



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on August 30, 2016. The landlord stated the packages were returned unclaimed. The landlord state a copy was also sent by email on August 30, 2016.

Section 90 of the Act determines that a document sent by registered mail is deemed to have been served five days later. Failure to pick up the packages is not grounds from review. I find that the tenants have been duly served in accordance with the Act.

The landlord appeared gave affirmed testimony and was 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 evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on January 15, 2015. Rent in the amount of \$1,575.00 was payable on the 15<sup>th</sup> of each month. The tenants paid a security deposit of \$800.00. The tenancy ended on August 12, 2016.

The landlord claims as follows:

a.	Cleaning	\$ 165.00
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b.	Carpet cleaning	\$ 68.25
c.	Refrigerator door replacement	\$ 615.55
d.	Kitchen sink replacement	\$ 357.13
e.	Repair to walls	\$ 600.00
f.	Microwave replacement	\$ 379.00
g.	Labour to repair laminate floor	\$ 735.00
h.	Repair broken tile	\$ 787.50
i.	Broken fob	\$ 100.00
j.	Unpaid rent	\$ 630.00
k.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$4,537.43</b>

### Cleaning

The landlord testified that the tenants left the rental unit messy. There was hair in the bathroom. The landlord stated they did not provide any documentary evidence, such as photographs showing the rental unit was left unreasonably clean. The landlord stated that seek to recover the cost of the cleaner in the amount of \$165.00. Filed in evidence is a receipt.

### Carpet cleaning

The landlord testified that the tenants did not clean the carpet at the end of the tenancy. The landlord stated that the carpet was left dirty with stained. The landlord stated that they paid to have the carpet cleaned and seek to recover the amount of \$68.25. Filed in evidence are a photograph and a receipt.

### Refrigerator door replacement

The landlord testified that the tenants caused damage to the refrigerator door by leaving a large dent. The landlord stated the only way to repair the dent is to replace the door. The landlord seeks to recover the estimate cost to replace the door in the amount of \$615.55. Filed in evidence are photographs of the door, which shows a large dent. Filed in evidence is an estimate for repair.

### Kitchen sink replacement

The landlord testified that the kitchen sink was dented. The landlord stated that they are unable to remove the dents. The landlord seeks to recover the estimated amount of \$357.17. Filed in evidence is a photograph of the sink. Filed in evidence is an estimate for replacement.

### Repair to walls

The landlord testified that the tenants caused damage to the walls by hanging picture and frames on the walls leaving holes. The landlord stated that the tenants also caused damage to the bathroom door as the door stop went through the door from the door being missed used. The landlord stated that there was wall damage around the door frames, above the door frames and the wall where the cabinet meets. Filed in evidence are photographs. Filed in evidence is an estimate.

#### Microwave replacement

The landlord testified that the tenants placed something in the microwave that exploded and the microwave is now showing an error code. The landlord stated that the microwave will not work and they were informed that the cost of the repair would likely be greater than purchasing a new microwave. The landlord seeks to recover the estimated cost of the microwave in the amount of \$379.00. Filed in evidence is a photograph of the microwave showing an error code. Filed in evidence is an estimate for replacement.

#### Labour to repair laminate floor

The landlord testified that the tenants caused damage to the laminate floor as there were three holes in the flooring. The landlord stated that they are able to have the floor repaired; however, they have to have some of the flooring removed in order to replace the damaged panels. The landlord seeks to recover the estimated cost of labour in the amount of \$735.00. Filed in evidence are photographs of the floor and an estimate for repair.

#### Repair broken tile

The landlord testified that the tenants broke a tile. The landlord seeks to recover the estimated cost to remove and replace the tile in the amount of \$787.50. Filed in evidence is a photograph and an estimate for repair.

#### Broken fob

The landlord testified that the tenants returned two fobs at the end of the tenancy; however, one fob was broken. The landlord seeks to recover the estimated cost of the fob in the amount of \$100.00. Filed in evidence is a photograph.

#### Unpaid rent

The landlord testified that the tenants did not pay rent for the 12 days that they were residing in the rental property. The landlord stated that the tenants were served with a 2 Month Notice to End Tenancy. The landlord stated that they did not give the tenants compensation equal to one month of rent.

#### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

**Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Cleaning

In this case, the landlord has provided no photographic evidence to support that the tenants left the rental unit uncleaned. While I accept the landlord paid to have a cleaner attend the premises; however, the invoice submitted as evidence indicates it was for move-in clean. I find this is more likely than not to bring the unit to a higher standard than required by the Act as the tenants are only required to leave the rental unit reasonably clean. Therefore, I find the landlord has failed to provide sufficient evidence that the tenants breached section 37 of the Act. Therefore, I dismiss this portion of their claim.

### Carpet cleaning

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are expected to clean the carpets if vacating after a tenancy of one year.

I accept the evidence of the landlord that the tenants did not have the carpet cleaned at the end of the tenancy. This is supported by documentary evidence. I find the tenants have breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover carpeting cleaning costs in the amount of **\$68.25**.

### Refrigerator door replacement

I accept the evidence of the landlord that the tenants' caused damage to the refrigerator door. The move-in condition inspection report shows there was no dent in the door at the start of the tenancy. The photographs show a large dent in the exterior of the door. I find this is not normal wear and tear, rather I find this damage was caused by neglect. I find the tenants have breached the Act, when they failed to leave the rental undamaged and the landlord suffered a loss. I accept the estimate provide by the landlord. Therefore, I find the landlord is entitled to recover the estimated cost of repair in the amount of **\$615.55**.

### Kitchen sink replacement

In this case, the landlord has provided a photograph of the kitchen sink. Even If I accept there is minor denting in the base of the sink. I cannot determine if this exceeds normal wear and tear as there was no evidence of neglect presented. Therefore, I dismiss this portion of the landlord's claim.

### Repair to walls

The landlord has provided photographs; however, the photographs have been enlarged to a point that I am not able to see the entire area. Some of the damage to the door frames appears to be from poor installation, as the doors are rubbing on the frame causing damage. Photograph #108, of the wall attached to the cupboards appears to be from the building settling, not neglect. Photograph #109, appears to be cocking along the trim that has discolored due to age.

While I am not satisfied the tenants are responsible for the full amount claimed. I am satisfied that the tenants caused damage to the door as excess force had to been used to have the door stop penetrate the door. I am also satisfied that some of the damage to the door frame, such as damage above the frame would be from neglect. I find the tenants have breached the Act and the landlord suffered a loss. Therefore, I find a reasonable amount for compensation is half the amount claimed in the amount of **\$300.00**.

#### Microwave replacement

I accept the evidence of the landlord that the tenants caused damage to the microwave. The move-in condition inspection report shows there were no issues with the microwave at the start of the tenancy.

The photograph of the microwave shows an error code. The evidence of the landlord was that this caused by something exploding. I find this is not normal wear and tear, rather I find this damage was caused by neglect. I find the tenants have breached the Act when they failed to repair the microwave and the landlord suffered a loss.

I accept the evidence of the landlord that it more cost effective to purchase a new microwave. In this case the microwave has not been replaced and is approximately four years old.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenants damaged an item, the age of the item may be considered when calculating the tenants' responsibility for the cost of replacement.

I have determined based on the guideline that the microwave had a useful life span of ten years. The microwave was four years old. I find the landlord is entitled to the depreciated value of sixty percent.

The evidence of the landlord was it cost \$379.00 to replace the microwave. Therefore, I find the landlord is entitled to compensation for the cost of replacing the item in the depreciated value of **\$227.40**.

#### Labour to repair laminate floor

I accept the evidence of the landlord that the tenants caused damage to the laminate floors as this is supported by the photographs. The move-in condition inspection shows there were no holes in the flooring at the start of the tenancy. I find the tenants have breached the Act when they failed to repair the damaged flooring and the landlord suffered a loss.

In this case the flooring has to be removed to replace the three panels. I find the amount claimed not unreasonable. Therefore, I grant the landlord the cost of the floor repair in the amount of **\$735.00**.

#### Repair broken tile

Although the landlord provided an estimate to replace the tile, the estimate appears to be exceptional high as only one tile would need to be removed and replaced.

Further, I am not satisfied that the tile needs to be replaced. While the landlord submitted a photograph of the tile which they said is cracked; the photograph appears to shows a surface scratch. I find without further evidence, such a proper inspection report of the tile or additional quotes that the landlord has failed to prove their claim. Therefore, I dismiss this portion of the claim.

#### Broken fob

I accept the evidence of the landlord that the tenants caused damage to one of the fobs. I find the tenants have breached the Act when they failed to return the fobs undamaged.

However, I am not satisfied on the amount claimed as there was no documentary evidence to support the cost and the amount claimed seems to be exceptionally high. Therefore, I find an appropriate amount for compensation is **\$25.00**.

#### Unpaid rent

When tenants are served with a 2 Month Notice to End Tenancy for Landlord's Use of Property they are entitled to receive from the landlord an amount equal to one month of rent. In this matter the tenants did not pay rent for the last 12 days they resided in the premises; however, the landlord did not compensation the tenants as required by the Act. Therefore, I find the landlord is not entitled to recover rent for the 12 days as that amount goes towards the tenants' compensation.

I have not made any determination at the hearing whether the tenants were fully compensated as required by the Act, as that issue is not for me to consider at today's hearing.

I find that the landlord has established a total monetary claim of **\$2,071.25** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,271.25**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

#### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: March 15, 2017

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Residential Tenancy Branch