



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ENCORE PROPERTIES CANADA INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNSD, MND, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for the cost of replacing carpet and a refrigerator and to retain the security deposit in satisfaction of her claim. The landlord also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by their agent.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

### **Background and Evidence**

The parties agreed to the following:

The tenancy started on October 15, 2012 and ended on June 30, 2018. A copy of the tenancy agreement was filed into evidence. The monthly rent at the end of tenancy was \$1,195.00, payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$625.00. Copies of move in and move out condition inspection reports were also filed into evidence.

The tenant testified that sometime during the tenancy, the ice maker of the refrigerator broke down and he informed the property manager about the problem. The property manager checked the appliance and indicated that it would cost less to replace the refrigerator than to repair the ice maker. The tenant stated that since ice was not that important to him, he agreed to continue to use the appliance without the icemaker.

The tenant stated that approximately 12 months later, the refrigerator started leaking water and the tenant reported the problem the property manager. The tenant stated a maintenance person was dispatched immediately. He pulled the refrigerator away from the wall and shut off the water supply located at the back of the refrigerator.

The tenant agreed that his spouse damaged the finish on the doors of the refrigerator when she attempted to clean. The landlord made efforts to use a wrap to cover the scratches but it was not esthetically pleasing. The landlord is claiming the cost of the wrap in the amount of \$239.94. The landlord also looked into replacing the doors of the refrigerator but found that some parts were not available and the cost was high. The landlord found that it was more cost effective to replace the refrigerator. The landlord provided a receipt in the amount of \$1,999.19 which is the cost she incurred to replace the refrigerator.

The landlord agreed that the damage to the doors of the refrigerator was cosmetic and that the refrigerator worked well. The landlord stated she was not aware of the breakdown of the ice maker during the early part of tenancy.

The landlord stated that the carpet had multiple bleach stains and had to be replaced. The tenant agreed that the carpet was stained due to spillage onto the carpet that was brought on by his spouse's medical condition. The landlord provided photographs and an invoice to support her claim of \$2,363.13.

### **Analysis**

Cost to replace refrigerator - \$1,999.19

Cost of wrap - \$239.94

Based on the testimony of both parties and the documentary evidence, I find that the tenant caused damage to the finish on the refrigerator doors by cleaning the doors with an abrasive cleaner. I accept the tenant's testimony that the ice maker broke down sometime during the tenancy and the tenant agreed to do without it for the remainder of the tenancy.

I also accept the tenant's testimony that the refrigerator started leaking water and the tenant had to call for help to shut off the water supply and clean up the water spill.

Even though the tenant caused damage to the finish on the refrigerator, the landlord agreed that the refrigerator was functional. However the ice maker was not functional, and therefore I find that the landlord would have had to repair the ice maker and make it available for use by the next tenant.

The tenant testified that the property manager had informed him that repairing the ice maker would be more expensive than replacing the refrigerator and therefore chose not to repair the icemaker or replace the refrigerator during the tenancy. Therefore I find that the tenant was without with an ice maker for most of the six year tenancy.

Apart from the ice maker, the appliance is functional and the damage is cosmetic. However the broken ice maker does affect the functionality of the refrigerator in that there would be no ice or cold water available to the user. Based on the above, I find that the landlord would have had to replace the refrigerator mainly because of the broken ice maker and not just because of the damaged finish. Accordingly, I find that the landlord must bear the cost of replacing the refrigerator

I find that while the doors are scratched, this damage does not affect the functionality of the appliance. However, the scratches have reduced the value of the refrigerator and I will award the landlord an arbitrary amount towards this loss of value.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I award the landlord a minimal award of \$100.00 towards the loss of value of the refrigerator.

#### Replace carpet - \$2,363.13

Based on the testimony of both parties and the photographs and invoice filed into evidence by the landlord, I find that the carpet was heavily stained and had to be replaced. The tenant agreed that the staining was caused by his spouse and therefore I find that the tenant is responsible for the cost of replacing the carpet.

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of carpet is ten years.

The landlord stated that at the end of the tenancy the carpet was 7 years old and therefore the carpet had three years of useful life left. Accordingly, I find that the landlord is entitled to \$708.93 which is the prorated value of the remainder of the useful life of the carpet.

Since the landlord has proven a portion of her claim I award the landlord the filing fee in the amount of \$100.00.

Overall the landlord has established a total claim of \$908.93 as follows:

Loss of value of refrigerator - \$100.00

Replace carpet - \$708.93

Filing fee - \$100.00

The landlord is currently holding a security deposit in the amount of \$625.00. The landlord may retain the security deposit in partial satisfaction of her claim. I grant the landlord a monetary order in the amount of \$283.93 for the balance of her established claim. This order may be registered in the Small Claims Court and enforced as an order of that court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$283.93**.

The landlord may retain the security deposit of \$625.00.

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: November 09, 2018

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Residential Tenancy Branch