



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

On January 10, 2017, the Landlord submitted an Application for Dispute Resolution for a monetary order for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and Tenant attended the teleconference hearing. The parties provided affirmed testimony and were 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 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 and Procedural Matters

On June 1, 2017, a dispute resolution hearing involving the parties was rescheduled after the arbitrator recused himself to avoid a perception of bias.

On June 5, 2017, both parties were mailed a Notice of Rescheduled Hearing providing the date, time, and telephone codes for the teleconference hearing.

The Tenant acknowledged receipt of the Landlord's documentary evidence. The Tenant did not submit any documentary evidence in response to the Landlord's claim.

### Issues to be Decided

- Are the Landlords entitled to a monetary order due to damage
- Are the Landlords entitled to keep the security deposit due to damage
- Are the Landlords entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began in May 1, 2015. Rent in the amount of \$1,400.00 was to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$700.00. The Tenant moved out of the unit on December 31, 2016.

The Landlord testified that the Tenant left the rental unit unclean and damaged.

The Landlord is seeking compensation for the following items:

Curtains	\$36.00
Remote	\$20.00
Oil spill	\$31.97
Toilet installation	\$20.00
Damage to bathtub	\$7.20
Flooring	\$41.53
Floor divider	\$21.19
Broken kitchen tiles	\$40.00
Kitchen tap	\$40.79
French Door damage	\$10.00
Dog waste	\$10.00
Cleaning	\$153.06
Cost of photos	\$45.05
Bathroom drawer	\$5.00
Cement landing	\$0
Entrance door damage	\$0
Total	\$541.79

The Landlord is requesting to keep the security deposit in the amount of \$700.00 in satisfaction of her claim.

#### Curtains \$36.00

The Landlord testified that the Tenant is responsible for damage to curtains. The Landlord testified that the Tenant's dog ripped up the curtains.

The Landlord provided two color photographs showing damage to a curtain. The Landlord provided receipt in the amount of \$67.18.

In response the Tenant testified the dog chewed up one curtain. The Tenant submitted that she purchased replacement curtains and then submitted that she received them as a gift.

#### Remote / Ceiling Light and Fan\$

The Landlord testified that the remote to control the light is missing, and a replacement remote could not be located. The Landlord testified that the light could not be operated without the remote and had to be replaced.

The Landlord provided a color photograph showing a ceiling light/ fan.

In response the Tenant testified that she could not find the remote when she moved out, but she has purchased a universal remote.

Oil Spill \$31.97

The Landlord testified that the Tenant's car was leaking oil on the driveway. The Landlord testified that there were no oils spills on the driveway at the start of the tenancy. The Landlord provided a photograph of an oils spill on the driveway. The Landlord is seeking compensation for labor and material to clean up the oil. The Landlord provided a copy of a receipt in the amount of \$11.97.

In response, the Tenant acknowledged that the oil spill was from her car.

Toilet \$20.00

The Landlord is seeking compensation for the labor cost to install a new toilet in the rental unit.

In response, the Tenant testified that she removed the toilet because the toilet was plugged and the water was overflowing and flooding the floor. She testified that the Landlord replaced the toilet with a new one on the same day the old one was removed.

Damage to Bathtub \$7.20

The Landlord testified that the Tenant is responsible for damage to the bathtub. The Landlord purchased a tub repair compound, and is seeking to recover the cost of \$7.20. The Landlord provided two photographs of the bathtub.

In response, the Tenant testified that she did not notice any chips on the tub and does not know how the tub was damaged.

Flooring \$41.53

The Landlord testified that the Tenant is responsible for damage to the laminate flooring. The Landlord testified that there was water damage to seven strips of laminate flooring. The Landlord provided photographs of the damaged floor. The Landlord submitted that the condition inspection report does not list the front entrance area where the damage occurred. The Landlord provided a receipt for the cost of laminate flooring.

In response the Tenant testified that the damage was pre-existing and the Landlord already sued a previous Tenant for the damage.

Floor Divider \$21.19

The Landlord testified that the Tenant is responsible for damage to a floor divider. The Landlord submitted that the Tenant must have dragged something heavy across it causing the damage. The Landlord provided a color photograph showing damage to a floor divider. The Landlord testified that the divider was new at the start of the tenancy. The Landlord provided a copy of a receipt for a divider.

In response, the Tenant testified that the damage is due to wear and tear. The Tenant submitted that she has two kids and two dogs.

Broken Kitchen Tile \$40.00

The Landlord testified that the Tenant is responsible for damaging a kitchen floor tile. The Landlord testified that she replaced the tile herself and is seeking \$40.00 for the cost. The Landlord provided a color photograph showing a cracked floor tile.

In response, the Tenant testified that she did not notice a broken tile in the kitchen.

Kitchen Tap \$40.79

The Landlord is seeking half of the replacement cost of a kitchen tap. The Landlord testified that the tap was 6 years old and had a hole in it. The Landlord provided a receipt for a faucet.

In response, the Tenant testified that she notified that Landlord in November that there was a problem with water leaking from the tap. The Tenant testified that it was an old tap, and the drain pipes were also leaking. The Tenant submitted that she did not put a hole in the tap.

French Door Damage \$10.00

The Landlord is seeking \$10.00 for the cost to repaint the French doors. The Landlord testified that the paint was new at the start of the tenancy. The Landlord provided four color photographs showing damage to a French door.

In response, the Tenant testified that her dog made marks on the door, and agreed to pay the painting cost.

Dog waste \$10.00

The Landlord testified that the Tenant failed to clean up the dog excrement in the yard.

In response, the Tenant acknowledged there was dog excrement, and submitted that it was frozen in ice, and she would have picked it up if the Landlord had asked.

Cleaning \$153.06

The Landlord testified that the rental unit was not clean at the end of the tenancy. The Landlord testified that the kitchen, living room, furnace room, and floors needed to be cleaned. The Landlord provided color photographs showing the state of cleanliness throughout the rental unit. Photographs were provided of the toilet, bathtub, oven, and windows.

In response, the Tenant testified that she did not clean one of the bathrooms and stated that she did not clean the windows because there was mold and they were poor when she moved in. The Tenant acknowledged that she did not clean the storage area, stove, and kitchen cupboards.

Bathroom drawer \$5.00

The Landlord is seeking \$5.00 for the cost of reattaching a bathroom drawer. She testified that a screw was broken and a new screw was installed. The Landlord provided a color photograph of the bathroom drawer.

In response, the Tenant testified that she told the Landlord that the front of the drawer had come off.

Cost of Photos \$45.05

The Landlord is seeking to recover the cost of having photographs developed for this hearing. The Landlord provided a receipt in the amount of \$45.05 for the cost of the photographs.

Cement Landing and Entrance Door Damage

The Landlord withdrew her claims for compensation for damage to cement landing and entrance door.

Condition Inspection Report

The Landlord provided a copy of a Condition Inspection Report. The Landlord testified that at the move out inspection on December 31, 2016, the Tenant's father in law became aggressive and unreasonable and was asked to leave the property. The

Landlord offered the Tenant another opportunity for an inspection on January 8, 2017, but the Tenant did not attend.

In response, the Tenant testified that she participated in a move in inspection with the Landlord on May 15, 2016, and signed the report.

The Tenant testified that at the move out inspection on December 31, 2017, she was asked to leave and the move out inspection could not be completed.

The Tenant testified that the Landlord contacted her to meet again on January 8, 2017, but she believed it was not for an inspection, but was another opportunity for the Tenant to come and clean the unit.

The Landlord testified that she was going to give the Tenant another opportunity to come clean the unit, but the Tenant did not show up.

The Tenant acknowledged that she provided her forwarding address on the condition inspection report on December 31, 2016.

The Landlord applied to keep the security deposit on January 10, 2017.

### Analysis

The Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises provides clarification of the responsibilities of the Landlord and Tenant regarding maintenance, cleaning, and repairs of residential property. The Guideline states that a Tenant is not responsible for reasonable wear and tear to the rental unit or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

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.*

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

### Curtains \$36.99

I find that the Tenant's dog chewed up one curtain. I find that the Tenant is responsible for the replacement cost of the curtain.

I grant the Landlord the amount of \$36.99.

Remote Ceiling Fan \$20.00

I find that the Tenant lost the remote control for the light fixture, and is responsible for the replacement cost of the light. The Landlord is granted \$20.00 for the replacement of the light.

Oil Spill \$31.97

The Tenant acknowledged that she was responsible for the oil spill. I grant the Landlord \$31.97.

Toilet \$20.00

The Landlord's claim for the cost to install a toilet is dismissed. I find that the toilet was plugged and was flooding, and the Landlord is responsible to ensure the toilet is in working order. The Landlord purchased a new toilet, and is responsible for the time and effort to install it.

Damage to Bathtub \$7.20

I find that the Landlord has provided the stronger evidence to support that the Tenant is responsible for the damage to the bathtub. The condition inspection report completed at the start of the tenancy contains no indication that the bathtub was damaged. The Landlord's photographs show chips in the porcelain tub at the end of the tenancy. I grant the Landlord the amount of \$7.20.

Flooring \$41.53

The Landlord submitted that the condition inspection report does not list the front entrance area where the damage occurred, and the Tenant submitted that the damage was pre-existing from a previous Tenant. The burden of proof rests with the applicant. I find that the Landlord has provided insufficient evidence that the Tenant is responsible for the damage to the laminate flooring. The Landlord's claim is dismissed.

Floor divider \$21.19

I find that the Landlord's photograph of the floor divider shows damage consisting of large scrapes and a gouge. I do not accept the Tenant's submission that the damage is from normal wear and tear. I grant the Landlord the amount of \$21.19.

Broken Kitchen Tiles \$40.00

I find that the Landlord has provided the stronger evidence to support that the Tenant is responsible for a broken floor tile. The condition inspection report completed at the start of the tenancy contains no indication that the kitchen floor was damaged. The Landlord's photograph shows a cracked tile. I grant the Landlord the amount of \$40.00

Kitchen Tap \$40.79

The Landlord's claim for the cost of the kitchen tap is dismissed. The kitchen tap was old, and there is insufficient evidence from the Landlord that the Tenant was negligent in using the tap. The Landlord is responsible to maintain the rental unit.

French Door Damage \$10.00

The tenant acknowledged that she is responsible for the damage to the French door. I grant the Landlord the amount of \$10.00.

Dog Waste \$10.00

The Tenant acknowledged that she did not pick up the dog waste. I grant the Landlord the amount of \$10.00.

Cleaning \$153.06

I find that the Landlord has provided the stronger evidence to support that the Tenant is responsible for the cost to clean the rental unit. The Tenant testified that she did not clean a number of areas within the rental unit. The photographs from the Landlord corroborate that the unit was left dirty. I grant the Landlord the amount of \$153.06.

Cost of Photos \$45.05

The Landlord's claim for the cost of providing the photographic evidence is dismissed. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of recovering the fee for filing the Application, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process.

Bathroom drawer \$5.00

The Landlord's claim for fixing the bathroom drawer is dismissed. The Landlord is responsible to maintain the rental unit. There is insufficient evidence from the Landlord to establish that the Tenant was misusing the drawer, or caused the screw to break.

Cement Landing and Entrance Door Damage



The Landlord withdrew these claims during the hearing. The Landlord's claims for the cement landing and entrance door are dismissed.

### Claims Granted

The Landlord was successful with the following claims:

Curtains	\$36.99
Remote	\$20.00
Oil spill	\$31.97
Damage to bathtub	\$7.20
Floor divider	\$21.19
Broken kitchen tiles	\$40.00
French Door damage	\$10.00
Dog waste	\$10.00
Cleaning	\$153.06
<b>Total</b>	<b>\$330.41</b>

### Security Deposit

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*

I find that the Landlord applied for dispute resolution to keep the security deposit the within 15 days of the end of the tenancy. I order that the Landlord can keep the security deposit in the amount of \$330.41 in satisfaction of the Landlord's claim.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful with the majority of her claims, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlords have established a total monetary claim of \$430.41 comprised of the \$330.41, for damage and cleaning and the \$100.00 fee paid by the Landlords for this hearing.

After setting off the amount of \$430.41 from the security deposit of \$700.00, I find that the Landlords must return the balance of \$269.59 to the Tenant.

Conclusion

The Landlords have established a monetary claim in the amount of \$430.41. I order that the Landlords can keep the amount of \$430.41 from the security deposit in satisfaction of the Landlord's claim.

I order the Landlords to return the balance of the security deposit of \$269.59 to the Tenant.

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: July 4, 2017

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Residential Tenancy Branch