



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GEMINI CONSULTING LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

On September 17, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the 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 attended the hearing; however, the Tenant did not.

The Landlord applied for a substituted service order to be able to serve the Tenant with the Notice of Dispute Resolution Proceeding and evidence using email. The Tenants application for substituted service was granted on October 11, 2018. The Decision provides that the documents served to the Tenants email address are sufficiently served to the Tenant for the purposes of the Act, three days after the date that the email is sent by the Landlord to the Tenant.

The Landlord provided a copy of an email sent to the Tenant dated October 14, 2018, which indicates it included the Notice of Dispute Resolution Proceeding and documentary evidence.

I find that the Tenant is deemed served with the Notice of Dispute Resolution Proceeding and evidence on October 17, 2018. The Tenant failed to attend the hearing to respond to the Landlord’s claims.

The Landlord provided affirmed testimony and was provided the opportunity to present her 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 keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord testified that the tenancy began on July 1, 2011, as a one year fixed term tenancy that continued thereafter on a month to month basis. The Tenant is to pay the Landlord monthly rent in the amount of \$1,588.00. The Tenant paid the Landlord a security deposit of \$775.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant gave two days' notice before she moved out of the unit on September 2, 2018.

The Landlord is requesting compensation for the following items:

Hardwood Floor Replacement	\$4,216.00
Toilet Seat Replacement	\$80.00
Key FOB replacement	\$195.00

#### Hardwood Floor Replacement     \$4,216.00

The Landlord testified that the Tenant is responsible for damage to the wood floors. The Landlord testified that there were big brown stains on the hardwood floor. The Landlord testified that she contacted a few companies about removing the stains and was informed that the stains could not be removed. The Landlord replaced the flooring. The Landlord testified that damaged flooring was new in 2006.

The Landlord provided four color photographs of the damage / discoloration to the flooring.

The Landlord provided a copy of a work order dated September 13, 2018, for the cost to remove hardwood and install 391 square feet of new flooring.

Toilet Seat Replacement \$80.00

The Landlord testified that the Tenant is responsible for damage to a toilet seat.

The Landlord provided a photograph of damage to the hinge of the toilet seat. The Landlord provided a receipt dated September 13, 2018, for the purchase of a new toilet seat.

Key FOB replacement \$195.00

The Landlord testified that the Tenant never returned three key fobs used for entry into the unit. The Landlord submitted that the Tenant is responsible for the replacement costs of the key fobs. The Landlord submitted that each key fob costs \$65.00.

Analysis

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.*

Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. The Guideline provides that an arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement. The Guideline provides that the useful life of hardwood flooring is 20 years.

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

I find that the Tenant was deemed served with the Notice of Dispute Resolution Proceeding and failed to attend the hearing. The Landlord's claims are unopposed.

Hardwood Floor Replacement     \$4,216.00

I find that the Tenant is responsible for the damage to the wood flooring. I accept the Landlord's testimony that the floor needed to be replaced. I have considered the age of the flooring at the time it was replaced. I find that the wood flooring was 12 years old when it was replaced with new flooring. I find that the flooring should have had 8 years of useful life when it was replaced. I find that The Tenant is responsible for 8/20 of the replacement cost. I find that the Tenant owes the Landlord the amount of \$1,686.40 for the cost of the wood floor. ( $\$4,216/20 \times 8 = \$1,686.40$ )

Toilet Seat Replacement     \$80.00

I accept the Landlord's evidence that the Tenant is responsible for a damaged toilet seat that needed to be replaced. I award the Landlord the amount of \$80.00 for the cost of a new toilet seat.

Key FOB replacement     \$195.00

I accept the Landlord's evidence that the Tenant failed to return three key fobs. I accept the Landlord's evidence that each key fob cost her \$65.00. I grant the Landlord \$195.00 for the replacement cost of the key fobs.

Security Deposit

I authorize the Landlord to keep the security deposit of \$775.00 in partial satisfaction of the Landlord's claims.

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

The Landlord has established a monetary claim in the amount of \$2,061.40. After setting off the security deposit of \$775.00 against the award of \$2,061.40, I grant the Landlord a monetary order in the amount of \$1,286.40. For enforcement, the order must be served on the Tenant and may be enforced in the Provincial Court.

### Conclusion

The Landlord was successful with claims for compensation due to damage.

I authorize the Landlord to keep the security deposit of \$775.00 in partial satisfaction of the Landlord's claims.

After setting off the security deposit of \$775.00 against the award of \$2,061.40, I grant the Landlord a monetary order in the amount of \$1,286.40.

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: January 18, 2019

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Residential Tenancy Branch