



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code , MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for damages to the unit and to recover the filing fee from the tenants.

This hearing commenced on January 22, 2018 and was adjourned to today's date March 22, 2018. The interim decision should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and Procedural issue

In this matter the tenants filed evidence on March 2, 2018; this is contrary to the interim decision. Therefore, I have not allowed the evidence to be considered.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Are the landlords entitled to monetary compensation for damages?

### Background and Evidence

At the outset of the hearing the landlord indicated that the tenants lived in the premises 4 to 5 years. Current rent was \$800.00 per month and the tenants paid a security deposit of \$200.00.

At the outset of the hearing the tenants indicated the tenancy commenced January 2014. Current rent was \$850.00 per month and the tenants paid a security deposit of \$325.00

The parties agreed the tenancy ended on July 15, 2017. No move-in or move-out condition inspection was completed.

The landlords claim as follows:

a.	New kitchen cabinets and counter tops	\$2,400.00
b.	Painting the rental unit	\$1,050.00
c.	New sink, faucet and installation	\$ 410.25
d.	Receiver and remote	\$ 33.60
e.	Two new blinds	\$ 311.36
f.	New stove	\$ 735.76
g.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$5,040.97</b>

#### New kitchen cabinets and counter tops

The landlord testified that the tenants left the kitchen dirty. The landlord stated the cabinets, countertops were yellowing, and there were lots of chips and some burns in the laminate countertop. The landlord indicated that the cabinets and countertops were approximately 16 to 17 years old at the time. The landlords seek to recover the cost to replace the cabinets in the amount of \$2,400.00. Filed in evidence is a USB, containing photographs and video.

The tenants testified that when they moved into the rental unit the countertops were already marked and chipped. The tenants stated that they had a big wood chopping block on the countertop and that is what they used.

The tenants testified that there have been multiple people leaving in the rental unit over the years and they are not responsible.

#### Painting the rental unit

The landlord testified that they had to have the rental unit painted as the walls were stained and chipped and the doors had gone yellow. The landlord stated that the rental

unit was freshly painted when the tenants moved into the premise. The landlords seek to recover the cost of painting in the amount of \$1,050.00.

The tenants testified that the rental unit was not freshly painted when they moved into the premises.

#### New sink, faucet, and installation

The landlord testified that the faucet was broken and leaking, which had to be replaced. The landlord stated that the sink was yellow and stained with hair colouring. The landlords seek to recover the cost of replacement in the amount of \$410.25.

The tenants testified that the faucet broke during their tenancy under normal use and they had to shut the faucet off and on from underneath the counter each time they used it. The tenants stated that they informed the female landlord and they never came to fix it. The tenants stated the sink was old and they are not responsible for replacement.

#### Receiver and remote

The tenants testified that they are not disputing this portion of the landlord's claim as their children broke the remote and they taped it back together.

#### Two new blinds

The landlord testified that the tenants broke the blinds in the living area and bedroom. The landlords seek to recover the cost of replacement in the amount \$311.36.

The tenants testified that they disagree that they are responsible for the blinds. The tenants stated that the blinds were 17 years old and they started have problems with them at the start of the tenancy.

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#### New stove

The landlord testified that the tenants left the stove very rusty, which could not be cleaned at the end of the tenancy. The landlord stated the stove was not that old.

The tenant testified the stove was dirty and rusty when they moved into the premise and they spent 3 to 4 hours trying to get it cleaned.

The tenant submits the landlords renovated the rental unit and want them to pay for it.

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### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

### New kitchen cabinets and counter tops

I accept the photographic evidence of the landlords as to the state of the kitchen cabinets and countertops at the end of the tenancy. However, these fixtures were approximately 16 to 17 years old, and this is likely from normal wear and tear and the aging process.

I find the landlords have provided no supporting evidence of the condition of the cabinets or countertops at the start of the tenancy such as a move-in condition

inspection report. I find landlords have failed to prove the damage was caused by the neglect of tenants. Therefore, I dismiss this portion of the landlords' claim.

#### Painting the rental unit

I accept the photographic evidence of the landlords as to the state of the paint at the end of the tenancy.

In this case, the evidence of the landlord was the rental unit was freshly painted at the start of the tenancy. The tenants denied this. I find the landlords have failed to prove the condition of the walls at the start of the tenancy such as a move-in condition inspection report.

Further, even if I accept the landlords' evidence that the rental unit needed to be repainted, the evidence of the landlord was the tenancy was approximately four to five years in duration.

The tenants would not be responsible for the repainting of the unit, as the Residential Tenancy Policy Guideline (the "Policy Guideline") #40 - Useful Life of Building Elements indicates the life span of the paint is 4 years. Therefore, I dismiss this portion of the landlords' claim.

#### New sink, faucet, and installation

In this case the parties agreed that the faucet was broken. The evidence of the tenant was it broke during the tenancy and never repaired by the landlord. I find the landlords have failed to prove this was damaged was caused by the neglect of the tenants as it just is likely from normal wear and tear or lack of maintenance by the landlords. Therefore, I dismiss this portion of the landlords' claim.

#### Receiver and remote

The tenants acknowledged they were responsible for this cost. Therefore, I find the landlords are entitled to recover the cost of **\$33.60**.

### Two new blinds

The parties agreed that there were two broken window blinds at the end of the tenancy and the blinds were approximately 17 years old; however, the evidence of the tenants was that the blinds were broken from normal wear and tear under reasonable use.

The Policy Guideline # 40, indicates the useful life of blinds is 10 years. I find it more likely than not that the damage was caused by normal wear and tear and the aging process, as the blinds were significantly past their useful life. I find the landlords have failed to prove the damage was caused by the neglect of the tenants. Therefore, I dismiss this portion of the landlords' claim.

### New stove

I accept the photographic evidence of the landlord as to the state of the stove at the end of the tenancy. The evidence of the tenants was that the stove was in poor condition when the tenancy started. The evidence of the landlord was that it was not rusty and not that old at the start of the tenancy. Both parties' version are probable. However, the onus of proof is on the landlords.

I find without further evidence from the landlords, such as a move-in condition inspection report that they failed to prove that the tenants caused the damage. Further, the stove appears to be older than claimed. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$133.60** comprised of the above described amount and the \$100.00 fee paid for this application.

In this case, both parties have provided a different version to the amount of security deposit paid by the tenants. Both versions are probable. Neither party provided any documentary evidence on this matter, such as receipts or cancelled cheques.

Therefore as the landlords have acknowledged that they have a security deposit of \$200.00, I order that the landlords retain the above amount from the tenants' security deposit in full satisfaction of the claim and I grant the tenants an order for the balance due under section 67 for the balance due of **\$66.40**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Further, should the tenants have proof that they paid the landlords a security deposit of \$325.00, they are to provide that evidence to the landlords, and the landlords are to reimburse the difference to the tenants.

### Conclusion

The landlords are granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenants are granted a formal order for the balance due.

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: March 29, 2018

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Residential Tenancy Branch