, as a 6 month fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,650.00 was payable on the first of each month. The Tenant paid the Landlord a security deposit of \$825.00. The parties testified that the Tenant moved out on May 1, 2016, but personal items remained in the unit until May 8, 2016.

*Loss of Rent and Security Deposit*

The Landlord testified that the Tenant moved out of the rental unit without providing the proper notice required under the Act. The Landlord testified that she was able to rent the unit out to a new Tenant beginning May 7, 2016. The Landlord testified that she suffered a loss of rent for 6 days.

The Landlord testified that the Tenant provided her forwarding address on May 25, 2016. The Landlord testified that she returned \$505.00 of the security deposit to the Tenant on June 6, 2016. The Landlord testified that the Tenant agreed to the deduction of \$320.00 for the loss of rent for 6 days of May 2016. The Landlord is seeking to keep the \$320.00 she retained for loss of rent.

The Tenant testified that she failed to give the Landlord proper notice to end the tenancy and that she agreed to allow the Landlord to retain \$320.00 from the security deposit for the 6 days of rent for May 2016.

The Landlord and Tenant testified that the Landlord failed to perform a move in inspection and provide the Tenant with a copy of a condition inspection report at the start of the tenancy. The parties testified that the Landlord did not provide the Tenant with a move out condition inspection report at the end of the tenancy.

*Damage*

The Landlord testified that the Tenant is responsible for damage and cleaning costs to the rental unit in the amount of \$5,000.00. The Landlord makes the following claims:

|   |            |
|---|------------|
| Cleaning Fees                               | \$160.00   |
| After spouts                                | \$23.45    |
| New bedroom door                            | \$109.75   |
| Washing machine repair                      | \$526.56   |
| Items needed for repairs                    | \$125.61   |
| Laminate flooring                           | \$3,835.29 |
| Labour for cleaning and repairing/ painting | \$219.34   |

*Cleaning Fees*

The Landlord testified that after the Tenant moved out, the rental unit needed to be cleaned. The Landlord testified that she hired a cleaner for 8 hours at \$20.00 per hour

to clean the ceramic tile grout, blinds, light fixtures, and paint touch ups. The Landlord is claiming \$160.00 for the cost of 8 hours of cleaning to the unit.

In response, the Tenant testified that she cleaned the rental unit from top to bottom and the only thing she did not clean was the oven.

#### After Spouts

The Landlord testified that there were two spouts at the bottom of the downspouts on the house at the start of the tenancy. The Landlord testified that the spouts were missing at the end of the tenancy. The Landlord is claiming \$23.45 for the replacement cost of the spouts.

In response the Tenant testified that she has no idea what the spouts are and has no idea if they were moved.

#### Bedroom Door

The Landlord testified that the bedroom door was new when the Tenant moved into the rental unit. The Landlord testified that the Tenant is responsible for a 2.5 inch gouge in the door. The Landlord provided a copy of a color photograph of the door taken just after the Tenant moved out. The Landlord is claiming \$109.75 for the replacement cost of the door. The Landlord provided a copy of the receipt for the new door.

In response, the Tenant testified that she did not see any damage to the door during the tenancy. The Tenant acknowledged the photograph of the door and testified that it was a child's bedroom and that it is possible that her son damaged the door.

#### Washing Machine Repair

The Landlord testified that the Tenant is responsible for the cost to repair the washing machine. The Landlord testified that the washing machine was purchased used and was approximately 3 years old. The Landlord provided an invoice that provides an estimate for repair of the washing machine in the amount of \$526.56. The invoice states that the washing machine has a "Defective motor assy". The Landlord purchased a new washing machine but is claiming \$526.56 towards the cost of the purchase.

In response the Tenant testified that the washer and dryer worked fine during the tenancy and that she never attempted to repair the washing machine.

### Items for Repairs

The Landlord testified that she needed to purchase items for a few small repairs. The Landlord is claiming \$125.61 for adhesives and caulking and provided a receipt for the purchases.

In response, the Tenant agreed to the Landlord's claim for these items.

### Laminate Flooring

The Landlord testified that the Tenant damaged the laminate flooring. The Landlord testified that all the flooring in the rental unit was new when the Tenant moved in. The Landlord testified that there was damage to flooring in the master bedroom and the living room. The Landlord provided a letter from a construction company stating that the laminate flooring in the rental unit was new as of May 2014. The Landlord provided a receipt for the cost of new laminate flooring. The Landlord testified that the flooring can not be repaired and has to be replaced by removing the existing flooring. The Landlord testified that the replacement laminate is the same quality of flooring that was previously installed in the rental unit. The Landlord provided color photographs of the damage to the laminate flooring. The Landlord is claiming \$3,835.29 for new laminate flooring.

In response, the Tenant acknowledged that her dog did damage the floor in the bedroom. The Tenant also acknowledged that she damaged the floor in the living room when she moved her stereo.

### Labour for Cleaning and Painting

The Landlord testified that she spent four evenings and weekends cleaning the rental unit. She testified that her claim of \$219.34 is to round her claim up to an even \$5,000.00. The Landlord testified that she spent 8 hours cleaning the rental unit.

In response the Tenant testified that the Landlord never mentioned any mess when they walked through the rental unit. The Tenant stated that the Landlord only mentioned the damaged flooring and walls.

### Analysis

Based on the evidence before me, the affirmed testimony of the Landlord, and on a balance of probabilities, I make the following findings:

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 to the unit and has provided documentary evidence of damage to the rental unit after the Tenant moved out, but I find there is little evidence to establish the condition of the rental unit at the time the Tenant moved in.

### Cleaning Fees

The Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises provides clarification of the responsibilities of the Landlord and Tenant regarding maintenance, cleaning, and repairs of residential property. A Tenant is not responsible for reasonable wear and tear to the rental unit or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

When two parties provide different but equally believable testimony, the applicant making the claim bears the burden of proof. The Landlord did not complete an inspection condition report to establish the condition of the unit at the start and end of the tenancy. The Landlord did not provide any photographic evidence to support the claim for the cleaning. The Tenant testified that she cleaned the unit from top to bottom.

The Landlord has not provided sufficient evidence to prove this claim. I dismiss the Landlord's claim for compensation in the amount of \$160.00.

### Spouts

The Landlord did not complete an inspection condition report to establish the condition of the unit at the start and end of the tenancy. The Landlord did not provide any evidence to establish that the down spouts were present on the property at the start of the tenancy. The Landlord did not provide sufficient evidence to prove that the Tenant was responsible for the missing down spouts. The Landlord's claim for \$23.45 is dismissed.

### Bedroom door

I find that the Tenant is responsible for the damage to the bedroom door. The Landlord testified that the door was new when the Tenant moved in. The Landlord provided a photograph of the damage. Tenant stated that it is possible that her son damaged the door. I grant the Landlord the amount of \$109.75 for the cost of a new door.

### Washing machine

The Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises provides clarification of the responsibilities of the Landlord and Tenant regarding maintenance, cleaning, and repairs of residential property. The Guideline 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.

I find there is insufficient evidence from the Landlord to establish that the Tenant deliberately damaged or neglected the washing machine. The washing machine was purchased, used, and the invoice states that the washing machine has a "defective motor assembly". I find that the washing machine was defective.

The Landlord's claim for compensation in the amount of \$526.56 for a new washing machine is dismissed.

Items needed for repairs

The Tenant agreed with the Landlord's claim for compensation in the amount of \$125.61.

Laminate flooring

The Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guideline for determining the useful life of building elements when considering Applications for damages. The Guideline indicates that hardwood flooring has a useful life of 20 years.

The Landlord is claiming \$3,835.29 for new laminate flooring.

The Tenant admitted to damaging the floor in the bedroom and Livingroom. I find that the Tenant is responsible to pay the cost to repair the floor.

I find that the flooring was 2 years old, and that the useful life of the floor is 18 years. The replacement cost of the floor, divided by 20 and multiplied by 18 is the amount that Tenant must pay to the Landlord. ( $\$3835.29/20 = \$191.76 \times 18 = \$3,451.76$ )

The Tenant owes the Landlord \$3,451.76 for new flooring.

Labour for cleaning.

I dismiss the Landlord's claim for compensation in the amount of \$219.34.

The Landlord testified she chose the amount of \$219.34 to round the amount of her claim up to \$5,000.00. The Landlord did not provide any photographic evidence to support the claim for the cleaning. The Tenant testified that she cleaned the unit from top to bottom and that the Landlord did not mention any mess to her other than the damaged flooring.

Rent and Security Deposit

I find that the Tenant moved out without giving the Landlord proper notice to end the tenancy and is therefore responsible to pay for the 6 days of lost of rent suffered by the Landlord. The Landlord returned the security deposit to the Tenant, less 6 days of rent,

with agreement from the Tenant within 15 days of receiving the Tenant's forwarding address.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3,787.12 comprised of \$3,687.12 for damage; and \$100.00 for the fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$3,787.12. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant left the rental unit damaged and unclean. The Landlord is granted a monetary order for the unpaid rent; cost of repairs; and the cost of the filing fee in the amount of \$3,787.12

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: December 19, 2016

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Residential Tenancy Branch



