



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FFL

### Introduction

On December 18, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep a security deposit.

The matter was set for a conference call hearing. The Landlord and Tenants attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The initial hearing on May 19, 2020 was adjourned to permit the Tenants to re-serve their documentary evidence to the Landlord. At the start of the reconvened hearing, the Landlord confirmed that he received the Tenants’ documentary evidence.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to other compensation for damage or loss?
- Can the Landlord keep the security deposit towards their claims?

### Background and Evidence

The Landlord and Tenants testified that the tenancy began on December 28, 2018, as a 25-month fixed term tenancy. Rent in the amount of \$1,300.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$650.00 and a pet damage deposit of \$650.00.

The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants broke the fixed term tenancy agreement by moving out of the rental unit on November 30, 2019, prior to the end of the fixed term tenancy agreement.

The Landlord is seeking compensation from the Tenants for rent, damage, and cleaning costs as follows:

Replacement Countertops	\$661.50
Kitchen Sink Re-installation	\$304.00
Wall Damage Repairs	\$350.00
Paint, Blinds, Locks, Cleaner	\$344.71
Livingroom Carpet	\$1,174.38
Small Bedroom Carpet	\$672.44
Linoleum Replacement	\$599.80
Cleaning Costs	\$200.00

The Tenants submitted that the Landlord did not do his due diligence to find a new Tenant and the Landlords claim for damages is grossly exaggerated and untrue.

### Loss of Rent for December 2019

The Landlord testified that the Tenants broke the fixed term tenancy agreement by vacating the unit prior to the end of the fixed term and are responsible for a loss of rent. The Landlord testified that he advertised the rental unit on local websites and was not able to find a new Tenant until December 16, 2019. The Landlord provided copies of advertisements for the rental unit placed on three different websites. The rental unit was listed at the same monthly rent of \$1,300.00.

The Landlord is seeking compensation of \$650.00 which is a half month of rent due under the tenancy agreement.

In reply, the Tenants provided testimony that they do not believe that the Landlord was diligent in finding a new Tenant for the rental unit. The Tenants submitted that the Landlord delayed posting the advertisement until November 10, 2019 and that there was only one showing on November 25, 2019.

In reply, the Landlord testified that on October 31, 2019, the Tenants gave him notice that they were ending the tenancy; however, their notice was not signed and was not a valid notice to end tenancy. The Landlord testified that he needed an opportunity to view and inspect the unit to ensure it was suitable for re-rental before he could place an advertisement. The Landlord provided a copy of an email he received from the Tenants dated October 31, 2019 stating that they will be moving out on December 1, 2019.

Replacement Countertops \$661.50

The Landlord testified that he found cut marks and a gouge on the kitchen countertops. The Landlord testified that the countertops were a few years old. The Landlord has not had the countertops replaced and they are being used by the new Tenants. When asked why the countertops need to be replaced, the Landlord replied that the counters could swell if water gets into it. The Landlord provided four photographs showing the countertops. The Landlord provided a quote from a countertop company for the cost of replacement.

In reply the Tenants testified that maybe they are responsible for two or three cuts marks on the counters; however, they feel this amounts to normal wear and tear. The Tenants submitted that the damage to the counter tops is not substantial enough to warrant a replacement and does impede the function. The Tenants submitted that there is a new Tenant living in the unit and the Landlord has not suffered a loss due to the cut marks. The Tenants submitted that the Landlord is receiving the same amount of monthly rent. The Tenants testified that the gouge was present on the countertop at the start of their tenancy. The Tenants provided a photograph taken January 10, 2019 and stated that they spoke to the Landlord about the gouge at that time.

The Landlord replied that the gouge was not pre-existing and that the conversation in January 2019 was regarding a bathroom vanity.

Kitchen Sink Re-installation \$304.00

The Landlord testified that when the countertops get replaced, a hole will need to be cut, and the sink will need to be installed and plumbed. The Landlord provided a quote for the cost to cut a hole in the cabinet and install a sink.

In reply, the Tenants testified that since the countertops do not need to be replaced, there is no need for the Landlord to perform this work.

#### Wall Damage Repairs \$350.00

The Landlord testified that the Tenants attempted to patch holes in the walls' however, some walls were not filled properly, and the fill was sticking up in spots.

The Landlord testified that he hired a person to fill, sand and paint the walls in the kitchen and bathroom. The Landlord testified that walls were previously painted in December 2018. The Landlord provided a copy of a receipt in the amount of \$350.00 for the cost to fill, sand, and paint the walls due to the damage.

In reply, the Tenants provided testimony acknowledging that there was damage to walls in the rooms. The Tenants testified that they were able to paint over areas in the kitchen and bathroom. The Tenants testified that the walls in the bedroom and Livingroom were repaired and the only reason they were not painted is because the paint was not available.

#### Paint, Blinds, Locks, Cleaner \$344.71

The Landlord is seeking \$71.65 for the cost of one can of interior paint. The Landlord excluded the claim for the cost of exterior paint at the hearing. The Landlord provided a copy of a receipt dated December 4, 2019.

#### Blinds

The Landlord is seeking \$140.18 for the cost to purchase a new master bedroom blind and a new bathroom blind.

The Landlord testified that the blinds in the rental unit were approximately two years old and were aluminium. The Landlord found the blinds to be damaged/ bent at the end of the tenancy. The Landlord testified that he attempted to straighten them but could not and they could not be repaired and needed to be replaced. The Landlord provided

photographs of the blinds. The Landlord provided a copy of a receipt dated December 4, 2019, for the purchase of blinds.

In reply the Tenants testified that one of the blinds had only one bend which was minor. And amounts to normal wear and tear. The Tenants testified that damage to the second blind was more significant but could have been repaired.

### Locks

The Landlord testified that the Tenants did not return the key to the front door of the rental unit at the end of the tenancy. The Landlord testified that the Tenant said he would throw the key in the river. The Landlord purchased a new lock and is seeking to recover the purchase cost of \$50.37. The Landlord provided a copy of a receipt dated December 4, 2019, for the purchase of a lock.

In reply, the Tenants testified that they returned one of the front door keys to the Landlord. The Tenant testified that he offered to return the second key to the Landlord by placing the key in the mailbox. The Tenant testified that the Landlord refused the offer.

The Tenants submitted that the Landlord sent them an email on December 3, 2019 stating they would be responsible for the replacement cost of a lock due to their failure to return the key. The Tenants provide a copy of a text message sent to the Landlord at 9:49 am on December 4, 2019 asking where the key should be dropped off.

The Tenants testified that on December 4, 2019 the Landlord told him that he had already replaced the lock. The Tenants point out that the Landlord's receipt for the purchase of the lock is dated December 4, at 12:05 pm. The Tenant testified that the Landlord said they had poked the bear and the Landlord was not interested in working with them. The Tenant testified that he informed the Landlord that he may as well throw the key in the river.

The Tenants submitted that the Landlord chose to unilaterally change the lock without giving the Tenants an opportunity to return the key. The Tenants submit that the Landlord's claim should be disallowed.

In reply, the Landlord stated that the Tenants need to return the keys at the time of move out. He stated that he offered the Tenants an opportunity to return the key. He stated that he did not trust having the key left in a mailbox. The Landlord testified that

he changed the lock to prevent the Tenants from gaining entry into the rental unit. The Landlord testified that the Tenants could have still returned the key, but they did not.

Livingroom Carpet \$1,174.38

The Landlord testified that the Livingroom carpet needs to be replaced. The Landlord testified that there is a noticeable odor of animal dander. The Landlord testified that the carpet was approximately two years old with some pre-existing damage.

The Landlord has not had the carpet replaced and the new Tenant is using the carpet. The Landlord provided a quote for what he states is the replacement cost of the same type of carpet. The Landlord provided a quote dated December 6, 2019 for the labour and cost to install 222 square feet of carpet. The Landlord did not provide any photographic evidence of damage to the carpet.

In reply, the Tenants testified that they had all the carpets cleaned on November 30, 2019 and they provided an invoice dated November 29, 2019 for the cost of cleaning. The Tenants testified that the carpet did not smell like feces or urine. The Tenants pointed out that there is no indication on the condition inspection report that there was a smell of urine or feces. They submitted that the Inspection Report notes a dog smell. The Tenants testified that the email from the cleaning company which states urine and feces is inconsistent with what was indicated on the condition inspection report.

The Tenants testified that they accept that the carpet needed to be cleaned again with a deodorizer. The Tenants testified that the Landlord refused to have the carpet re-cleaned and deodorized. The Tenants submitted that the Landlord re-rented the unit and has not suffered a loss. The Tenants submitted that their pets are house trained and are crated during their absence. The Tenants submitted that there is no reliable evidence that any odor has penetrated the underlay.

In reply, the Landlord provided testimony agreeing that the Tenants offered to have the carpets cleaned again on December 4, 2019. The Landlord testified that he did not have the carpet re-cleaned because the carpet professional told him that there is no guarantee that the cleaning would be successful.

Small Bedroom Carpet \$672.44

The Landlord provided testimony that the small bedroom carpet needs to be replaced due to a noticeable odor of animal dander. The Landlord testified that the carpet was

two years old. The Landlord has not had the carpet replaced and the new Tenant is using the carpet. The Landlord provided a quote dated December 6, 2019 for the cost to replace carpet in a small bedroom. The Landlord did not provide any photographic evidence of damage to the carpet.

In reply, the Tenants provided the same submissions as provided in response to the claim for the Livingroom carpet.

Linoleum Replacement \$599.80

The Landlord testified that the Tenants are responsible for discoloration on the linoleum flooring. The Landlord testified that the linoleum was two years old. The Landlord has not had the linoleum replaced and the new Tenant is using the linoleum. The Landlord provide a photograph of the linoleum floor. The Landlord submitted that the linoleum flooring looks cosmetically bad. The Landlord provided a quote dated December 6, 2019 for the cost to install linoleum in a laundry area.

In reply, the Tenant testified that the discoloration to the linoleum floor is minor and does not warrant replacement. The Tenants testified that they have no idea what caused the discoloration. The Tenants submitted that the washing machine may have slowly leaked. The Tenants provided a photograph showing rust spots on the linoleum where the legs of the washer contacted the linoleum.

Cleaning Costs \$200.00

The Landlord testified that the Tenants left the rental unit unclean at the end of the tenancy. The Landlord is seeking to recover the cost to have the unit cleaned. The Landlord provided a receipt for \$200.00 which is \$20.00 per hour for 10 hours of cleaning. The receipt indicates that the walls, windows, blinds, cupboards, fridge and floors were cleaned.

In reply, the Tenants testified that there is no evidence from the Landlord to show that the rental unit needed to be cleaned.

The Tenants testified that they cleaned the rental unit, except for the exterior windows, a shelf, and the blinds. An email sent to the Landlord from the Tenants on November 30, 2019 provides the following:

We have been agreeable to all of your requests and have upheld all the requirements of the lease, with the exception of the term. We have cleaned underneath and inside all the appliances and cupboards, fully cleaned the bathroom, wiped down all walls and baseboards, cleaned inside the bathroom ceiling fan, cut the tall grass, had the carpets professionally cleaned with copy of receipt provided and repaired all nail holes/marks on the walls. We have painted the walls that are white but have left the walls that are CIL/GLIDDEN Painters White Satin Finish. The reason for this is because the Home Depot staff told us that it wasn't available. They were able to make a similar color, but it is noticeably darker. We have informed you of this and have repeatedly followed up to ask what to do. We strongly prefer not to cut out a portion of the wall to do a paint match, which I am sure you don't want either. We have consented to viewings with less than 24 hours' notice, although there has only been one. We have even cut you a spare key so you wouldn't have to look through your box of keys to find ours.

### Security Deposit and Pet Damage Deposit

The Landlord applied to keep the security deposit and pet damage deposit towards his 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 Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that a Tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the Tenant or his or her guest. A Tenant is not responsible for reasonable wear and tear to the rental unit or site.



The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.*

Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. The Guideline provides that an arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

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

#### Loss of Rent for December 2019

Section 45 of the Act provides that a Tenant may end a fixed term tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

I find that the Tenant notified the Landlord that they would be moving out; however, that notification is not a proper notice to end tenancy. The Tenants could have changed their mind and remained in the unit in accordance with the fixed term agreement. The tenancy ended when the Tenants vacated the rental unit on December 1, 2019; however, the Tenants remained responsible to pay the rent until the unit could be re-rented. I find that the Landlord was not responsible to take steps to re-rent the unit until December 1, 2019 when the Tenants actually vacated the rental unit.

I accept the Landlords testimony and evidence that the rental unit was advertised on local websites at the same monthly rent. The Landlord is seeking \$650.00 for a loss of December 2019 rent. The Landlord found a new Tenant starting December 16, 2019.

I find that the Landlord mitigated against his loss and found a new Tenant in less than a month after the Tenants breached the fixed term tenancy agreement by moving out early. I award the Landlord the amount of \$650.00 for a loss of December 2019 rent.

Replacement Countertops \$661.50

The Landlords claim for the replacement cost of countertops is dismissed without leave to reapply. I have reviewed the Landlords evidence and I find that the cuts are not substantial enough to warrant replacement of the countertops. I find that the countertops are being used by the new tenant. I find that the Landlord has not established that he has suffered a loss and has not established the value of any loss.

Kitchen Sink Re-installation \$304.00

The Landlords claim for the costs for the kitchen sink reinstallation is dismissed without leave to reapply. I find that the Landlords claim for new countertops has failed and the Landlord is not entitled to any compensation on this claim.

Wall Damage Repairs \$350.00

I have reviewed the Landlords testimony and documentary evidence of wall damage. I accept that the walls of the Master bedroom, small bedroom, and living room had damage and were patched by the Tenants. The Tenants acknowledged they were responsible for wall damage and that they patched the walls but could not paint because they could not find the correct paint. I find that the Tenants were responsible for damage to the walls.

I find that the Landlord s invoice for the labor cost to fill, sand and paint the wall damage is reasonable. I award the Landlord the amount of \$350.00.

Paint, Blinds, Locks \$344.71

I find that the Tenants were responsible for damage to the walls and therefore they are responsible to reimburse the Landlord for the cost of the interior paint. I award the Landlord the amount of \$71.65 for paint.

Blinds

I find that the master bedroom blind was significantly bent/ damaged, and I find accept the Landlords testimony that repairing an aluminium blind is difficult. I find that the Tenants are responsible for the damage to this blind and for the replacement cost of the master bedroom blind. Policy Guideline #40 Useful Life of Building Elements provides that the useful life of a blind is 10 years. I find that the blind was two years old. I find that the Tenants are responsible for 8/10 of the replacement cost. I award the Landlord the amount of \$67.92.

I find that damage to the bathroom blind was minimal/ minor. I find that this amounts to normal wear and tear. The Landlords claim for compensation for this blind is dismissed without leave to reapply.

### Locks

I find that the Tenants failed to return all the door keys to the Landlord at the end of the tenancy. The December 4, 2019 text message from the Tenant indicated that they were going to let carpet cleaners back into the unit and then return the key to the Landlord.

I find that the Tenants did not have the right to access the rental unit or permit anybody else into the unit after December 1, 2019.

I find that the Landlord is justified in purchasing a new door lock on December 4, 2019, to secure the rental unit. I note that the tenants could have still returned the key on December 4, 2019 and this may have prevented the claim against them for the purchase of a new lock.

I find that the Tenants are responsible for the Landlords cost to purchase a new lock for the door of the rental unit. I award the Landlord the amount of \$ \$50.37.

### Livingroom Carpet and Small Bedroom Carpet

I find that when the Landlord raised a concern about carpet smell, the Landlord declined an immediate offer from the Tenants to have the carpets re-cleaned using a deodorizer. The Landlord takes the position that the carpets need to be replaced and that the smell is in the underlay.

I find that the Landlord has failed to mitigate against his loss. I find that the Landlord should have accepted the offer to have the carpets re-cleaned and then determined whether the smell persisted. I note that the Landlord has not replaced the carpets in the

rental unit, and they are still being used by the new Tenant. I find that the Landlord has not established that he has suffered a loss and has not established the value of any loss.

The Landlords claim for the cost to replace carpets is dismissed without leave to reapply.

#### Linoleum Replacement \$599.80

After considering the evidence and testimony from the parties, I find that the Landlords claim for the replacement cost of linoleum fails.

The photograph of the linoleum provided by the Landlord shows a small and light colored area of discoloration around the washing machine. There is insufficient evidence from the Landlord that the Tenants deliberate actions or neglect caused discoloration of the linoleum. I find that it is more likely than not that the linoleum which is located next to a washing machine may be exposed to water which caused the discoloration. This finding is supported by the photograph showing rust marks on the linoleum.

The Landlords claim for compensation to replace the linoleum is dismissed without leave to reapply.

#### Cleaning Costs \$200.00

I have reviewed and considered the documentary evidence showing the condition and state of repair of the rental unit at the end of the tenancy. I find that the rental unit was left reasonably clean by the Tenants. The Tenants testified that they did not clean the exterior windows, a shelf, and the blinds.

The Residential Tenancy Branch Policy Guideline #1 provides that a Landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

Since the Tenants testified that they did not clean a shelf and blinds, I find it reasonable to award the Landlord \$20.00 for the cost of cleaning these items. I award the Landlord the amount of \$20.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,309.94 comprised of \$650.00 for rent; \$559.94 for damage and repairs; and \$100.00 for the filing fee. After setting off the security deposit and pet damage deposit of \$1,300.00 towards the award of \$1,309.94 I find that the Landlord is awarded a monetary order for the balance of \$9.94. This monetary 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 Tenants ended the fixed term tenancy early. The Landlord has established a monetary claim for loss of rent, damage and repair costs, and the filing fee in the amount of \$1,309.94.

I order that the Landlord can keep the security deposit and pet damage deposit in the amount of \$1,300.00 in partial satisfaction of the Landlords' claim.

I grant the Landlord a monetary order in the amount of \$9.94.

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: July 15, 2020

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Residential Tenancy Branch