



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PREFERRED REALTY  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes MNDL-S, FFL

#### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), made on February 9, 2018. The Landlord applied for a monetary order for damages to the rental unit, permission to keep the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with 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 Matter

At the outset of the hearing, the Tenant requested a translator.

Residential Tenancy Branch Rules of Procedure state the following:

##### **"6.7 Party may be represented or assisted**

A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation."

This arbitrator advised the Tenant that she is allowed to have a translator attend the hearing to assist her, however, this office does not provide translators. An adjournment was offered to the Tenant, in order to allow her additional time to secure translator services. The Tenant declined the offered adjournment and stated that she wished to proceed with the hearing.

Additionally, at the outset of the hearing, the Landlord testified that the dollar amount of her claim is reduced to \$3,092.01.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement shows that this tenancy began on July 1, 2013, initially as a six-month fixed term tenancy that rolled into a month to month tenancy after the initial term. The Parties testified that rent in the amount of \$906.00, was to be paid by the first day of each month and that the Landlord is holding a \$425.00 security deposit that was paid by the Tenants at the beginning of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenants move out of the rental unit on July 15, 2017, and that the move out inspection was completed with the Landlord and one of the Tenants, on July 17, 2018. The Landlord provided a copy of the move out inspection into documentary evidence.

The Landlord testified that the Tenants had left the rental unit in a dirty and damaged state, the Landlord is claiming for the recovery of \$3,092.01 worth of repairs and cleaning that was needed at the end of the tenancy. The Landlord provided 67 pictures of the rental unit taken at the end of the tenancy, the move-in/move-out inspection report and six invoices into documentary evidence.

The Landlord is claiming the following damages:

- \$217.70 for cleaning;
- \$75.00 for carpet cleaning;
- \$177.45 for miscellaneous repairs;
- \$24.57 replace stove drip trays;
- \$240.00 in labour for wall and door repairs;
- \$213.87 to dispose of three broken wardrobe cabinets;
- \$419.99 replace wardrobe cabinets;
- 721.98 replace shower doors,
- \$361.45 replace broken fridge parts, and
- \$640.00 in compensation for damage to the floors, the kitchen countertop and a gate railing.

The Landlord testified that the required repairs to the floor, the gate railing, and the kitchen countertop had not been completed, as the owner did not have the funds to complete them at this time. The Landlord testified that the \$640.00 requested in compensation for the floors the gate railing, and the kitchen countertop was based on an arbitrary depreciated allowance assigned by the Landlord. The Landlord is seeking \$40.00 per minor area and \$80.00 per major area. The Landlord testified that they are claiming for \$480.00 in compensation for damage to the floors; comprised of one major area of damage to the kitchen floor, five minor areas of damage to the living room floor, one major area of damage to the master bedroom floor, and three minor areas of damage to the two spare bedroom floors. The remaining \$160.00 is comprised of \$80.00 for the damaged gate railing and \$80.00 for the damage countertop in the kitchen.

When asked, the Landlord could not testify as to the age of the rental unit or to when the flooring or wardrobe cabinets had been installed. The Landlord did testify that the property was 5 years out when the tenancy began.

The Tenant testified that she agreed that they broke the shower door and had damaged the fridge during the tenancy and she agreed they were responsible for the to the costs the Landlord is seeking in relation to replacing the show door and repairing the fridge.

The Tenant also agreed that there had been damage to the floors in the rental unit and the gate railing at the end of her tenancy. The Tenant agreed that they were responsible for the to the costs the Landlord is seeking compensation for the damage to the floors in the rental unit and the gate railing.

The Tenant testified that they had lived in the rental unit for five years and that the Landlord had not done regular maintenance on the rental property during that time. The Tenant also testified that they had not damaged the other areas of the rental unit that the Landlord is requesting compensation for in her claim. It was just that the materials used in the rental unit were of poor quality. The Tenant testified that the wardroom closets provided by the Landlord were cheap plywood and that the back would fall off anytime she put a hanger in the rod in the closet, and that the screws had been stripped since they moved in, and the doors had never stayed on properly.

Additionally, the Tenant testifies that they had not damaged the counter top, it was that it was just a laminate countertop and had broken down with regular use. The Tenant testified that she had personally fully cleaned the rental unit and it had been in clean condition when they moved out

### Analysis

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

I accept the testimony of both parties that the Tenants damaged the shower door and fridge during the tenancy. I find that the Landlord has established an entitlement to a monetary award of the depreciated cost of \$397.09 for the replacement of the shower door and \$144.58 for the repair of the fridge.

I also accept the testimony of the Tenant that they damaged to the floors in the rental unit and the gate railing during the tenancy. I find that the Landlord has established an entitlement to a monetary award of \$560.00, in compensation for the damage to the floors and the gate railing.

As for the Landlord's claim to recover the costs associated with cleaning rental unit, I must refer to the Residential Tenancy Policy Guideline #1, Landlord & Tenant – Responsibility for Residential Premises, which states a Tenant must leave a rental unit reasonably clean, as follows:

“The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also 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 tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher

standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).”

I have carefully reviewed the inspection report, the pictures, and all documentary evidence provided by the Landlord. I accept that both the Tenant and the Landlord attended the move-out inspection of the rental unit on July 17, 2018, and I find the move-in/move-out inspection report (the “inspection report”) to be the official condition of the rental unit at the beginning and the end of this tenancy.

I find that the inspection report shows that the rental unit had not been fully cleaned at the end of tenancy as required by section 37(2) of the *Act*. Therefore, I am awarding the Landlord the full amount requested to recover their costs associated with cleaning the rental unit; consisting of \$217.70 for cleaning services, \$75.00 for carpet cleaning and \$24.57 to replace stove drip trays.

The Landlord is also asking for the full costs associated to buying and installing new wardrobe cabinets in the bedrooms of the rental unit as well as the disposal of the damaged ones.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

When determining the award of damages, I need to take into account the age and the condition of the of the item being replaced. The Residential Tenancy Policy Guideline #40, Useful Life of Building Elements states:

“Damage

When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.”

During this hearing, I find that the parties to this dispute offered conflicting verbal testimony regarding the age and serviceability of the wardrobe cabinets provided by the Landlord in this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a

dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the documentary evidence provided by the Landlord, and I find that there is no evidence before me that shows the age of the wardrobe cabinets at the start of this tenancy. In the absence of sufficient evidence to prove the age of the wardrobe cabinets, I decline to award the Landlord the costs associated with the removal of the old wardrobe cabinets and the replacement cost of new wardrobe cabinets for this tenancy.

The Landlord has also claimed for \$80.00 in compensation due to damage to the kitchen countertop. Again, I find that the parties to this dispute offered conflicting verbal testimony regarding the condition of the countertops and the useful life of a building element used in the countertops construction. I have reviewed the documentary evidence provided by the Landlord, regarding the countertops and I find that there is no evidence before me that proves that the claimed amount is due to damage caused by the Tenants and is not just normal wear and tear. Therefore, I decline to award the request \$80.00 in compensation request by the Landlord for countertops.

As for the Landlord request to be compensated \$177.45 for the miscellaneous cost associated with general labour and repairs to the rental unit at the end of this tenancy. Section 8 of the *Act* states that the landlord must provide and maintain the residential property in a reasonable state of decoration and repair, and that a tenant is only responsible for the costs associated with damage the tenant or a guest of the tenant caused to the rental unit, and that the tenant is not responsible for the costs associated with reasonable wear and tear or upgrades to the rental property.

I have carefully reviewed the invoice provided by the Landlord detailing the miscellaneous repairs conducted on the rental unit; I noted that there are nine different repairs listed on the invoice and that the invoice does not assign an individual cost to each individual repair. I find that five of the repairs listed on the invoice fall under regular maintenance which is the responsibility of the Landlord due to normal wear and tear of the rental unit and not damage. In the absence of a detailed account of the costs associated with each repair, I am not able to determine the value of the four repairs that were needed due to damage caused by. I find that the Landlord has not proven the amount of or value of the damage or loss, associated with the damage caused by the Tenant on this invoice. Therefore, I decline to award the Landlord the \$177.45 request for the miscellaneous repairs completed to the rental unit on this invoice.

In regard to the Landlord's claim for wall repair in the rental unit, the Residential Tenancy Policy Guideline #1, Landlord & Tenant – Responsibility for Residential Premises states:

“WALLS Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes: 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.”

In this case, I find that the inspection report indicates that there have been several changes to the condition of the walls from the beginning to the end of the tenancy and that the pictures provided in documentary evidence show that the Tenants have caused deliberate or negligent damage to the walls of the rental unit. I find that it is the responsibility of the Tenants to cover the costs associated with repairing the damage caused to walls in the rental unit. Therefore, I award the Landlord the \$240.00 she is requesting in cost for wall repair.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,233.94. The Order is comprised of \$397.09 for the depreciated value of replacing the shower door, \$144.58 in the depreciated costs of repairing the fridge, \$317.27 in cleaning costs, \$560.00 in compensation for the floors and the gate railing, and \$240.00 in wall repair, less the \$425.00 that the Landlord holds as a security deposit for this tenancy.

As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

<u>Item</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Cleaning	\$217.70	100%	\$217.70
Carpet cleaning	\$75.00	100%	\$75.00
Miscellaneous Repairs	\$177.45	0%	\$0.00
Replace Stove drip trays	\$24.57	100%	\$24.57
Wall and Door repairs	\$240.00	100%	\$240.00
Disposal of wardrobe cabinets	\$213.87	0%	\$0.00
New wardrobe cabinets	\$419.99	0%	\$0.00
Replace shower door	\$721.98	55%	\$397.09
Replace broken fridge parts	\$361.45	40%	\$144.58
Compensation (floors, railing)	\$640.00		\$560.00
			\$1,658.94
Security deposit			-\$425.00
			<b>\$1,233.94</b>
Filing fee			\$100.00
<b>Due</b>			<b>\$1,333.94</b>

### Conclusion

I find for the Landlord under sections 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$1,333.94**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 25, 2018

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Residential Tenancy Branch