



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, 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, compensation for damages, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Tenant 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 Landlord’s evidence. The Tenant did not submit any evidence prior to the hearing.

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.

### Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for damages?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

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

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on August 1, 2016 and ended on April 30, 2019. Monthly rent was \$1,950.00 at the start of the tenancy and was \$2,020.00 when the tenancy ended. The Tenant paid a security deposit of \$975.00 which is still held by the Landlord.

The parties agreed that the Tenant did not authorize any deductions from the security deposit. They were also in agreement that while the rental unit was inspected at the start and end of the tenancy, the inspections were not put into writing. The Tenant provided her forwarding address to the Landlord on May 7, 2019.

The Landlord has claimed compensation in the amount of \$2,700.00 as noted on a Monetary Order Worksheet submitted into evidence which states that \$2,600.00 is for floor damage and fridge door repair and \$100.00 for the recovery of the filing fee.

The Landlord clarified that she is seeking \$350.00 for the cost of replacing the fridge door and \$2,250.00 for repairing the laminate flooring.

Regarding the flooring, the Landlord testified that there was damage to the floors that occurred during the tenancy. The Landlord submitted photos of the floors taken at the end of the tenancy. She stated that the floors were coming up at the seams, and that she was told by a professional that this was due to water damage. The Landlord stated that the damage is in the entry way of the rental unit. However, she noted that the laminate flooring is throughout the rental unit with the exception of the bathroom and kitchen. As she has been unable to find matching laminate, she stated that the whole laminate flooring will need to be replaced. The Landlord stated that the floors were new in 2013.

The Landlord testified that she has not yet replaced the laminate, but that \$2,250.00 is an estimate of how much this will cost. The Landlord also submitted copies of text messages between herself and the Tenant which the Tenant signed on April 30, 2019 confirming that the text messages were between herself and the Landlord. Although the poor quality of the copy of the messages makes it difficult to read, it seems that the

Tenant discusses how she had used a mop on the floors as she had done in previous homes without any damage to the flooring.

The Landlord also submitted copies of emails between the parties in which the Tenant stated that she does not agree to pay for the repair of the flooring and that she finds the damage to be normal wear and tear. In an email dated May 8, 2019 the Tenant states that she was cleaning the floors as any tenant would and that she did not know that the steam mop would lift the planks. She further states that as only one area of the floors is damaged it indicates that it is an issue with the floors. It is were caused by the mopping, the Tenant stated her position that all of the laminate flooring would have been damaged.

The Tenant stated that the damage to the floors was not intentional and that she cleaned the floors as she would any floor. She noted that the area that is damaged seems to have happened from inside of the floor. The Tenant wondered if there was an issue with the flooring or the installation of the floors.

Regarding the claim for the dent in the fridge door, the Landlord submitted photos of the dent in the fridge. She stated that the fridge was new a few weeks before the Tenant moved in. The Landlord submitted an invoice for the cost of a new fridge dated March 28, 2019 in the amount of \$1,613.17. However, she stated that she only intends to purchase a new door for the fridge and that the cost of this is estimated at \$350.00. She noted that she has not yet purchased this.

The Tenant stated that the fridge door in the rental unit opens the wrong way and therefore hit the counter which caused the dent. As such, she stated that this was not intentional damage and instead is normal wear and tear due to the placement of the fridge and the counter.

The parties discussed settlement but were unable to reach an agreement.

### Analysis

As the Landlord has claimed compensation, I refer to Section 7 of the *Act* which states the following:

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 on determining whether compensation is due through a four-part test as follows:

- 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.

A party must meet all four points above to establish that they are entitled to compensation.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the party filing the claim has the onus to prove the claim, on a balance of probabilities. Therefore, in this matter I find that the Landlord has the burden of proof.

The parties were not in agreement as to whether the damage to the fridge and the floors were caused by the Tenant or were normal wear and tear. When parties to a dispute resolution proceeding present opposing testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

In this matter, I do not find sufficient evidence from the Landlord to establish the condition of the floors and fridge at the start of the tenancy as there is no move-in inspection in writing. I also fail to find evidence that would provide further information on the damage such as a report from a professional regarding the likely cause of the damage. Although the Landlord made reference to a professional advising her that the

damage to the floor was caused by water, no evidence was submitted that would support this testimony. As such, I find it difficult to determine whether there was an existing issue with the flooring that caused the issue or whether the Tenant is responsible for the damage. The Tenant stated that there may have been an issue with the floors or installation of the floors and I find this to be possible in the absence of evidence that have determined otherwise.

As stated in Section 37 of the *Act*, a tenant must leave a rental unit clean and reasonably undamaged at the end of the tenancy. However, as stated, due to insufficient evidence from the Landlord I am not satisfied that the damage was the responsibility of the Tenant and not reasonable wear and tear or an issue with the floors/fridge that cause unavoidable damage as stated by the Tenant.

The Tenant stated that due to the placement of the fridge, it hit the counter when the door was opened, and I do not find sufficient evidence from the Landlord, who has the burden of proof in this matter, to determine that this is not the case.

As noted in the four-part test outlined above, a party claiming compensation must also establish the value of their loss. While the Landlord testified as to estimates of \$350.00 for the fridge door replacement and \$2,250.00 for the replacement of the floor, there was no evidence submitted that would support this testimony. The Landlord did not submit any quotes or invoices regarding the repairs and instead submitted a copy of an invoice for the purchase of a fridge which she is not claiming.

As stated in Section 7 of the *Act* and in the four-part test, a party claiming a loss must also take reasonable steps to mitigate the potential loss. While the Landlord testified as to being unable to only repair the damaged area of the floor, she did not submit any evidence to support her claim that she had attempted to repair or replace only a small section. Instead, the Landlord stated that the whole area of laminate flooring must be replaced and that the whole fridge door must be replaced. However, without sufficient evidence to support this testimony, I am not satisfied that the Landlord has established that it is not possible to repair only the damaged area of the floor or the dent in the fridge without replacement of the entire fridge door.

Therefore, I do not find that the Landlord met the burden of proof to establish that the Tenant breached the *Act*, that the Landlord experienced a loss due to a breach by the Tenant, to prove the value of the loss, or to establish that reasonable steps were taken to mitigate the potential loss. As such, I find that the Landlord has not met the

requirements of the four-part test and therefore I decline to award any compensation to the Landlord. As the Landlord was not successful with the application, I also decline to award compensation for the recovery of the filing fee. The Landlord's application is dismissed, without leave to reapply.

As the Landlord is not awarded any compensation as claimed but is still holding the security deposit, in accordance with the policy guidelines I find that the Landlord must return the security deposit to the Tenant. As the Tenant's forwarding address was provided on May 7, 2019 and the Landlord filed the Application for Dispute Resolution on May 21, 2019, I do not find that the Landlord owes the Tenant double the deposit in accordance with Section 38(6) of the *Act*. As such, I grant the Tenant a Monetary Order for the return of the security deposit in the amount of \$975.00.

### Conclusion

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

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$975.00** for the return of the security deposit. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: August 30, 2019

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Residential Tenancy Branch