



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant, an agent for the tenant and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord testified that he was not served the tenant's evidence seven days before the hearing as required under the Rules of Procedure. I have reviewed the tenant's evidence and find that the majority of this evidence was also sent to the landlord in the tenant's application heard on February 27, 2017. As the landlord did receive that evidence earlier I find it would not prejudice the landlord and will not result in a breach of the principals of natural justice if I consider the tenant's evidence for this hearing in accordance with rule 3.17. 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 Issues

With regard to the landlord's application for an Order of Possession based on a One Month Notice to End Tenancy for cause (the Notice); I refer the parties to the previous decision made by myself on February 27, 2017 for the tenant's application to dispute the Notice. At that hearing the Notice was cancelled. Res Judicata is a doctrine that prevents rehearing of claims and/or issues arising from the same cause of action, between the same parties, after a final judgment was previously issued on the merits of the case.

I decline to hear the matters regarding the landlord's application for an Order of Possession based on the reasons given on the Notice, as those issues were decided upon in the February 27, 2017 Decision. (File number is located on the front page of this Decision). To rehear those issues now would constitute Res Judicata, as defined above. This section of the landlord's application is therefore dismissed without leave to reapply.

I was advised the landlord had applied for a review of the earlier decision made on February 27, 2017 and a review hearing has been ordered. Any matters regarding the Notice can be addressed at that review hearing in full or in part.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2014. Rent for this unit is currently \$750.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$380.00 on August 17, 2014.

The landlord testified that the tenant caused damage to the kitchen cabinets. The tenant agreed at the last hearing that her son pulled the doors off the cabinets. The landlord referred to a quote provided in documentary evidence showing that a cost of \$613.69 will be incurred for the landlord to replace the cabinet under the sink. This includes taking off the countertop installing a new cabinet and replacing the countertop. The landlord testified that the cabinets are approximately 15 years old and will be replaced with a like for like cabinet.

The landlord testified that the tenant has caused damage to the carpets. The carpets were newly installed in August 2014 just before this tenancy started. The tenant has stained the carpets and there is a long carpet pull on the bedroom carpet. The landlord testified that he does not have the original receipt for the carpet when he put it in the unit but does refer to a letter from another tenant who has written that the flooring was replaced prior to the tenant moving in. The landlord also referred to his photographic evidence showing the bedroom carpet in a new condition without staining or pulls. The landlord testified that the carpet is just over two years old. The landlord has provided an estimate to replace the carpet for \$884.41.

The landlord testified that the tenant has caused damage to the walls in the bedroom. The landlord referred to his photographic evidence to show a number of small and large holes in the walls. The landlord also referred to a letter from another tenant who writes that the unit was all repainted prior to the tenant moving in. The landlord testified that he had new drywall put in by a drywall company and he had painted the unit prior to the tenant moving in. The landlord's contractor will now have to cut sections of the drywall out to repair the holes and replace this and the walls will need to be repainted. The

landlord referred to his photographic evidence showing the bedroom at the start of the tenancy without any damage to the walls. The landlord also provided an estimate for these repairs of \$900.00.

The landlord testified that there is no further monetary claim for money owed or compensation for damage or loss.

The landlord requests an Order to be permitted to keep the security deposit in partial satisfaction of his claim for damages.

The tenant disputed the landlord's claim for repairs. The tenant's agent gave testimony on behalf of the tenant and testified that the tenant did agree that her son pulled off the doors of the kitchen cabinet but due to a past water leak that the landlord failed to repair the screws would not hold the hinges for the doors on. The tenant had called and left messages for the landlord about this water leak and he did not repair it so the tenant's father made the repair to the faucet. The tenant's agent testified that the landlord's quote is high and the tenant also obtained a quote to have the repairs done and intends to make the repairs and referred to the tenants quote obtained to do the same work. This work order has been signed by the tenant for that company to do the work. The quote is for the amount of \$450.00. The tenant's father works for the cabinet company who will do the repair but the quoted price was not discounted because of this. Although the tenant has agreed to do the repairs because of the water leak the tenant does not feel she should be held responsible for the full cost of the repairs.

The tenant disputed that she has stained or caused carpet pulls on the bedroom carpet. The tenant's agent testified that there is no evidence from the landlord to show the carpets were new at the start of the tenancy and that it is the tenant's position that this staining and any carpet pull was in place prior to her moving into the unit. The tenant's agent testified that in any event the tenant has a right to have the carpets cleaned at the end of the tenancy.

The tenant disputed that she caused any damage to the walls in the unit. The tenant's agent testified that this damage was in place when the tenant moved in. The tenant's agent agreed she was not present at that time and only saw the unit later. The tenant's agent testified that the landlord has not provided any proof that the walls were in a good condition at the start of the tenancy or that he had painted the unit as he failed to complete a move in condition inspection report with the tenant when she moved in. The tenant's agent questions the validity of the painting and repair estimates she states these repairs can be made in a day.

The tenant's agent asked the landlord how he obtained the quotes for this work. The landlord responded that he sent pictures and measurements to the painting company and the painter quoted on the square footage of the room. The landlord testified that this is not a one day repair. The damaged drywall needs to be cut out and replaced and then muddied, sanded, muddied again and sanded, primed and painted. The tenant's agent asked the landlord why he did not do a move in inspection if he had done all these renovations before the tenant moved in. The landlord responded I don't know it was all good and the tenant's father and stepmother were there with her. The tenant's agent asked the landlord why he did not submit receipts for the things he did prior to the start of the tenancy. The landlord responded I don't have the receipts as this work was done over two years ago. The tenant's agent asked the landlord if he has ever received a letter from the tenant about repairs. The landlord responded only in January, 2017 after the eviction notice was served to the tenant. The tenant's agent asked the landlord if he had received any messages from the tenant about repairs. The landlord responded no.

The landlord asked the tenant's agent to explain when he was contacted about the water leak at the sink. The landlord testified that this would not have anything to do with the door hinges on the cabinets being ripped out as the water damage does not go up that far. The tenant's agent testified that the tenant contacted the landlord several times and left messages he did not respond to.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied from the evidence before me that the tenant or a person permitted on the property by the tenant has caused damage to the kitchen cabinet; has caused damage to the carpet with a carpet pull and stains; and has damaged the walls in the bedroom. I find on a balance of probabilities that the landlord has sufficient evidence to meet the burden of proof that this damage was caused through the tenant's actions or neglect and is beyond normal wear and tear. The tenant has a responsibility under s. 32 of the *Act* to either repair or replace the cabinets or pay for them to be repaired; to either have

the carpets cleaned and the carpet pull repaired to a satisfactory standard; and to repair and repaint the walls in the bedroom.

With this in mind I refer the parties to s. 32(2), 32(3) and 32 (4) of the Act which states:

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

*(3) 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.*

*(4) A tenant is not required to make repairs for reasonable wear and tear.*

The tenant must take responsibility for this damage and therefore be held accountable for the repairs to the damage in the unit; however, the tenant must be given an opportunity to repair this damage at her own expense before the landlord can file an application for this damage. If the tenancy was ending then it is likely the landlord would be awarded a Monetary Order for these repairs; however, as the Notice was cancelled at a previous hearing then this tenancy will continue at this time and as such the tenant still has time to make these repairs.

I therefore Order the tenant to comply with s. 32 of the Act and repair any damage caused to the unit or common areas as described above. Further to this the tenant also agreed that she is responsible for the entrance door and I Order that this door is also replaced. These repairs must be completed to a satisfactory standard and must be done by a competent person before this tenancy ends or at least within three months of the date of this decision if the tenancy continues.

If the tenant does not complete the repairs as ordered the landlord is at liberty to file a new application to recover the cost of any repairs required at the end of the tenancy. The landlord's application for repairs is therefore dismissed with leave to reapply.

With regard to the landlord's application to keep the security deposit, A security deposit is held in trust by the landlord until the end of the tenancy; as the tenancy is continuing at this time, then the landlord is not entitled to an Order to keep the deposit and it must be held in trust until the tenancy ends and then dealt with in accordance to s. 38 of the *Act*. The landlord's application is therefore premature and is dismissed with leave to reapply.

As the landlord's application for repairs and an Order to keep the security deposit is premature then the landlord must bear the cost of filing his own application.

### Conclusion

The landlord's application for an Order of Possession is dismissed without leave to reapply.

The landlord's application for repairs and to keep the security deposit is dismissed with leave to reapply.

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 14, 2017

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Residential Tenancy Branch