



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MND MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for damage to the rental unit, compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution and secondary evidence package. The landlord confirmed receipt of the tenant's evidence package sent on April 6, 2017.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order against the tenant?  
Is the landlord entitled to retain the tenant's security deposit?  
Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on March 1, 2015. The current rental amount of \$1160.00 was payable on the first of each month. The tenant vacated on November 1, 2016. The landlord confirms that he continues to hold the tenant's security deposit in the amount of \$550.00 paid at the outset of this tenancy. The landlord applied to retain the security deposit towards the \$7500.00 monetary amount he sought at this hearing.

The landlord described the residential premises as a house with a basement suite. The tenant resided in the basement suite and he lived upstairs in the house. He testified that the home is approximately 25 years old and that he purchased the property in 2005. The landlord testified that, at the time that he purchased the home, he renovated the residential premises extensively. The landlord testified that, after the tenant vacated the rental unit, there was significant damage requiring repair and renovations to the rental unit. The landlord testified that he did most of the cleaning and some minor repairs himself.

A copy of the condition inspection report was submitted as evidence for this hearing. The condition inspection report described some parts of the unit as dirty at move-out. No items are listed as damaged at move-out. The tenant signed the condition inspection report at move in confirming that the condition of the unit was accurate in the report. For move-out, the tenant wrote that she did not agree that the report fairly represented the condition of the unit. She provided these reasons (not totally legible) in writing on the condition inspection report; "*windows dirty not my fault ... windows are not properly insulated... gets wet and mould... towel handle was broken and Landlord did not replace*". The tenant signed the report at move-out. No deductions from the security deposit are noted on the condition inspection report.

Each party supplied a package of photographs as evidence for this hearing. Both parties stated that their photographs were taken of the tenancy at the end of the tenancy. The landlord's photographs show:

- Oil spots on the driveway spanning two feet;
- Grimy, mouldy window sills;
- Windows with condensation build-up;
- Scuff marks and stains on the walls;
- Holes in the walls;
- Damage to doors (paint chipping);
- A broken closet door;
- A large scrape or scratch in linoleum;
- Food crumbs, dirt and dust behind the appliances; and
- A broken refrigerator interior door handle.

The tenant's photographs show:

- A portion of the driveway clean, without oil stains;
- Vacuumed carpets in the bedrooms;

- Damaged, mouldy blinds;
- A side view of a closet door;
- A clean bathroom, shower, closet, kitchen floor, stove, kitchen cupboards; and
- A dirty damaged carpet in one large room.

One of the tenant's photographs shows an open refrigerator. The interior handle appears to be held together somehow. Otherwise, the refrigerator is very clean.

The landlord testified that the rental unit is approximately 1100 square feet and that the unit had been freshly painted prior to the tenant's move-in however the condition inspection report does not indicate that the unit had new paint at move-in. The landlord testified that the majority of the rental unit required cleaning, repairs and painting at move-out.

The landlord testified that he had to replace the washing machine because, during the course of her tenancy, the tenant damaged the washer. He testified that the washer was approximately 2 years old when the tenant moved into the rental unit. The landlord was unable to provide the receipt or other documentary evidence to confirm the date of the previous purchase of the washer. He testified that he purchased the new, more efficient washer for \$356.16 on September 5, 2016. The broken washer is not included in the condition inspection report however the tenant acknowledged that it had broken. The tenant testified that she had advised the landlord that the washer was broken and needed repair. The tenant did not provide a copy of any written note to the tenant regarding the washer.

The tenant testified that she always advised the landlord of required repair during her tenancy. The tenant did not provide copies of correspondence with the landlord with respect to any repair issues.

The landlord testified that the refrigerator door was broken. This was shown in the photographs submitted by the landlord. He testified that he did not notice the damage to the refrigerator when conducting his inspection as the interior handle was held together at that time.

The landlord testified that the toilet was plugged and he submitted a receipt for \$13.27 to unplug the toilet. This issue was not noted on the condition inspection report however the landlord did make other notes about the bathroom area: that a stopper was missing and the floor had a "few stains".

The landlord testified that there was an oil stain on the driveway that he has been unable to remove. These stains are included on the condition inspection report: at move-in, the landlord wrote “no oil stains” and at move-out, the landlord wrote “oil stains many”.

The landlord testified that the flooring had to be replaced as it was badly damaged: the cost was \$1774.00 for the materials that he installed himself. The only mention of damage to the floors is under “kitchen” in the condition inspection report. At move-in, 2 large and small stains are noted with a code indicating, “scratched”. At move-out, “left double [scratch]” is written on the report. The tenant submitted that the floor scratches were present at the outset of this tenancy.

The landlord submitted that the carpets required cleaning. The landlord referred to a clause within the residential tenancy agreement that states,

*The tenant is responsible for period cleaning of carpets and window coverings provided by the landlord. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy.*

The landlord testified that some of the blinds slats required replacement. He submitted a receipt in the amount of \$43.65. Window coverings in each room of the residence are noted as very dirty on the condition inspection report at move-out and in good condition at move-in. The tenant disputed that the blinds needed to be replaced and says that any dirt resulted from the damp conditions in the rental unit.

The living room floor, on the move-in condition inspection report indicates one long tear and stairs. At move-out, there is simply a check mark which the key indicates symbolizes, “good condition”. The tenant acknowledged that the carpets required cleaning and that she had not had them cleaned.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Therefore, in this case, the landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Once that has been established, the landlord must also provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the landlord has submitted invoices and receipts with respect to most of his monetary claim.

Residential Tenancy Regulation No. 20 is useful in assessing a claim for repairs and cleaning at the end of a tenancy. The regulation provides a list of information that must be included in a condition inspection report. It includes but is not limited to: "a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement" and a "statement identifying any damage or items in need of maintenance or repair".

Residential Tenancy Regulation No. 21 provides the evidentiary weight to be given to a condition inspection report – "a condition inspection report ... 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."

The landlord did not submit receipts with respect to cleaning of the rental unit at the end of the tenancy. The landlord testified that he did most of the cleaning himself. Based on the photographic evidence of both parties as well as the condition inspection report, I find that the only area that the landlord has proven required extra cleaning was behind the appliances at the end of the tenancy. As the tenant testified that she did not attempt to move the appliances and the landlord was required to clean prior to the next tenancy, Section 37(2) provides that the tenant must leave the rental unit reasonably clean. I find that the landlord is entitled to an amount representative of his efforts and time cleaning when the tenant who did not meet her obligations at the end of the tenancy. Therefore, I find that the landlord is entitled to \$40.00 towards cleaning for approximately 2 hours of work.

The condition inspection report does not indicate that the rental unit was painted prior to move-in. The landlord provided photographs of damage to the walls and some large holes that would have required repair and paint. The landlord provided receipts totalling \$984.70 (\$109.87 for labour invoices + \$153.07 for paint purchase receipts + 721.76 for trim replacement and wall repair). Residential Tenancy Policy Guideline No. 40 suggests a four year useful life for walls/paint within a residential rental unit. The landlord would have not been required to paint for 2 years or more as of the move-out date of the tenant. Based on the landlord's proof of his costs, the photographic evidence depicting wall damage as well as consideration of the useful life guidelines, I find that the landlord is entitled to be compensated for these materials, repairs and paint as a

result of the damage caused during the tenancy. Therefore the landlord is entitled to recover \$984.70 towards painting at the end of this tenancy.

The tenant testified that she advised the landlord that the washing machine was broken during the course of her tenancy. However, she also testified that she broke the washer. The landlord was candid in his testimony that he chose not to repair the washer and provide a more energy efficient washer in the rental unit at a cost of \$393.00. The landlord was not able to indicate the age of the washer. Based on the useful life guidelines at Guideline No. 40, the landlord's washer should have been functional for approximately 15 years and he testified he had purchased the washing machine approximately 2 years ago, I find that the landlord is entitled to recover \$235.00 for a portion (60%) of the cost of the washer. The amount is reduced by a portion to take into account its useful life and a further portion to take into consideration the upgrade described by the landlord. The landlord supplied estimates for repairs that indicated that the washer was not worth repairing. I find the landlord is also entitled to a further \$50.00 towards the service calls to assess the washer.

The landlord testified that the refrigerator interior door was broken. The tenant's photographs differed from the landlord's photographs in that the tenant's photographs showed a refrigerator door that was held together somehow. I accept the evidence of the landlord that, after the condition inspection report, he realized that the interior door handle was broken. The landlord provided a receipt for \$44.79. Given that the damage is evident in the photograph of the tenant's as well as the landlord's photograph, I find that the landlord is entitled to recover his costs for this damage in the amount of \$44.79.

Section 37(2) provides that the tenant must leave the rental unit undamaged except for normal wear and tear. Based on the photographs supplied by both parties, the blinds required cleaning at the end of the tenancy. I accept the landlord's evidence that some slats on the blinds had to be repaired or replaced. The landlord submitted a receipt for \$43.65. I find that the landlord is entitled to recover the cost of the repair and replacement of some blind slats given that they were not cleaned as required by the tenant.

I find that the landlord is not entitled to recover the cost of unplugging the toilet in the amount of \$13.27. While the landlord had a receipt proving his cost, I find that the landlord did not prove that this plugged toilet was created by the tenant. The tenant provided undisputed testimony and argument that the landlord had not written this in his condition inspection report and that he had a variety of workers in the unit at the end of the tenancy and after.

The landlord provided testimony, illustrative photographs as well as documentary evidence (the condition inspection report) that there was an oil stain on the driveway that he had to pay to clean. While the tenant disputed the amount of the cost to have the stain removed, I accept the landlord's receipt and find that he is entitled to recover \$40.00 to clean up the oil spill.

The landlord testified that the flooring had to be replaced as it was badly damaged. He submitted a receipt in the amount of \$1774.00. However, I must rely on the best evidence available to me regarding damage and proof that it was caused by the tenant. The best evidence, unless proven otherwise, is the condition inspection report. I note that the condition inspection report notes scratches on the floor at the end of the tenancy but also notes scratches on the floor at the outset of the tenancy. The marks in the landlord's photographs appear significant but I find that the landlord has provided insufficient evidence to show that the tenant caused the floor damage or that it was not already there. Finally, I find that the landlord has not provided sufficient evidence to show that the floor could not be repaired instead of a full replacement. Therefore, I find that the landlord is not entitled to recover the cost of his floor replacement.

The landlord provided a receipt in the amount of \$105.00 for carpet cleaning. The residential tenancy agreement signed by both parties provides that a tenant should regularly clean the carpets and that they should be cleaned professionally at the end of the tenancy. Based on the photographic evidence and the condition inspection report referring to dirty carpets, I find that the landlord is entitled to recover the cost of the carpet cleaning in the amount of \$105.00.

The landlord sought recovery of \$33.55 for an addition to a missing piece of the stove top element and \$16.75 for the replacement of a hose. I find that the landlord has provided insufficient proof to show that the tenant is responsible for the stove top element piece or the replacement of the hose. I also find the landlord is not entitled to recover the cost of several small receipts he submitted for compensation for the purchase of screws, nuts, bolts and sealant: I find these are tools of the landlord to make minor repairs from wear and tear at the end of any tenancy.

In accordance with section 72 of the Act, I find that the landlord is entitled to retain the tenant's security deposit towards his monetary award. Further, as the landlord was successful in his application for a monetary award, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

I grant a monetary order to the landlord as follows,

<b>Item</b>	<b>Amount</b>
Cleaning behind appliances	\$40.00
Wall repair and paint	984.70
Washer (\$235.00) & washer repair visit (\$50.00)	285.00
Refrigerator interior door	44.79
Blinds replacement slats	43.65
Oil stain in driveway	40.00
Carpet cleaning	105.00
Less Security Deposit	-550.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1093.14</b>

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: June 14, 2017

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Residential Tenancy Branch