



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 a portion of the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 a portion of the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began November 2017. Current rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 (the “Deposits”). The

tenancy ended on January 5, 2019. The parties agreed that the landlord has returned to the tenants the amount of \$1,400.00 and the balance of the Deposits held by the landlord is \$600.00.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report.

The landlord claims as follows:

a.	Damage counter top	\$250.00
b.	Damage stove	\$350.00
c.	Filing fee	\$100.00
	<b>Total claimed</b>	<b>\$700.00</b>

At the outset the tenants agreed to the cost of the counter top.

The landlord testified that the tenants agreed in the move-out inspection that they are responsible for the damage stovetop. The landlord stated that the amount was to be determined once they had received a quote. The landlord stated that they received a quote which was for labour and the necessary part. The landlord seeks to recover the cost of the repair to the damage stovetop in the amount of \$350.00.

Filed in evidence is a copy of the move-out condition inspection, which the tenants acknowledged they are responsible for the repair. Filed in evidence is a copy of the quote.

The tenants testified that they have determined that the part for the GE stovetop has been discontinued and were unable to obtain a quote. The tenants stated that they have not received a proper quote for the cooktop, as the quote they received from the landlord was only three lines and from a gmail account. The tenants stated that the person appears to be an appliance repair person as they did an internet search. The tenants confirmed they did not make contact with the person listed in the quote.

Filed in evidence is an internet printout showing the part for the cooktop is unavailable though GE.

The landlord argued that they were told that the part is available. The landlord stated that they do not care if the part is from GE or an aftermarket part as long as the stove is

repaired. The landlord stated that they were told they would be able to get the part and it may have to be shipped for the states.

### 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.

### **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. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the tenants agreed they are responsible for the chipped countertop. As their quote is similar to the landlord's quote the tenants agreed to the amount claimed. Therefore, I find the landlord is entitled to recover the cost of the countertop repair in the amount of **\$250.00**.

The tenants were informed during the hearing that the landlord has the right to use any repair person they want to make the repairs after the tenancy has ended. The landlord

is under no obligation to use someone that the tenants have referred. If the tenants wanted to use a person of their choice they should have made the repair at the time they caused the damage to the countertop and prior to the tenancy ending.

In this case, the tenants agreed in the move-out inspection that they are responsible for the damage countertop. I accept the evidence submitted by the landlord that they are able to obtain the part, although it might not be from the original part supplier GE. I accept the quote provided by the landlord is reasonable.

While the tenants do not believe the quote is official, as it is not on a letterhead and the email address is gmail account, I find that alone does not satisfy me that the quote is not valid. Quotes can be provided in many different forms.

Furthermore, it was within the tenants control to contact the person listed in the quote as both their email address, telephone number, and company name were provided. The tenants did not do so. The tenants did not determine if there was an aftermarket part available.

I find the tenants breached the Act when they failed to make the repair to the stovetop prior to their tenancy ending. Therefore, I find the landlord is entitled to recover the estimated cost of the repair in amount of **\$350.00**.

I find that the landlord has established a total monetary claim of **\$700.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

While the tenants disagree that they are required to pay the filing fee, I find the landlord was required by the Act, to make their application within the statutory time limit which was within 15 days, and pay the filing fee, since there was no agreement with the tenants on these issues. The legislation does not provide any flexibility on the statutory time limits. The landlord is entitled under the Act to recover the cost of the filing, when they are successful with their application.

I order that the landlord retain the balance of the Deposits of **\$600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$100.00**.

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

Conclusion

The landlord is granted a monetary order and may the balance of the Deposits held.  
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: May 10, 2019

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Residential Tenancy Branch