



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding SUTTON ADVANTAGE PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes MND, MNSD

#### Introduction

On June 14, 2017, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for damage to the rental unit and to keep the security deposit or pet damage deposit in full or partial satisfaction of the claim. The matter was set for a conference call hearing.

The Landlord's agent ("the Landlord") and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during 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

During the hearing the Tenant disconnected from the teleconference at 1:54 pm, and reconnected at 1:55 pm. The hearing was stopped and no testimony from the Landlord was taken during the Tenant's brief absence.

#### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to keep all or part of the security deposit or pet damage deposit in satisfaction of his claims?

#### Background and Evidence

The parties testified that the tenancy began in August 2013, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. The Tenants paid the Landlord a security deposit of \$700.00 and a pet damage deposit of \$700.00 to the Landlord. The Tenants moved out of the rental unit on May 31, 2017.

The Landlord is seeking compensation in the amount of \$5,046.04 for the following items:

Blinds	\$50.10
Installation of Blinds	\$80.00
Lawn restoration	\$4,011.55
Cleaning of stove and oven	\$90.00
Painting	\$320.00
Microwave	\$414.38
Microwave installation	\$\$80.00

### Condition Inspection Report

Both the Landlord and Tenant provided a copy of a condition inspection report ("the Report") that was completed by the Landlord and Tenants at the start and end of the tenancy. The Tenant testified that the copy of the Report that he provided is different from the copy of the Report the Landlord provided. The Tenant testified that the Landlord's copy contains additional information.

In response, to the Tenants concern about the Report, the Landlord testified that he changed his copy of the Report by adding additional information at the request of the property owner.

### Blinds and Installation

The Landlord testified that the blinds were damaged. The Landlord is seeking \$130.10 for the purchase and installation of blinds. The Landlord provided a document containing a quote for the cost of the blinds from a local business. The Landlord has not purchased or installed new blinds in the rental unit. The Landlord did not provide any photographic evidence showing the blinds or damage to the blinds.

In response, the Tenant testified that the damage to the blinds was pre-existing. The Tenant provided a copy of the Report that was completed by the Landlord and Tenant at the start and end of the tenancy. The Report indicates that there was damage to the vanes of the blinds at the start of the tenancy.

### Lawn Restoration

The Landlord testified that the lawn needs to be repaired and restored to the original condition.

The Landlord provided one black and white photocopied photograph of the lawn and submitted that the photograph shows the condition of the lawn prior to the start of the tenancy. The Landlord testified that he did not know the date the photograph was taken. The photocopied photograph shows the entire back yard, but is very dark.

The Landlord also provided one black and white photocopied photograph of the lawn showing the condition of the lawn at the end of the tenancy. The photocopied photograph shows a portion of the lawn containing a lighter patch of lawn.

The Landlord testified that the lawn has not been restored and he has provided a quote from a landscaping company for the cost of restoring the lawn by removing and disposing of the existing lawn; adding new soil; and new sod.

In response, the Tenant testified that the lawn was not in good condition at the start of the tenancy. He testified that he looked after the lawn during the tenancy. He testified that he watered; weeded; fertilized; and seeded the lawn. The Tenant does not agree to pay any amount of compensation to the Landlord for the landscaping.

The Tenant submitted an aerial photograph taken of the rental property one month prior to the start of the tenancy. The Tenant submitted that the photograph shows that the lawn was not looked prior to the start of the tenancy as the lawn needed to be watered. The Tenant provided a second aerial photograph that is blurry.

The Report provided by the Tenant indicates that the back lawn was satisfactory at the end of the tenancy.

#### Cleaning of Stove and Oven

The Landlord testified that the Tenants left the stove dirty at the end of the tenancy and that the Landlord charges a minimum charge of \$90.00 for cleaning the stove. The Landlord provided one black and white photocopy of a photograph of the stove. The photograph shows a small portion of the stove door and is very dark and blurry.

In response, the Tenant stated that he does not agree to pay for the cleaning of the stove. He testified that at the end of the tenancy his wife cleaned the stove and that he also pulled the stove out from the wall and cleaned behind it.

The Tenant provided two digital color photographs showing the condition of the stove at the end of the tenancy. The Tenant testified that the Report he provided indicates that the stove was satisfactory at the end of the tenancy.

#### Painting

The Landlord testified that there were visible roller marks on the walls of the living room and bedroom and the owner of the unit wants the walls repainted. The Landlord testified that he does not know when the rental unit was last painted.

The Landlord testified that it will cost \$320.00 to repaint the walls. The Landlord did not provide a copy of an estimate for the cost to repaint the walls.

The Landlord provided one black and white photocopy of a photograph that he states shows the roller marks on a living room wall. The photograph is of very poor quality.

In response, the Tenant testified that they touched up some scuffed areas on the walls that occurred after four years of tenancy. He testified that the Landlord said it was just wear and tear.

The Tenant provided photographs of the rental unit that were taken just prior to the move out inspection. He testified that the photographs do not show any roller marks. The Tenant provided 26 digital color photographs taken at the end of the tenancy showing the condition of the walls and other areas of the unit at the end of the tenancy.

#### Microwave and Installation

The Landlord testified that the microwave needs to be replaced because it has a broken handle. The Landlord provided one black and white photo-copied photograph of the microwave which he indicates shows that the microwave has a broken handle.

The Landlord provided an estimate for the replacement cost of a microwave. The Landlord testified the replacement model is of the same quality that exists in the unit. The Landlord testified that the microwave has not been purchased or installed.

The Landlord testified that the microwave was not brand new when the Tenants moved into the rental unit.

In response, the Tenant testified that the microwave was fine when they lived there. The Tenant submitted that they did not break the handle of the microwave, and that handle was there when they moved out. The Tenant provided two color digital photographs taken of the microwave at the end of the tenancy.

The Tenants copy of the Report indicates the appliances were satisfactory at the end of the tenancy.

#### Security Deposit

The tenancy ended on May 31, 2017, when the Tenants moved out of the rental unit. The Landlord made application to retain the security deposit and pet damage deposit on June 14, 2017.

#### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the

damage or loss was a result of a breach of the tenancy agreement or Act, and proof that the party took all reasonable measures to mitigate their loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

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

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

Section 21 of the Residential Tenancy Regulation states that in dispute resolution proceedings a condition inspection report is evidence of the state of repair or condition of the rental unit on the date of the inspection unless is a preponderance of evidence to the contrary.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

*The Landlord is responsible for painting the interior of the rental unit at reasonable intervals.*

The Residential Tenancy Policy Guideline #40 useful Life of Building Element's provides that the useful life of interior paint is four years.

After considering the testimony of the Landlord and Tenants, and on balance of probabilities, I make the following findings:

#### Condition Inspection Report

The Landlord admitted to altering the condition inspection report after the move out inspection. I find that the copy of the Report provided by the Tenant is the reliable evidence of the state of repair or condition of the rental unit on the date of the inspections. The altered copy of the Report provided by the Landlord is not reliable and will not be considered.

#### Blinds and Installation

I find that there was pre-existing damage to the vanes of the blinds at the start of the tenancy. The Landlord has provided insufficient evidence that the Tenants are responsible for damaging the blinds.

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

#### Lawn Restoration

I find that the Tenants provided the stronger evidence regarding the condition of the lawn at the start and end of the tenancy. I find that the lawn was not in great condition at the start of the tenancy. I find that the Report establishes that the lawn was in satisfactory condition at the end of the tenancy.

The Landlord's claim for cost to restore the lawn is dismissed.

#### Cleaning of the Stove and Oven

The Landlord provided insufficient evidence that the stove was left dirty at the end of the tenancy. The Report and photographs from the Tenants indicate that the stove was satisfactory at the end of the tenancy.

The Landlord's claim for cost to clean the stove is dismissed.

#### Painting

I find that the Tenants are not responsible to pay for the painting of the interior of the rental unit. The Tenants lived in the unit for almost four years and the Landlord's agent did not know when the unit was last painted. The Landlord is responsible for painting the interior of the rental unit at reasonable intervals, and the policy guideline provides that the useful life of interior paint is four years.

The Landlord's claim for repainting the unit is dismissed.

#### Microwave and Installation

I find that there is insufficient evidence from the Landlord that the Tenants are responsible for the full replacement cost of a new microwave due to a missing handle.

I find that the microwave was not new at the start of the tenancy. I accept the Tenant's photographic evidence that shows the microwave was not damaged at the end of the tenancy. The report indicates the appliances were satisfactory at the end of the tenancy.

The Landlord's claim for the cost of a new microwave is dismissed.

#### Result

The Landlord was not successful in any of his claims against the Tenants and his Application is dismissed in its entirety.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- *a landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, **whether or***

***not the tenant has applied for dispute resolution for its return.  
[my emphasis]***

I order the Landlord to return the security deposit of \$700.00 and pet damage deposit of \$700.00 to the Tenants. I grant the Tenants a monetary order in the amount of \$1,400.00.

Conclusion

The Landlord failed to establish his claims for compensation against the Tenants. The Landlords application is dismissed without leave to reapply.

The Landlord is ordered to return the pet and security deposits in the amount of \$1,400.00 to the Tenants.

The Tenants are granted a monetary order in the amount of \$1,400.00.

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: December 8, 2017

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Residential Tenancy Branch