



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STERUM PROPERTIES LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Code MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 16, 2018, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was 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 evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 7, 2014. Current rent in the amount of \$948.00 was payable on the first of each month. The tenant paid a security deposit of \$335.00. The tenancy ended on September 1, 2018.

a.	Damages and cleaning to the unit	\$4,087.00
b.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$4,087.00</b>

The landlord's agent testified that the tenant did not clean the rental unit to a reasonable standard at the end of the tenancy. The agent stated the appliances were not cleaned, and the entire rental unit had to be cleaned. Filed in evidence are photographs of the doors which support the testimony of the landlord' agent.

The landlord's agent testified that the tenant glued mirrors all over the doors of the rental unit, which caused damage to the doors when removed. The agent stated as a result five (5) doors had to be replaced. Filed in evidence are photographs of the doors which support the testimony of the landlord' agent.

The landlord's agent testified that the tenant also caused damage to the drywall as there were holes in the drywall from fighting. The agent stated that they did not provide any photographs of the holes in the walls.

The landlord's agent testified that the tenant also glued mirrors to the walls, which caused damage to the walls. The agent stated the walls had to be repaired and then painted. The agent stated that the rental unit was painted at the start of the tenancy in 2014.

The landlord's agent testified that the back splash in the bathroom had to be replaced.

The landlord's agent testified that the hardwood floors were scratched and had to be refinished.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

#### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process.

I accept the landlord's agent evidence that the tenant did not leave the rental unit reasonably clean as required by the Act. This is supported by the photographs.

I accept the landlord's agent evidence that the tenant caused damage to the rental unit when they glued mirrors on the doors and walls. This is supported by the photographs. I find this is not normal wear and tear. I find the tenant breached the Act when they failed to remove the mirrors and repair the damage and this caused losses to the landlord.

I accept the landlord's agent evidence that the rental unit need to be painted due the damage cause to the walls, by gluing mirrors to them. However, I find any amount claimed for painting should be depreciated by the useful lifespan of interior paint of five years as determined by Residential Tenancy Policy Guideline #40. The tenancy was four (4) years and nine (9) months. This leave only three (3) month left on the useful lifespan of the paint.

I am not satisfied that the tenant caused damage to the drywall by fighting; the landlord did not provide any photographs of holes from fighting to support their claim.

I am not satisfied that the tenant caused damage to the floors as the photographs do not show anything significant damage other than normal wear and tear. Further, there was no move-in inspection filed in evidence to show the condition of the floors at the start of the tenancy. Therefore, I dismiss this portion of the landlord's claim.

I am not satisfied that the tenant caused damage to the back splash in the bathroom. The photograph does not show any damage. Further, the back splash appears to be a product that was used in the 70's, and is more likely, than not, passed its useful lifespan. This was not denied by the landlord's agent at the hearing. I find the landlord has failed to establish the tenant caused damage to the back splash. Therefore, I dismiss this portion of the landlord's claim.

In this case, I cannot rely upon the invoice submitted by the landlord. The landlord is claiming the full amount of the invoice, which there is clearly items on the invoice that are not the tenant's responsibility, such as electrical work.

Further, as the invoice does not break the work down, I cannot determine the amount for cleaning, door replacement, wall repair or the cost of painting to depreciate value. Therefore, I find a reasonable amount for compensation is the amount of **\$1,105.69**. This represents 25% of the invoice.

I find that the landlord has established a total monetary claim of **\$1,205.69** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$335.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$770.69**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: March 20, 2019

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Residential Tenancy Branch