



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNSD

### Introduction

This is a revised application brought by the Landlord requesting a monetary order in the amount of \$3201.49, and a request to retain the full security deposit towards the claim. The applicant is also requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issues are, whether or not the applicant has established monetary claim against the respondents, and if so in what amount, and whether or not an order should be issued allowing the landlord to retain the full security deposit towards the claim.

### Background and Evidence

The parties agree that this tenancy began on April 1, 2011 with a monthly rent of \$2600.00 due on the first of each month.

The parties also agree that the tenants paid a security deposit of \$1250.00 on April 8, 2011.

The parties also agree that the tenancy ended on June 30, 2016 and that a forwarding address in writing was given to the landlord.

The parties also agree that no move-in inspection report was ever done; however a moveout inspection report was done at the end of the tenancy.

The landlord testified that a move in inspection report was not done because the rental unit was brand-new at the beginning of the tenancy.

The landlord further testified that, the original carpets in the rental unit were expensive wool carpets, and she has provided a quote from the carpet company that shows that cost to replace the wool carpets would have been approximately \$4500.00.

The landlord further testified that the tenants left the carpets stained such that they could not be cleaned at the end of the tenancy and therefore she had to replace the carpets.

The landlord further testified that she could not afford the expensive cost of wool carpets, and therefore she replaced the carpets with a less expensive brand, at a total cost of \$1433.17, and she therefore asks that the tenants be held responsible for the full amount of the less expensive carpets.

The landlord further testified that, although the fridge was new when the tenants moved in, when the tenants moved out there were broken parts in the refrigerator that had to be replaced, and the replacement cost for those broken parts came to \$235.58.

Landlord further testified that the tenants left a portion of the tile in the rental unit with a significant red wine stain, and left stains on the balcony from potted plants, and as a result she had to have those stains removed at a cost of \$420.00, and she has provided the invoice for the cost of that cleaning.

The landlord further testified that the tenants left the tile and grout throughout the rental unit dirty, and in need of cleaning, and, as a result, she also had to have that tile/grout cleaned at a cost of \$840.00.

Landlord further testified that the washing machine did not work properly when the new tenants moved in September of 2016, and the repair person found that there was a piece of plastic stuck behind the washer barrel, and the cost to have that removed was \$172.74.

The landlord further testified that at the beginning of the tenancy there were two garage remotes supplied to the tenants, and at the end of the tenancy only one was returned and it cost \$100.00 to replace the missing garage remote.

The tenants testified that the carpets did indeed get stained during their tenancy however they felt that over a five-year tenancy this would be considered normal wear and tear. They further stated that not all the carpets were stained and they therefore do not believe they should have to pay the full amount claimed by the landlord.

The tenants further testified that the shelf in the refrigerator broke under normal use and not by any kind of abuse on their part. The shelf was designed to hold a large milk jug and that's all they used on that shelf, they therefore believe that this was normal wear and tear.

They further testified that the drawer in the refrigerator that was also replaced broke under normal use as well, just from normal opening and closing and they therefore do not believe they should be held liable for the cost of any the refrigerator repairs.

The tenants do admit that they inadvertently left a wine stain on the tile in the rental unit however they believe it could have easily been cleaned up with bleach, and they do not believe the amount charged by the landlord for cleaning up this stain is reasonable.

The tenants also testified that there was some staining on the balcony, however they cleaned approximately 75% of the stains and they do not believe this charge for cleaning the remaining 25% is reasonable.

With regards to the tile and grout in general, the tenants argued that they left the tile and grout in a reasonably clean condition and should not be charged anything further for this cleaning. They note that part of the landlord's bill also includes sealing the granite countertop, and there was nothing whatsoever wrong with the granite countertop when they left.

The tenants also testified that the timestamp on the photos supplied by the landlord clearly shows that the photos were taken prior to the arrival of their professional cleaner who arrived at 11 PM on June 30, 2016, the same date as the photos were taken. They therefore do not believe that the photos are an accurate representation of the cleanliness of the rental unit after their professional cleaner had completed the cleaning.

The tenants also testified that the washing machine worked fine when they did a last load of laundry on June 30, 2016, and therefore they fail to see how they can be held responsible for any damage to the washing machine, especially since the landlord claims that the damage was not found until September 2016 when new tenants moved in.

The tenants testified that they do not dispute the claim for the lost remote.

In response to the tenants testimony the landlord testified that the photos supplied were taken after the tenants cleaners had finish cleaning.

The landlord further testified that no one used the washing machine between the date that the tenants moved out and the date the new tenants discovered that it was not working.

### Analysis

It is my finding that the landlord has shown that the tenants damaged the carpets in the rental unit beyond cleaning and as a result the carpets had to be replaced. Further I also find that the landlord has shown that the original carpet was a much more expensive carpet than the carpet with which it was replaced. I therefore allow the landlords request for the full replacement cost of the less expensive carpet.

The tenants argued that there is normal depreciation expected over a five-year term of the tenancy, however I find that the normal depreciation has been taken into account by the fact that the landlord replaced the carpet with a carpet of much lower quality than the carpet that was damaged by the tenants.

I deny the landlords claim for repairs to the refrigerator however because the landlord has not met the burden of proving that the damage to the refrigerator was a result of any negligent or willful actions on the part of the tenants, and that this damage was not just the result of normal wear and tear under normal daily use.

The tenants testified that they did not abuse the refrigerator and used it in a normal manner, and, in the absence any evidence to the contrary, I find they are not responsible for the cost of the repair to the refrigerator.

I will however allow the landlords claim for the cost of cleaning the wine stain on the tile, and the stains on the balcony. The tenants have admitted to causing the wine stain on the tile, and although the tenant claims that he did further cleaning to the balcony he has provided no evidence in support of that claim. The landlord has provided an invoice from the company that did the cleaning of both the wine stain and the balcony, and it is my decision that the tenants are liable for the cost of that cleaning.

I will not however allow the landlords claim for general cleaning of the tile and grout and sealing of the granite countertop. It is my finding that the landlord has not shown that

the tenants failed to leave the tile and grout, and the granite countertop in a reasonable state of cleanliness. The landlord claims that the photos taken of the tile grout were taken after the tenants cleaners had been at the rental unit however it's my finding that the time stamp clearly shows that the photos were taken prior to the arrival of the tenants professional cleaner at 11 PM.

I also deny the landlords claim for the repair to the washing machine. This tenancy ended on June 30, 2016 and the landlord claims that the problem with the washing machine was not found until September 2016, and it is my finding that too much time passed between the end of the tenancy and the date at which this repair was done for it to be considered the responsibility of the tenants. Further, the landlord testified that the new tenants found the problem with the washing machine; however there is insufficient evidence to show that this problem was not caused by the new tenants.

The tenants do not dispute the claim for the garage remote, and therefore I have allowed that portion of the claim.

Further, since I have allowed a significant amount of the landlords claim, I also allow the landlords request for recovery of the \$100.00 filing fee.

Therefore the total amount of the landlords claim that I have allowed is as follows:

Replace stained carpets	\$1433.17
Professional cleaning of balcony and wine stained tiles/grout	\$420.00
Replace garage remote	\$100.00
Filing fee	\$100.00
Total	\$2053.17

The landlord has requested an order to retain the security deposit towards this claim; however section 24(2) of the Residential Tenancy Act states:

**24(2)** The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, the landlord has admitted that no move-in inspection report was done at the beginning of the tenancy, and therefore the landlord's right to claim against the security deposit was extinguished at that time.

Further the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

Therefore, since the landlords right to claim against the security deposit had been extinguished, the landlord was required to return the security deposit to the tenants within 15 days of the end of the tenancy or the date the landlord got a forwarding address in writing.

This tenancy ended on June 30, 2016, and the landlord obviously had a forwarding address by July 15, 2016 when the application was filed, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenants. The tenants paid a security deposit of \$1250.00, and therefore the landlord was required to pay \$2500.00 to the tenants.

### Conclusion

I have allowed \$2053.17 of the landlords claim, and I therefore have set off that amount against the \$2500.00 amount of the security deposit payable to the tenants, and I have issued a monetary order for the landlord to pay the difference of \$446.83 to the tenants.

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: January 30, 2017

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Residential Tenancy Branch