



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages against the security deposit and for the recovery of the filing fee paid for this application.

One of the Landlords and one of the Tenants were present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlords’ evidence by registered mail. The Landlord confirmed receipt of a copy of the Tenants’ evidence package by registered mail. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Are the Landlords entitled to monetary compensation for damages?

Should the Landlords be allowed to retain the security deposit towards any compensation found to be owing?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2016 and ended on July 31, 2018. Monthly rent was \$1,350 plus utilities. The Tenants paid a security deposit of \$675.00 and a pet damage deposit of \$675.00. The pet deposit of \$675.00 has been returned to the Tenants while the Landlords are still in possession of the full security deposit amount. The Landlord submitted the original tenancy agreement into evidence as well as a tenancy agreement extension both of which confirm the details of the tenancy as stated by the parties.

The Landlord stated that the Tenants agreed to have \$100.00 deducted from their security deposit for cleaning. The Tenant confirmed the agreement for the Landlord to withhold \$100.00 from their security deposit for cleaning, which leaves an amount of \$575.00 in the Landlord's possession.

The Landlord provided testimony that he applied for compensation in the amount of \$705.00 for the repair of a countertop that was damaged during the tenancy. However, the Landlords' Application for Dispute Resolution states a claim in the amount of \$675.00; the full amount of the security deposit.

The Landlord testified that the kitchen countertop in the rental unit was new in 2014. He submitted a photo of the countertop being installed along with an invoice dated November 1, 2013 in the amount of \$168.75. The Landlord testified that this receipt was for the purchase of the laminate countertop only and did not include the cost of the plywood underneath or any labour costs.

The Landlord stated that there was a burn mark present on the countertop at the end of the tenancy. He submitted a photo of the burn mark into evidence and provided testimony that the mark is approximately 5-7 cm in length. He stated that he spoke to the Tenant about the burn mark and advised that he would get a quote for the cost of repairing the counter.

The Landlord stated that he suggested to the Tenant that she also find some quotes for the repair. He stated that while the area with the burn may be able to be patched, a patch would not blend in well and will remain noticeable on the counter. He also stated

that he is not able to replace only a section of the counter due to the location of the sink and the potential for water to leak into the area where the counter sections join.

The Landlord submitted into evidence a quote for replacement of the countertop dated August 10, 2018 in the amount of \$705.46, including labour. The invoice also notes a quote for the cost of the countertop without labour which is stated as \$484.96. The Landlord noted that this does not include plumbing costs to disconnect and reconnect the sink and faucet which he estimates at a few hundred dollars. The Landlord stated that he would cover the plumbing costs and was not claiming these from the Tenants.

The Landlord testified that he has not yet completed the repairs and when he does so may choose to complete the labour himself and replace just the laminate top for a lower cost than a full replacement. The Landlord stated that the burn mark requires repair as the damage caused bubbling on the surface that led to holes right through the top layer of the counter.

The Tenant provided testimony that the burn mark occurred during the tenancy when a heavy cast iron pan touched the countertop while hot. She stated that the burn mark is approximately 4-5 cm in length and submitted a photo of the mark into evidence.

The Tenant stated that this was the first she had heard that the burn caused holes right through the top layer of the counter. She stated that the mark was caused through normal wear and tear and she stated her disagreement as to the amount claimed by the Landlord. She stated that there are ways to repair the countertop other than a complete replacement.

The Tenant submitted into evidence a text message from the Landlord dated August 14, 2018 in which the Landlord stated that the counter was functional but ugly. The Tenant also noted that in the text message that the Landlord suggested that a repair would not be possible and instead a full replacement would be required.

The parties were unsure of when the Tenants' forwarding address was provided to the Landlord, but they agreed that it was provided in late August 2018. The Landlord applied for dispute resolution on September 5, 2018.

The parties were presented with the opportunity to discuss a possible settlement agreement but chose not to resolve this matter through settlement.

#### Analysis

The parties were not in agreement as to whether the Tenants are responsible for the cost of repairing damage to the kitchen countertop. As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Landlords bear the burden to establish their claim.

Section 7 of the *Act* states the following regarding compensation for damages or loss:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

*Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* provides further clarification by outlining a four-part test to determine if compensation is due:

- 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.

Both parties were in agreement that a burn mark on the counter was caused during the tenancy, although were not in agreement as to whether this was reasonable wear and tear or damage. However, regardless of whether the mark on the counter was beyond reasonable wear and tear, I am not satisfied as to the value of the Landlord's loss or that reasonable steps were taken to minimize the loss. As such, I do not find sufficient evidence to determine that the 3<sup>rd</sup> and 4<sup>th</sup> points in the above four-part test were met.

The Landlord submitted a quote for the countertop replacement in the amount of \$705.46, but the work has not yet been completed. The Landlord also testified as to other possibilities for completing the countertop replacement or repair, such as completing the work himself or seeing if it is possible to just replace the laminate top. As the work has not yet been completed and the Landlord was not clear whether he would be going forward with company who provided the quote for \$705.46, I find that the

Landlord did not establish the amount of the repair costs and therefore the value of the loss. The Landlords applied for compensation in the amount of \$675.00, but I am not satisfied that they experienced a loss valued at \$675.00.

The Landlord provided testimony as to why he believed a repair of the countertop would be possible, such as through patching the damaged area or replacing a smaller section of the counter. However, I find no documentary evidence before me to establish that a repair is not possible and that a full countertop replacement is required. I also do not have sufficient evidence to establish how much a repair may cost should this be possible instead of a full counter replacement.

As the Landlord is claiming an amount of \$675.00 for a small area of damage on the counter, I find it reasonable that options for repair would be explored prior to moving forward with a full counter replacement. Accordingly, I find it reasonable that the Landlord would have evidence that the option of a repair was explored and it was determined that a repair was not possible. However, I find insufficient evidence to establish this and therefore I am not satisfied that reasonable steps were taken to minimize the loss claimed.

Accordingly, I am not satisfied that the Landlord met the burden of proof in this matter to establish that compensation is owing, and I decline to award any compensation. As the Landlord was not successful with the application, I decline to award the recovery of the filing fee.

Although this is the Landlords' application, as stated in *Residential Tenancy Policy Guideline 17: Security Deposit and Set off*, a security deposit is dealt with regardless of which party filed the application. As such, I award the Tenants a Monetary Order for the return of the security deposit.

As the parties agreed that the Tenants' forwarding address was provided at the end of August 2018 and the Landlord applied for dispute resolution on September 5, 2018 I find that the Landlord was in compliance with Section 38(1) of the *Act* and therefore the Tenants are not entitled to the return of double their deposit as stated in Section 38(6) of the *Act*. I accept the testimony of both parties that the Tenants agreed to a \$100.00 deduction from their deposit for cleaning and therefore issue a Monetary Order in the amount of \$575.00.

### Conclusion

The Landlords' Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$575.00** for the return of their security deposit. The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: January 10, 2019

---

Residential Tenancy Branch