



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord said they served the Application and evidence for Dispute Resolution on the tenant by registered mail and the tenant agreed he received them. The landlord said he got the tenant's response after the deadline and makes a motion that I not accept this late evidence. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced November 1, 2015, that monthly rent was \$2870 and a security deposit of \$1435 was paid. It is undisputed the tenant vacated on October 30, 2016 and provided his forwarding address in writing in a letter dated November 7, 2016 which the landlord received on November 13, 2016. The landlord applied on November 26, 2016 to claim against the security deposit which he pointed out was within the 15 days permitted under section 38.

The landlord claims as follows:

1. \$288.75 for cleaning. The tenant objected that this seemed too much as he had cleaned. He agreed they did clean everything, for example the bathroom shower and oven.

2. \$7.94 for bulbs burned out in entry light. The tenant agreed responsibility for that.
3. \$446.25 for repair of a chip in the kitchen counter. The landlord pointed out that his evidence included before and after photos and some quotes and an invoice. The tenant had obtained a cheaper quote by email and the landlord said that was to repair a flat colour but the counter had multiple layers of colour. The tenant said it was possible it was there at move-in and not noticed or maybe it was wear and tear. The landlord said they noted many very small items on the move-in report and it would have been noted if there.
4. \$1200 to repair/replace a bathroom counter that is badly stained. The landlord said that after exploring all the options including possible warranty, the only option is to have it replaced at a cost of \$1330 plus plumbing at a cost of \$462. Invoices were included. The parties debated responsibility for this at length. Some photos are in evidence and the landlord invited me to conclude that some marks on the counter were reflections while the tenant invited me to conclude that they were the pre-existing stain. The landlord said no damage to it was noted in the move-in report. The tenant sent a copy of an email from the landlord to him dated November 25, 2016 that said he (the landlord) had not thought to check the real estate photos (taken before move-in for advertising). He states "It turns out the main bathroom stain was there as you can see in the photo attached". The tenant said he had requested from the landlord a copy of the advertising photos taken before he moved in and this email and photo were the result. The landlord said he was just responding quickly to the tenant and he could see some discoloration without a proper inspection. He was trying to get a resolution to the matter. Afterwards, he said he viewed the photo on a computer screen and realized the stain was not the same as at the end of the tenancy; it was just a reflection and there was no stain there. He invited me to view the shape of the stain and position to prove his point.

Both parties submitted documents to support their testimony. Although the tenant's were submitted late, I used my discretion to consider some of the evidence such as photographs and emails between the parties as I noted the landlord had copies of these, had discussed them previously with the tenant and was given opportunity to respond to them during the hearing. In evidence are the move-in and move-out condition inspection reports, the tenancy agreement, photographs, receipts, quotes and emails. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused certain damages for which he claims compensation. I find his evidence credible that the tenant left some items in the unit unclean and it cost \$288.75 for cleaning. His credibility is supported by the condition inspection report and the invoice which shows on move-out, items were left dirty and the cost for cleaning. However, I find on the move-out report, the landlord said the tenant was only responsible for half of the cost of the cleaning or \$144.37 to bring the unit up to the clean standard required under his lease. I find the landlord entitled to recover \$144.37 compensation which he had concluded was the amount of the tenant's responsibility at move-out. I find insufficient evidence to support the tenant's contention that he would have cleaned on the last day if invited by the landlord. I find the landlord entitled to recover \$144.37 for cleaning cost and \$7.94 for bulbs for which the tenant admitted responsibility.

In respect to the chipped kitchen counter, I find the weight of the evidence is that it was not chipped at commencement of the tenancy and was chipped at the end. I find the condition inspection report and photos support this finding. I find the landlord's evidence credible that it cost \$446.25 to repair as it is supported by an invoice and I find him entitled to recover this amount. Although the tenant provided a quote for a lesser amount, I find it was done by email with no inspection and may not have taken into account the complicated colour of the counter so I find his quote not as credible as the landlord's. I find the landlord entitled to recover \$446.25 for the repair.

Regarding the stains on the bathroom counter which were hotly debated by the parties, I find insufficient evidence to support the landlord's claim. It is true that they were not noted on the condition inspection report at move-in but I find the email from the landlord dated November 25, 2016 contradicts his claim that the tenant caused the stains. I do not accept his explanation that he was rushed and did not examine the advertising photograph carefully before he admitted that the bathroom stain was there before the

tenancy commenced. His email is dated 25 days after the tenant moved out. Although both parties invited me to examine the photographs and consider possible stains caused by reflections and how the stains might differ in shape or size, I find the photographs inconclusive to prove that the stains occurred during the tenancy and did not pre-exist. The move-out report states there were 2 large stains in the quartz counter but the tenant did not sign this report and does not agree and subsequently on November 25, 2016 after viewing photographs, the landlord concluded that the tenant had not caused the stains. I find the landlord not entitled to compensation for replacing this counter and plumbing as there is insufficient evidence this damage was caused by the tenant.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain part of the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. I note the result is a balance in favour of the tenant and a monetary order is issued to the tenant for the balance.

**Calculation of Monetary Award:**

Cleaning as noted ½	144.37
Light bulb replacement	7.94
Kitchen counter repair	446.25
Filing fee	100.00
Less security deposit	-1435.00
<b>Balance is monetary order to Tenant</b>	<b>-736.44</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 01, 2017

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Residential Tenancy Branch