



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

On September 1, 2016, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for damage to the unit; to keep all or part of the pet damage deposit or security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and the Tenants attended the hearing. The parties provided affirmed testimony. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

In this decision I only describe the evidence relevant to the issues and findings in this matter.

### Preliminary and Procedural Matters

The Residential Tenancy Branch received the Landlord's evidence on March 2, 2017, four days prior to the hearing. The Tenants testified that they received the Landlord's documentary evidence and have had an opportunity to consider it. The Tenants were offered an opportunity for more time to consider the evidence but declined the opportunity stating they wish to proceed with the hearing.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit/ property?
- Is the Landlord entitled to keep the security deposit or pet damage deposit towards the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Parties testified that the tenancy began on November 1, 2014. Rent in the amount of \$2,100.00 was to be paid on the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$1,050.00 and a pet damage deposit of \$1,050.00.

The Landlord testified that the Tenants left the rental unit damaged and unclean at the end of the tenancy.

The Landlord submitted a monetary order worksheet claiming compensation for the following items:

Item	Claim
Tile Sealer	\$149.19
Carpet Cleaning	\$77.74
Screen Door	\$109.76
Drywall/ Toilet seat	\$34.33
Painting Ceiling	\$45.22
Door Jam / Trim Paint	\$94.82
Painting on Main floor	\$217.42
Plumbing Pump	\$2,441.25

#### Tile Sealer \$149.19

The Landlord testified that the floor tiles on the basement bathroom were left unclean. The Landlord testified that he had to use muriatic acid to etch the grout in order to clean it. The Landlord testified that after cleaning the grout he had to reseal the grout. The Landlord testified that the tile floor was new at the start of the tenancy. The Landlord provided two color photographs of the tile floor and provided a receipt in the amount of \$149.19 for the tile sealer.

In response, the Tenant testified that the cleanliness of the tile grout was just normal wear and tear. The Tenant testified that the Landlord caused more damage by trying using acid to repair the grout which caused more damage to the grout and required the grout to be resealed.

The Tenant refers to the condition inspection report that was completed at the end of the tenancy. The Tenant submitted that the condition inspection report does not capture any damage or uncleanliness of the tile floor.

Carpet Cleaning \$77.44

The Landlord testified that the Tenants did clean the carpet at the end of the tenancy. The Landlord testified that the carpet required more cleaning due to flea infestation and due to a couple of red/ green stains on the bedroom carpets. The Landlord testified that the Tenants had a dog. The Landlord testified that he also has a dog, but it is not permitted to be on the top floor. The Landlord provided color photographs of the carpet showing a red and green staining. The Landlord provided a receipt for carpet cleaning in the amount of \$77.74.

In response, the Tenants testified that they did clean the carpet. They testified that they also showed diligence by arranging for a pest control company to attend the rental unit and have it inspected. The Tenant testified that the pest control company showed up to the rental unit 48 hours prior to the date of the invoice. The Tenants provided copies of receipts for the flea/insect inspection and the carpet cleaning.

Screen Door \$109.76

The Landlord testified that the screen door in the rental unit was damaged by the Tenants' cat and had to be replaced. The Landlord provided a photograph of the damaged screen door. The Landlord provided a receipt for the replacement of the screen door in the amount of \$109.76.

The Tenant testified that the damage to the screen door was pre-existing. The Tenant testified that a repair kit for the screen door would have cost approximately \$14.

The Tenants testified that damage to the screen door was not captured in the condition inspection report.

Drywall and Toilet Seat \$34.33

The Landlord testified that the toilet see was damaged and needed to be replaced. The Landlord provided photographs of the main bathroom walls. The Landlord testified that there were six holes in the wall that needed to be repaired. The Landlord provided a receipt for the purchase of a new toilet seat, a putty knife, and Droid X2 compound to repair the holes in the wall.

In response, the Tenants testified that the toilet seat was not broken. The Tenants submitted that the condition inspection report does not list damage to the toilet seat. With respect to the holes in the walls, the Tenants testified that they hung pictures and

used plugs. The Tenants testified at the end of the tenancy the holes were patched and sanded but we're not painted.

Ceiling Paint \$45.22

The Landlord testified that the ceiling in bedroom three had to be repainted due to damage caused by the Tenants. The Landlord testified that the Tenant had attached glow stars to the ceiling which when removed caused damage to the ceiling. The Landlord testified that the ceiling needed to be repainted. The Landlord testified that the bedroom was painted 3 or 4 years prior. The Landlord provided a receipt in the amount of \$38.99 for the cost of the paint.

In response, the Tenants acknowledged that glow stars were put on the bedroom ceiling. The Tenants testified that he believed he could remove the stars without damage. The Tenant testifies that the damage is not highlighted in the condition inspection report.

Door Jamb and Trim Paint \$94.82

The Landlord testified that the doors and trim were damaged by the Tenants' cat. The Landlord testified that the doors and frames had to be sanded and painted. The Landlord provided color photographs of scratches on doors and trim. The Landlord provided a receipt for the cost of the paint for the door jamb and trim paint.

In response, the Tenants testified that they have a cat but the cat was never upstairs in the unit. The Tenant submitted that the damage was pre-existing and is not more than regular wear and tear. The Tenant submits that the damage is not listed in the condition inspection report.

Main Floor Painting \$217.42

The Landlord testified that he found 105 holes in the walls. The Landlord testified that he had to fill, sand, and paint the walls. The Landlord testified that 20 walls needed to be repaired. The Landlord testified that he bought one large pail of paint for the entire unit. The Landlord testified that the living room had just been repainted prior to the Tenants moving in. The Landlord testified that the kitchen was repainted five years earlier. The Landlord testified that there were holes in the wall in the kitchen. The Landlord provided a receipt for the cost of the paint in the amount of \$217.42.

In response the Tenants submitted testified that there were some pre-existing holes when they moved in and that they patched all the holes. The Tenants testified that they did not paint over the patches.

Plumbing Pump \$2,441.25

The Landlord testified that there is a pump on the property that pumps the grey water up into the sewer line. The Landlord testified that the pump was installed by a contractor 7 years prior and had warranty work performed 6 years prior.

The Landlord testified that when the Tenants moved out the Landlord noticed a problem with the pump. The Landlord testified that he noticed the pump was very noisy, and found that it was jammed. The Landlord testified that when the pump was taken apart; a face cloth and other items were found inside the pump. The Landlord provided color photographs the pump and the items that were found within the pump.

The Landlord testified that the tenancy agreement has a term with respect to the pump. The Landlord referred to clause 32 of the tenancy agreement that states:

*the Tenant acknowledges and agrees that untreatable products such as Q-tips condoms tampons hair cigarette filters for butts sanitary napkins were disposable diapers will not be put down the toilet.*

The Landlord provided a receipt for the replacement of the grinder pump in the amount of \$2,441.25. The Landlord testified that he chose to purchase a rebuilt pump rather than have it repaired for \$1,811.25.

The Landlord testified that the rental property was rented out to other Tenants prior to this tenancy.

In response, the Tenant testified there was no pre-inspection of the pump at the start of the tenancy. The Tenant testified that the pump was working when the Tenants moved out. The Tenants submitted that the life expectancy of the pump is between 1 to 8 years and the pump was perhaps at the end of its life cycle.

The Tenants submitted that they had two issues with the plumbing back in 2015. They submit that a plumber came out with a snake and cleared the line and there was no further problem while they were living there.

The Tenants testified that they were aware of what they can and cannot flush. They submit that none of the objects found inside the pump belong to them. The Tenants

submitted that clause 32 of the tenancy agreement does not specifically mention a grinder pump, it just indicates to watch what we put down the drain.

### Conditioning Inspection Report

The Tenants testified that they participated in a move in and move out inspection of the rental property. The Tenants testified that they were provided a copy of the condition inspection report at the end of the tenancy. Both parties provided a copy of the condition inspection report. The Tenant K.M. testified that she agreed that the Landlord could retain \$100.00 for cleaning and \$112.00 for a water bill and \$2.10 for rent. The Tenants provided their forwarding address within the condition inspection report.

### Analysis

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.*

Residential Tenancy Policy Guideline # 16 Compensation for Damage or Loss addresses the criteria for awarding compensation and the limitation periods for filing claims. The Guideline provides that:

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

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

I find that the Landlord and Tenants inspected the condition of the rental unit at the start and end of the tenancy and a copy was provided to the Tenants as required by section 23 and 35 of the Act. I note that the Landlord did not sign the move out inspection section. Nevertheless, I accept that the Condition Inspection Report ("the CIR") is evidence of the state of repair and condition of the rental unit at the start and end of the tenancy.

### Tile Sealer \$149.19

The Landlord's claim for re-sealing the grout is dismissed. The Condition Inspection Report ("the CIR") indicates that the floors of the bathrooms were satisfactory at the

start and end of the tenancy. The photographs provided by the Landlord show a very small area of the floor and I am not satisfied based on the evidence provided that the Tenants are responsible for the cost of the sealer.

Carpet Cleaning \$77.44

The CIR indicates that the floors of the rental unit were satisfactory at the start and end of the tenancy. The Landlord provided color photographs that showing red and green discoloration on the carpets. I find that the Landlords testimony and photographic evidence has more weight than the CIR. I find that the Tenants are responsible for the Landlord's cost to clean the carpets.

I grant the Landlord \$77.44.

Screen Door \$109.76

I find that the exterior screen door is damaged. I find that the CIR does not specifically list the screen door and therefore the CIR is not helpful to determine the condition of the door at the start and end of the tenancy. The Tenant testified that the damage to the screen door was pre-existing. The Landlord has not provided any evidence to show the condition of the door at the start of the tenancy. The burden of proof rests with the person seeking compensation. There is insufficient evidence from the Landlord to establish that the Tenants are responsible for the damage to the screen door. The Landlord's claim is dismissed.

Drywall and Toilet Seat \$34.33

The CIR indicates that the walls of the bathroom were satisfactory at the start and end of the tenancy. I find that the Landlords' photographic evidence shows the walls needed to be repaired. The Tenants acknowledged they hung pictures and did not fully repair the holes before they moved out. I find that the Tenants are responsible for the Landlord's cost for the materials to repair the walls. The Landlord claim for a toilet seat is dismissed. There is insufficient evidence from the Landlord showing damage to a toilet seat and that the Tenants are responsible for the damage.

I grant the Landlords \$8.00 for the cost of the materials as indicated in the receipt provided.

Ceiling Paint \$45.22

I find that the Tenants acknowledged affixing the glow stars and that removal of the stars caused damage.

I grant the Landlord \$45.22 for the cost of paint for the ceiling.

Door Jamb and Trim Paint \$94.82

I find that the CIR establishes that there was no damage or cleaning required to the interior living areas, halls, or bedrooms at the start of the tenancy. The CIR contradicts the Tenant's suggestion that the damage was pre-existing. The CIR indicates some of these areas required cleaning or were damaged at the end of the tenancy.

I accept the Landlords testimony and photographic evidence of damage to the door jams and trim and I grant the Landlord \$94.82 for the cost of the paint.

Main Floor Paint \$217.42

The CIR indicates that at the move out inspection, some walls in the rental unit were damaged/ patched. The Tenants testified that they did patch some holes but did not paint over the patches.

Based on the testimony, documentary, and photographic evidence before me I grant the Landlord \$217.42 for the cost of paint for repainting the walls on the main floor.

Plumbing Pump \$2,441.25

Residential Tenancy Policy Guideline # 40 is a general guide for determining the useful life of building elements for considering applications and determining damages. Useful life is the expected lifetime or acceptable period of use of an item under normal circumstances.

When applied to damages caused by a Tenant the arbitrator may consider the useful life of the building element and the age of the item. The arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenants responsibility for the cost or replacement.

The Landlord seeks the replacement cost of the pump. The Tenant suggested the pump has a useful life of 8 years and the Landlord did not make a submission related to the useful life of the pump.

I find that the pump is an electric and mechanical device similar to a plumbing fixture or underground sprinkler, and as such, I find it has a useful life of 10 years.

I find that that the pump was approximately seven years old and had previous warranty work done on it.

I find that there was no pre-inspection of the pump at the start of the tenancy. I accept the Landlords testimony and photographic evidence showing items that were blocking the pump; however, I find it is not possible to determine whether the items were flushed into the pipes and pump prior to this tenancy; during this tenancy; or after this tenancy ended.

I find that there is insufficient evidence from the Landlord that the Tenants were negligent and are responsible for the replacement cost of the pump.

The Landlord's claim for the replacement cost of the pump is dismissed.

#### Security Deposit

I find that the Landlord complied with the legislation surrounding security deposits by arranging for a moved in and move out inspection and by providing the Tenants with a copy of the condition inspection report at the end of the tenancy. The Landlord applied for Dispute Resolution to keep the security deposit within 15 days from the date they received the Tenants' forwarding address. The Tenants moved out of the unit on August 19, 2016.

#### Monetary Awards

The Landlord has established a monetary claim in the amount of \$442.90.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord had some success with his Application; therefore, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I order that the Landlord can keep retain \$542.90 from the Tenants' security deposit in satisfaction of this claim.

The Landlord is directed to repay the remaining amounts of the Tenants' security deposit and pet deposit, less the \$214.10 that was agreed to, within 15 days of receiving this decision.

#### Conclusion

The Landlord established a monetary award against the Tenants for damage and cleaning costs in the amount of \$442.90.

The Landlord is granted the cost of the filing fee for the hearing.

The Landlord can keep \$542.90 from the security deposit in satisfaction of the award.

The Landlord must return the remaining amounts of the Tenants' deposits within 15 days of receiving this decision.

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: April 2, 2017

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Residential Tenancy Branch