



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FFL

### Introduction

On February 19, 2018, 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 scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant 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.

### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced in April 15, 2016, on a one year fixed term basis to continue thereafter on a month to month basis. The Tenants were to pay the Landlord monthly rent in the amount of \$3,600.00. The Tenants paid the Landlord a security deposit of \$1,800.00.

The Landlord testified that when the Tenant moved out on January 31, 2018, there was damage and cleaning needed in the rental unit.

The Landlord is requesting compensation for the following items:

Damage to laminate flooring	\$2,064.00
Carpet Cleaning	\$0.00
General Cleaning	\$320.00
Sink Cover	\$250.00
Total	\$2634.00

Damage to Floor

The Landlord testified that the townhome was a new build completed shortly before the Tenants moved in. At the end of the tenancy the Landlords inspected the rental unit and observed damage to the flooring.

The Landlord testified that there are chips in a few places and some water damage to the laminate floor. The Landlord testified that he brought in a friend to look at the flooring.

The Landlord provided photographs showing a few chips and a scratch on the floor. The Landlord testified that he feels the floor needs to be replaced.

The Landlord testified that he has not had the floor replaced and that the rental unit was rented out to new Tenants.

The Tenant testified that the Landlord lived in the unit for four months before they moved in. The Tenants testified that there was no move in inspection or report completed at the start of the tenancy. The Tenants testified that the flooring was deficient from the start, as can be observed by the photograph they provided showing a large gap between the floor panels in the kitchen.

The Tenants submitted that they did not observe any scratches; however, they submitted that any scratches would be normal wear and tear.

The Tenants testified that they spoke to the new tenants who moved in and they were informed them that the Landlord made no mention of replacing the flooring. The Tenants provided a copy of a text message from the new tenants.

The Landlord acknowledged that he did not perform a move in or move out inspection with the Tenants.

### Carpet Cleaning

The Landlord testified that the Tenants cleaned the carpet; however the carpet was wet when the Landlord entered the unit and the carpet became dirtier as the Landlord was in the unit.

The Landlord testified that he did not have the carpets cleaned.

The Tenants provided a receipt for the cost of having the carpets steam cleaned.

### General Cleaning

The Landlord testified that the Tenants are responsible for the cost of general cleaning to the rental unit. The Landlord testified that the Landlord cleaned the unit at the end of the tenancy. The Landlord testified that it took four people four hours each to clean the rental unit. The Landlord testified that they cleaned the kitchen, appliances, cabinets and walls. The Landlord is seeking \$320.00 for the time it took to clean.

The Landlord provided photographs of an unclean drawer, cabinet and an unclean window sill. There are no photographs of unclean appliances.

In response the Tenant testified that they cleaned the rental unit on January 31, 2018 including the fridge, walls and baseboards. They submitted that they needed until 5:00 pm to clean the unit and they understood that they would have until February 1, 2018 to have the cleaning completed. The Tenants submitted that the Landlord rushed them out of the rental unit, and due to that they may have missed cleaning a few small crumbs. The Tenants acknowledge that they did not clean inside the oven.

### Sink Cover

The Landlord testified that a stainless steel sink cover provided at the start of the tenancy was found damaged at the end of the tenancy. The Landlord is seeking the replacement cost of \$250.00.

The Landlord testified that the cover remains in the unit.

In replay, the Tenants testified that they were not aware of any damage to the sink cover.

The Tenants acknowledge that the Landlords photograph of the cover shows that a wire has come off.

### Security Deposit

The Tenants testified that they provided their forwarding address to the Landlord on February 16, 2018. The Landlord made an application to retain the security deposit on February 19, 2018.

### Analysis

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

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.*

I find that the Landlord failed to perform a move in and move out inspection with the Tenants as required by the Act. Accordingly, the Landlords right to apply to keep the security deposit is extinguished.

The Landlord has testified about damage and has provided documentary evidence of damage to the rental unit after the Tenant moved out; However, I find there is no evidence to establish the condition of the rental unit at the time the Tenant moved in.

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.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

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

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.*

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

#### Damage to Floor

I find that the Landlord has provided insufficient evidence to support his suggestion that the flooring needs to be replaced. I find that the damage to the floor is minimal. Since the Landlord failed to conduct an inspection at the start of the tenancy, there is no evidence showing the state of repair and condition of the floors at the start of the tenancy.

I find that the Landlord has not established that the Tenants have breached the Act by causing the damage, or that the Landlord has suffered a loss.

The Landlord's claim for \$2,064.00 is dismissed.

#### Carpet Cleaning

I find that the Tenants cleaned the carpets at the end of the tenancy. The Landlord testified that he did not have the carpets cleaned. I find that the Landlord has not established that he suffered a loss.

The Landlord's claim for compensation for dirty carpets is dismissed.

### General Cleaning

I find that the Tenants left parts of the rental unit unclean when they moved out. I accept the Landlords photographs that show the drawer, cabinet and an unclean window sill. I also accept the Tenants' testimony that the oven was not cleaned.

I find that the amount of effort required to clean these items is not significantly more than a few hours. I award the Landlord 25% of the amount being claimed for cleaning. The Landlord is granted \$80.00 for cleaning.

### Sink Cover

The Landlords claim for the replacement cost of the sink cover is dismissed. Photographic evidence of the damaged sink cover was not located in the Landlords evidence. While the Tenants indicated they had a photograph of the sink cover they submitted that they were not aware it had been damaged.

Since there is insufficient evidence to establish the condition of the sink cover at the start of the tenancy, and since it remains in the rental unit, presumably being used, I find that the Landlord has proven that the Tenants have damaged the cover by neglect or that the Landlord has suffered a loss.

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

### Security Deposit

I find that the Landlords applied for dispute resolution seeking to keep the security deposit within 15 days of receiving the Tenants' forwarding address in writing.

While I find that the Landlord extinguished the right to claim against the security deposit; the Landlords retain the right to pursue their claims for damage or loss. Section 72 of the Act authorizes me to permit the Landlord to retain an amount that is awarded to the Landlord from any deposit that is held by the Landlord.

I find that the Landlord has established a monetary claim against the Tenants in the amount of \$80.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was only partially successful with

their application, I order the Tenant to repay the \$50.00 of the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$130.00. I authorize the Landlord to retain the amount of \$130.00 from the deposit of \$1,800.00.

The Landlord is ordered to return the balance of the deposit in the amount of \$1,670.00 to the Tenants. The Tenants are granted a monetary order in the amount of \$1,670.00. The order must be served on the Landlords and may be enforced in the Provincial Court.

### Conclusion

The Landlords have established a monetary claim for damage against the Tenants in the amount of \$130.00. I authorize the Landlord to retain the amount of \$130.00 from the security deposit of \$1,800.00.

The Landlords are ordered to return the balance of the deposit in the amount of \$1,670.00 to the Tenants. The Tenants are granted a monetary order in the amount of \$1,670.00. The monetary order must be served on the Landlords and may be enforced in the Provincial Court.

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: September 27, 2018

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Residential Tenancy Branch