



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FFL

### Introduction

On July 16, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords and Tenants attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlords and Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the 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 a monetary order for damage to the unit?
- Are the Landlords entitled to keep the security deposit and pet damage deposit towards his claims?

### Background and Evidence

The Landlords and Tenants testified that the tenancy began on July 25, 2014, on a month to month basis. Rent in the amount of \$1,332.50 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a security deposit of

\$625.00 and a pet damage deposit in the amount of \$625.00. The parties testified that the Tenants moved out of the rental unit on June 30, 2019.

The Landlord is seeking compensation for the following items:

Flooring	\$6,960.57
Electrical	\$185.02
Washing machine	\$300.00
Cleaning	\$400.00
Dining Room Light Fixture	\$53.74

### Flooring

The Landlord testified that the Tenant is responsible to damage to the flooring of the unit.

The Landlord testified that at the time of the move out inspection it was noted that the laminate flooring in the living room, kitchen, and master bedroom was water damaged. The Landlord testified that the flooring was installed by the Landlord in 2012 and there was no damage to the flooring when the tenancy began in 2014.

The Landlord testified that prior to completing the move out condition inspection report he brought a contractor into the unit to look at the flooring. The Landlord testified that the contractor informed him that the flooring had too much water left on it which resulted in peeling. The Landlord testified that it is damaged beyond repair and needs to be replaced. The Landlord testified that he plans to replace the flooring with the same quality of flooring that was installed in 2012. The Landlord provided 18 photographs and a video recording of the floor taken at the end of the tenancy.

The Landlord testified that the flooring has not been replaced and there are new tenants living in the rental unit since June 30, 2019, at a higher monthly rent.

The Landlord provided a quote from a flooring company for the cost to remove and dispose of the old laminate flooring and for the purchase and installation of 1171 square feet of laminate flooring. The quote indicates that the laminate flooring costs \$2.49 per square foot. The quote indicates the surface of the existing laminate has been damaged beyond repair due to too much water while cleaning.

The Landlord is seeking the amount of \$6,984.30 for flooring costs.

In reply, the Tenants provided testimony that the flooring in the rental unit was poorly installed. They testified that the Landlord had to fix the flooring during their tenancy. The Tenants testified that during the tenancy the Landlord told them that he had installed low quality flooring at .79 cents per square foot. The Tenant testified that low quality flooring under .99 cents per foot should not be installed in entranceways or elsewhere where water could be present.

The Tenants provided a letter from the manager of a local flooring company which indicates the manager reviewed a piece of the laminate flooring and reviewed the Tenant's photographs of the flooring. The letter indicates that the laminate is worth no more than .99 cents per square foot and it is not recommended for entrances, bathrooms, laundry areas, or kitchens. The letter indicates that the laminate installation is one of the poorest he has seen in 45 years in the industry.

The Tenant testified that he has photographs that were taken at the start of the tenancy showing pre-existing damage to the flooring. The Tenants provided numerous photographs of the laminate flooring including photos showing gaps in the flooring joints.

The Tenant had a witness, Mr. B.W. testify that he has experience with laying laminate flooring and the flooring in the unit is low grade and poor quality.

#### Light Fixture Purchase and Installation

The Landlord testified that the Tenant removed a light fixture located in the dining room during the tenancy. The Landlord testified that when they inspected the unit there was only a hole in the ceiling.

The Landlord is seeking the amount of \$53.74 for the cost to purchase a light fixture and \$185.02 for the cost to install the light fixture. The Landlord provided a quote from a company for the installation cost. The Landlord provided a photograph of a flush mount LED light fixture with a price tag of \$47.98.

The Landlord testified that he has not purchased a light fixture and had a fixture installed. The Landlord testified that the Tenants told him they were removing the old fixture because they found a funky one that they wanted to install. The Landlord testified that he did not grant permission to the Tenants to remove the light fixture; however, he did not address the issue with them when they mentioned they were going to replace it. The Landlord testified that he does not recall the Tenants giving him the old light fixture.

In reply, the Tenants testified that they asked the Landlord if they could replace the fixture and the Landlord agreed on the condition that they replace it when they move out. The Tenant testified that he asked the Landlord for the old fixture in June prior to moving out and the Landlord said it was in the shed. The Tenant testified that the Landlord then informed him that the Landlord had lost the light fixture. The Tenant testified it would only take 10 minutes to replace the light fixture. The Tenant testified that the original fixture was not an LED fixture; it was incandescent.

### Washing Machine

The Landlord testified that the rubber stopper within the front-end washing machine needs to be replaced. The Landlord testified that they purchased it in used condition in 2014 for between \$300.00-\$400.00 and they do not know how old it is.

The Landlord testified that they observed mildew on it and tried to clean it but are unable to remove it. The Landlord provided a quote for the replacement cost and installation cost of replacing the part.

The Landlord testified that they have not had the part replaced and the washer remains in the rental unit and is being used by the new tenants.

In reply, the Tenants provided testimony that the washer was a used unit that already had mildew in it. The Tenant testified that he showed the Landlord the mildew when it was provided to the Tenants in August.

### Cleaning

The Landlord is seeking to recover the amount of \$400.00 for the cost to clean the rental unit at the end of the tenancy. The Landlord testified that they had to wash the walls and baseboards in the rental unit. The Landlord testified that there was grease in the stove, dirty burners, dirty sink, and mildew in the cupboards. The Landlord testified that the fridge and freezer required cleaning.

The Landlord testified that it took the Landlord 20 hours to clean the rental unit and they are seeking to be compensated at \$20.00 per hour. The Landlords provided a copy of a condition inspection report that indicates it was completed on June 30, 2019. The condition inspection report is not signed by the Tenants.

The Landlords provided 100 photographs taken of the rental unit. The Landlord also provided the following video recordings taken of the rental unit.

- July 24, 2014 taken prior to a move in inspection
- May 3, 2019 interim inspection
- June 30, 2019 move out inspection

In reply, the Tenants testified that the oven/stove was in poor shape at the start of the tenancy and is worth \$50.00. The Tenants testified that the fridge was left spotless. The Tenants testified that the hose in the kitchen sink had normal wear and tear.

The Tenants testified that they have provided letters from people that helped them clean the rental unit. The Tenants provided email letters dated August 30, 2019 and September 15, 2019 from persons who indicate they helped clean the rental unit on June 30, 2019. The Tenants provided a letter dated September 8, 2019 from a person who indicates that she spent six hours cleaning the rental unit on June 30, 2019.

The Tenants provided three photographs taken of the kitchen; washer and dryer; and fridge and freezer.

The Tenants testified that the photographs that the Landlord provided were taken while the Tenants were still living in the rental unit and were taken prior to when the Tenants cleaned the unit. The Tenants stated that the Landlord's photographs do not contain the date they were taken.

The Landlord provided testimony acknowledging that some of the Landlords' photographs were taken during a pre- move out inspection.

### Security Deposit

The Landlord is seeking to keep the security deposit of \$625.00 and pet damage deposit of \$625.00 in partial satisfaction of their claims.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

#### Flooring

I have reviewed the documentary evidence and considered the testimony from both parties. I accept the Landlord's testimony that he installed the laminate flooring himself in 2012. I find that the laminate flooring was seven years old at the end of the tenancy. I accept the evidence that shows there is damage to the laminate flooring.

The Landlords documentary evidence provides that in January 2015 the Tenants reported a problem with the laminate flooring creaking and buckling. I find that the Tenants reported issues with the laminate flooring to the Landlord during the tenancy.

I find that the quality of the laminate flooring was of lower quality and the quality of the installation of the flooring was poor. I accept that the cost of the existing laminate flooring was approximately .99 cents per square foot. I find that the Landlords are seeking to replace the flooring with a higher quality laminate that costs \$2.49 per square foot. I find that Landlord has a duty to minimize the loss being claimed and the Landlords claim is inflated.

I find that it is reasonable to expect that water may occasionally be present in kitchens and entranceways. I accept that lower quality laminate should not be used in entranceways or kitchens where water may be present. I find that it is reasonable to accept that if low quality flooring was not installed perfectly, there is a higher likelihood that water could flow into gaps and seams and seep beneath the flooring and cause

water damage to the flooring. I find that it is more likely than not that the quality and age of the laminate flooring along with the quality of installation contributed to the damage present.

I have considered that the Landlord has not replaced the flooring and immediately rented the unit out to new tenants at a higher monthly rent. I find that the Landlords have not suffered a loss of rent or reduction of rent due to the condition of the flooring.

I am not convinced that the Tenants are responsible for water damage to the flooring or that the Landlord has suffered a loss. In addition, I find that the Landlords' claim is inflated. In the circumstances, the Landlords' claim to be compensated for damage to the laminate flooring is dismissed.

#### Light Fixture

I find that the Landlord provided the Tenants with tacit approval to remove the light fixture. The Landlord testified that he chose to not address the issue when it was raised by the Tenant. I find that this led the Tenants to believe that they had permission to replace the light fixture.

I find that the Landlord was not entirely confident with his testimony on whether or not the Tenants gave him the original light fixture. The Landlord testified that he did not recall whether that had occurred. The video evidence from the Landlord provides a recording of the Landlord stating, "I don't know where the light is". The Tenant testified the Landlord told him it was in the shed and then informed him that he had lost the fixture. I find that the Tenant was attempting to replace the fixture prior to moving out but did not have the original fixture.

The Landlord has not purchased a light fixture and had a light fixture installed. It appears that the Landlord's claim is for a different quality of light fixture.

The Landlord bears the burden of proof and I find that the Tenants provided a more complete explanation for what occurred. I prefer the Tenants version of the events.

I find that there is insufficient evidence from the Landlords that the Tenants are responsible for the cost to purchase and install a light fixture. The Landlords' claim is dismissed.

#### Washing Machine

A landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The Landlords' documentary evidence indicates that the Tenants reported an issue with the washer not draining correctly in January 2019.

I find that the washing machine was in used condition when it was provided to the Tenants. I find that there was a problem reported with the operation of the washer. There is insufficient evidence from the Landlords that the Tenants used the washing machine in a neglectful manner or caused deliberate damage to the washer.

The washer remains in the rental unit and is being used by the new tenants. The Landlords claim for compensation to repair the washer fails and is dismissed.

#### Cleaning

The Landlord is seeking to recover the amount of \$400.00 for the cost to clean the rental unit at the end of the tenancy.

I find that the Landlords' evidence shows there is dirty trim/ baseboard and scuffs and dirt on walls. However, I find that some of the photographic evidence was taken during a pre move out inspection prior to when the Tenants cleaned the unit. I am unable to determine which photographs were taken before the Tenants cleaned the unit and which photographs were taken after the Tenants cleaned the unit.

With respect to the video evidence, after reviewing the Landlords video recording taken on June 30, 2019, I find that the rental unit required additional cleaning at the end of the tenancy. I find that the kitchen and bathroom area and some walls and baseboards were left dirty. I find that the Landlords have provided the better evidence that rental unit required additional cleaning. The Tenants are responsible to leave the rental unit clean and I find that the Landlords claim for cleaning costs is reasonable.

I grant the Landlords the amount of \$400.00 for cleaning costs.

#### Security Deposit

The Landlords applied to keep all or part of the security deposit and pet damage deposit towards their claims.



I find that the Landlord is holding deposits in the amount of \$1,250.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlords had some success with their application. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlords have established a monetary claim in the amount of \$500.00 for cleaning costs and the recovery of the filing fee.

I authorize the Landlords to retain the amount of \$500.00 from the deposits of \$1,250.00. I order the Landlords to repay to the Tenants, the balance of \$750.00 from the deposits.

I grant the Tenants a monetary order in the amount of \$750.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

### Conclusion

The Landlord was partially successful with the claims for damage and cleaning costs.

I authorize the Landlord to retain the amount of \$500.00 from the deposits of \$1,250.00.

I order the Landlord to repay the Tenant the amount of \$750.00 and I grant the Tenant a monetary order for \$750.00.

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: November 6, 2019

---

Residential Tenancy Branch