



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: MNDC, MNSD, FF  
TENANT: MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage or loss under the Act, regulations and tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on July 19, 2019, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on July 22, 2019, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

### Issues to be Decided

Landlord:

1. Are there damages or losses to the Landlord and if so, how much?
2. Is the Landlord entitled to compensation for damage or loss and if so how much?
3. Is the Landlord entitled to retain the Tenant's deposit?

Tenant:

1. Is the Tenant entitled to recover the security deposit?

### Background and Evidence

This tenancy started on June 15, 2017 as a fixed term tenancy with an expiry date of December 31, 2017. The tenancy then renewed on another fixed term to January, 31, 2019 and then renewed verbally on a month to month basis. Rent was \$2,850.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,425.00 on May 18, 2017. The Tenant said condition inspection reports were completed on July 15, 2017 for move in and June 30, 2019 for move out. The Tenant continued to say she gave the Landlord her forwarding address on the move out condition inspection report dated June 30, 2019.

The Landlord said their application is based on two incidents that happened during the tenancy. The first incident was a clogged and overflowing toilet during November 2017. The water overflowed from the toilet damaging the ceiling and floor of the room below. The Landlord said they made an insurance claim and the damages were repaired. The Landlord said they are requesting the Tenant compensate the Landlord for the insurance deductible of \$2,000.00 which the Landlord has paid.

The second incident happened in April 2019 when the Tenant text messaged the Landlord that the bar frig had leaked on the hard wood floor in the den or suite area. The Landlord said they looked into making an insurance claim but decided not to as it would increase the Landlord's insurance premiums and they would have to pay another deductible. Consequently, the Landlord is requesting the Tenant replace the hardwood floor at a cost of \$5,931.89. The Landlord said she believes the Tenant or someone in the Tenant's family left the frig door open and it resulted in water leaking out of the frig. The Landlord said the claim to replace the hardwood floor is based on a quote from a contractor. The Landlord said the quote/estimate is submitted in the Landlord's evidence.

In addition to these two claims the Landlord is requesting the Tenant pay the increase in the Landlord's insurance premiums in the amount of \$877.00. The Landlord said the \$877.00 is the amount her insurance premiums have increased since moving back into their home which was the rental unit while they were living out of province.

The Landlord said her total claim is \$2,000.00 for the insurance deductible, \$5,931.89 to replace the hard wood flooring and \$877.00 for the increase in her insurance premiums. The Landlord said her total claim is \$8,808.89. Further the Landlord said she is also requesting to recover the filing fee of \$100.00.

The Tenant said she disagrees with all the Landlord's claims for the following reasons.

The Tenant said after the toilet incident the Landlord told her it was an accident and the Tenant was not responsible to pay for it. The Tenant said it was the only incident with the toilet and she believed it was an accident or malfunction of the toilet. The Tenant said she is not responsible for any costs associated with the repairs. The Tenant added that she also incurred costs to repair her couch.

The Landlord said that was true, they agreed the Tenant was not asked to pay for the toilet overflow damage when it happened, but when a second water incident happened the Landlord changed her mind. The Landlord said she now wants to be paid for the first incident's insurance deductible of \$2,000.00.

The Tenant said the Landlord had two years and two tenancy agreement renewals to change her mind about the insurance deductible and she did not, so it seems wrong to change her mind now.

The Tenant continued to say the insurance premiums increases are not her responsibility as that is between the Landlord and the insurance company. As well there was a discussion that the Landlord did not do a calculation of the standard yearly or other insurance increases and the increase due to the damage claim. Consequently the actual increase in the premium due to the damage claim is unknown. The Tenant said she is not responsible for the insurance premium increase.

Further the Tenant said they did discuss the second incident regarding the bar frig leaking and staining the hardwood floor. The Tenant said the staining was on 3 panels only and the floor was old and damaged at the start of the tenancy, so it is incorrect to think the Tenant should pay for the whole hardwood floor to be replaced. As well, the Tenant said she believes the bar frig had a faulty door which allowed it to open resulting in the leak on the floor. The Tenant said the move in condition inspection report dated July 15, 2017 says the floor has "significant w/t (wear/tear) L of P (unknown) minor scratches and chips (elsewhere?). The Tenant continued to say the floor was not in good condition on move in and it is not the Tenant's responsibility to replace the entire floor. The Tenant said she offered to pay for the three panels to be replaced.

The Tenant continued to say the move out condition inspection report was completed on June 30, 2019. The report indicates there is "floor damage in the frig area" but, in the part of the report for damages the tenant is responsible for it only mentions three glass light fixtures with a value of \$30.00. The Tenant said she ordered the light fixtures and the floors issue was left off the report. The Tenant said she was told the Landlord

would contact the Tenant about the floor. The Tenant said the Landlord contacted her with the Landlord's application for Dispute Resolution and a claim to replace the full hard wood floors in the den/suite in the amount of \$5,931.89. The Tenant said she disagrees with this and she does not think she is responsible for it.

The Landlord said she had a friend do the move out condition inspection report as they were still out of province. The Landlord said her friend is not a professional property manager so the report may not be done correctly. The Landlord agreed the floor issue is not included in the repairs the Tenant is responsible for, but it was discussed with the Tenant.

The parties were given the opportunity to do a settlement agreement, but no arrangement was agreed on.

The Tenant said in closing that this has been a very stressful time for her. She does not believe she is responsible for any damages that are not included on the move out condition inspection report. Further she replaced the glass light fixtures that are indicated as her responsibility on the move out condition inspection report dated June 30, 2019. The Tenant requested the return of her security deposit of \$1,425.00 and to recover the filing fee of \$100.00.

The Landlord said in closing that this has been a frustrating experience and she is trying to recover the costs for damage to her house during the tenancy with the Tenant. The Landlord said the damage happened while the Tenant was in charge of the rental unit and therefore the Tenant should be responsible for it.

### Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspection reports to establish the condition of the rental unit at the start and the end of the tenancy. This is done to confirm that the parties agree on the condition of the unit at the start and end of the tenancy. Further, space is provided on the report to indicate any damage the Tenant is responsible for at the end of the tenancy. The tenant may agree or disagree to the damages. Once the parties sign off on the condition inspection report the parties are deemed to have agreed on all damages and if the Landlord is authorized to retain any of the Tenant's security deposit. In this case the only damages indicated on the condition inspection report condition are the glass light fixture which the Tenant said she has replaced. The Tenant indicated she agreed to the report and then signed it. The Landlord's agent did not sign the report but it was confirmed by testimony the Landlord's agent completed the report with the Tenant.

Section 32 of the Act says:

(1)A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

**(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.**

**(4)A tenant is not required to make repairs for reasonable wear and tear.**

(5)A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

For a Landlord to be successful under section 32 (3) a Landlord must prove the actions of the Tenant or the Tenant's neglect caused damage to the rental unit. If this is not proven and the damage is a result of an accident that was not directly caused by the Tenant then the damage is considered normal wear and tear.

As both parties testified the incidents were accidents and the Landlord has not presented any prove the Tenant's action were negligent; I find the Landlord has not established grounds to show the Tenant was neglectful or malicious in regards to the two incidents. These incidents are regrettable, but I find them to fall under the category of normal wear and tear.

Further for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the **applicant must show how they mitigated or minimized the loss.**

In this situation the Landlord is responsible to proportion the damage to the actual cause of the cost. The Tenant is not responsible to replace a full floor if the flooring is old or has damage at the start of the tenancy. The Tenant is only responsible for the damage attributed to the Tenant's tenancy. If the claims are not proportioned then the Landlord has not proven the actual loss. In this situation the portion of the claims that may be attributed to the Tenant for the bar frig incident and the insurance premiums have not been proportioned out; therefore the Landlord has not proven there is and actual claim that the Tenant may be responsible for.

The Landlord said the incidents were accidents, but the Tenant or her family caused the damage. I do not dispute the damage happened, but I have reviewed the evidence and I find the Landlord has not established proof that the Tenant caused the damage directly by neglect or by a malicious act.

Given that the Landlord told the Tenant that she was not responsible for the \$2,000.00 insurance deductible at the time the incident happened and it is not indicated on the move out inspection report, I dismiss the Landlord's claim for the insurance deductible of \$2,000.00.

Further the Landlord has not established that the Tenant is responsible for the full increase of the insurance premiums or what portion of the increase the damage claim is responsible therefore: I dismiss the Landlord's claim of \$877.00 for increases to the Landlord's insurance premiums.

With regard to the bar frig incident, I find the Landlord has not established grounds to prove what proportion of the floor replacement the Tenant may be responsible for and if the Tenant's actions were neglectful; therefore I dismiss the Landlord's claim to replace the hardwood flooring in the amount of \$5,931.89.

Further as the Landlord has not established grounds to retain the Tenants security deposit and the move out condition inspection report only indicates the Tenant is responsible to replace 3 glass light fixtures at \$30.00, which the Tenant said she has

replaced, I order the Landlord to return the Tenant's security deposit of \$1,425.00 immediately.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding from the Landlord. As the Landlord has not been successful in this matter I order the Landlord to bear the \$100.00 filing fee for her application.

A monetary order has been issues to the Tenant for the following:

Return of Security deposit	\$ 1,425.00
Filing fee	\$ 100.00
Total	\$ 1,525.00

#### Conclusion

A monetary order has been issued to the Tenant for \$1,525.00.

The Landlord's application is dismissed without leave to reapply.

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: October 31, 2019

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Residential Tenancy Branch