



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL -S, FFL

### Introduction

This hearing dealt with a landlord's application for compensation for damage and cleaning. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing documents and evidence upon each other. I admitted their materials and considered them in making this decision.

On a procedural note, the landlord had not specifically requested authorization to retain the tenant's security deposit in filing the application. During the hearing, I confirmed the landlord continues to hold the security deposit and the landlord intended to retain the security deposit in partial satisfaction of her claims against the tenant. Accordingly, I amended the Application for Dispute Resolution to reflect the landlord's request to retain the security deposit so as to bring resolution to disposition of the security deposit.

On another procedural note, despite explaining the hearing process to the parties at the outset of the hearing, including instructions not to interrupt while I was speaking with the other party, I had to caution the parties a number of times to refrain from interrupting the proceeding and making disrespectful comments. I was able to conclude the hearing without excluding either party.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage and cleaning as claimed?
2. Disposition of the security deposit.

### Background and Evidence

Under an oral tenancy agreement, the tenancy started in July 2016. The landlord collected a security deposit of \$400.00 and the tenant was required to pay rent of \$800.00 per month. In 2019 the rent was increased to \$900.00 per month. The tenancy ended on October 2, 2019.

The landlord did not prepare a move-in or a move-out inspection report.

On October 21, 2019 the tenant had provided her new address to the landlord via text message. On October 25, 2019, the tenant filed an Application for Dispute Resolution seeking return of the security deposit and a hearing was held on March 9, 2020 (file number referenced on the cover page of this decision). In the decision issued on March 10, 2020 the Arbitrator found the tenant was pre-mature in filing her Application for Dispute Resolution as she had not given the landlord 15 days to either refund the deposit or file a claim against the deposit. As such, the tenant was given leave to reapply for return of the deposit. Although the landlord had filed an Application for Dispute Resolution on March 2, 2020, it was not processed by the Residential Tenancy Branch until March 11, 2020 and the landlord's application could not be joined to the tenant's application and was scheduled for July 9, 2020, which is the application before me. The tenant informed me that she is in the process of filing another Application for Dispute Resolution to seek return of her security deposit. In keeping with the amendment noted in previously in this decision, I informed the parties that I would resolve the issue of the security deposit by way of this decision and it is unnecessary for the tenant to file another Application for Dispute Resolution.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

#### 1. Damage to kitchen cabinets

The landlord submitted the tenant damaged the lower kitchen cupboards by placing tape on the bottoms of the cabinet doors and allowing mould to form.

The tenant testified there was already tape on the cabinet doors when her tenancy started. The tenant also testified that one cabinet was broken and when she enquired about having it repaired the landlord's response was that the landlord would not repair it because the landlord intended to renovate the rental unit to receive more rent.

The landlord estimated the age of the cabinets to be 20 years. The landlord provided photographs of the cabinet doors; a receipt to purchase replacement doors; and, receipts for the hardware to attach the new cabinet doors.

## 2. Broken shelf

The landlord submitted that a shelf had fallen to the ground during the tenancy and had to be repaired by purchasing a piece of lumber and fixtures. The landlord produced a receipt for the purchase of lumber and fixtures.

The tenant testified the shelf was on the ground when the tenancy started and she had asked the landlord where to buy parts to reinstall the shelf but the landlord never did tell her and the tenant did not ask again.

## 3. Leaking faucet

The landlord submitted that the kitchen faucet was leaking water under the sink, into the cabinet. This necessitate purchasing nuts and washers to repair the leaking faucet.

The tenant testified the kitchen faucet was not leaking when the tenancy ended.

## 4. Painting

The landlord submitted that the walls in the rental unit required repainting because there were holes left in the wall by the tenant and there was residue from the tenant burning candles. The landlord provided photographs of a wall with holes and a burned shelf. The landlord also pointed to a video taken of the rental unit. The landlord provided a receipt for the purchase of paint. The landlord testified that the rental unit was freshly painted right before this tenancy began

The tenant testified that it was apparent the rental unit was not freshly painted when she moved in as there was crayon and stickers on the walls from the previous tenant. Also, there was no residue on the walls from burning candles, although the tenant did burn incense. The tenant claimed the picture of the burned shelf was not from her rental unit.

## 5. Floor replacement

The landlord submitted that the tenant caused 2 or 3 rips to the carpeting and it was very soiled so the landlord replaced the carpeted areas with laminate flooring. The landlord was uncertain as to whether it was more or less expense to install laminate verses carpeting but the landlord decided to install laminate because it cleans easier and does not rip. The landlord estimated the age of the ripped carpeting to be approximately 20 years. The landlord pointed to photographs of the damaged carpeting and receipts for the purchase and installation of the laminate flooring.

The tenant testified the carpeting had ripped before the tenancy started and she took care not to cause the rips to worsen by being careful when she vacuumed. The tenant stated the carpet needed replacing in any event and that the landlord had communicated to her that they would be renovating the unit so as to attract more rent after her tenancy ended.

## 8. Cleaning

The landlord submitted that the tenant left the rental unit unclean, in particular around the sides and underneath the appliances. In addition, the windows and window blinds were dirty and mouldy. The landlord submitted an invoice indicating the same person who installed the laminate flooring also cleaned the unit for \$400.00.

The tenant submitted that she paid a cleaner to clean the unit and the cleaning lady was still cleaning when the tenant returned possession of the unit to the landlord on October 2, 2019. According to the tenant, if the landlord found more areas that needed cleaning the landlord should have asked the cleaner to do so. The tenant claimed that upon returning possession of the unit to the landlord the landlord said the unit looked good. The landlord denied making that statement.

The tenant claimed the images of the mouldy blinds was not from her rental unit as they did not look like that during her tenancy and the garbage seen under the appliances was not hers.

## Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

- That the other party violated the Act, regulations, or tenancy agreement;
- That the violation caused the party making the application to incur damages or loss as a result of the violation;
- The value of the loss; and,
- That the party making the application did whatever was reasonable to minimize the damage or loss.

## **Damage claim**

Upon hearing from both parties, and upon review of the photographs and hearing the landlord state the rental unit was constructed by them approximately 20 years prior, it is apparent to me that this rental unit was in need of a renovation at the end of the tenancy; however, at issue is whether the tenant is responsible for compensating the landlord for such.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage or wear.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

The parties were in dispute as to the condition of the rental unit at the start of the tenancy. The condition of the rental unit at the start of the tenancy is critical to establish since the tenant is not responsible for pre-existing damage or pre-existing wear and tear.

As the applicant, the landlord bears the burden to prove the condition of the rental unit at the start of the tenancy. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

The primary purpose of preparing a move-in inspection report, which is required to be prepared by a landlord under section 23 of the Act, is to establish the condition of the rental unit at the start of the tenancy. The landlord did not prepare such a report for this tenancy. Nor, did the landlord produce pictures of the rental unit taken at the start of the tenancy, or receipts to establish the rental unit had been freshly painted right before the tenancy started. In the absence of corroborating evidence, all I am left with is opposing verbal testimony as to the condition of the unit at the start of the tenancy and I find this is insufficient to meet the landlord's burden of proof. The tenant asserted that much of the damage was pre-existing and I find the landlord's lack of proof the contrary, leads me to accept the rental unit was already showing signs of damage and several years of wear when the tenancy started. It follows that the rental unit was then subject to further wear and tear for more than three more years.

With respect to the kitchen cabinetry, I note that policy guideline 40 provides that cabinets have an average useful life of 25 years. While the cabinets in the rental unit were approximately 20 years at the end of the tenancy, upon review of the photographs it would appear that the material used to make the cabinet doors was not finished at the edges with edge banding, as is customary. Without the edge banding the raw material of what appears to be pressboard is exposed to moisture. It appears the edges swelled due to moisture, especially located in the kitchen where there is more moisture than other rooms, and then the swollen edges chipped. In my view, the cabinetry was of inferior quality and improperly finished and as such very unlikely to withstand use for 25 years as better constructed cabinets. Since the landlord had the cabinets installed 20 years ago, I find the landlord's decision to install cabinetry of this lower quality without adequate finishing at the edges is the reason the cabinets need replacement sooner than other cabinets and this is not tenant's responsibility to replace the poorly

constructed cabinet doors. Therefore, I dismiss the landlord's claim for replacement cabinet doors.

As for the shelf, both parties provided consistent testimony that a shelf had fallen from the wall but the parties were in dispute as to when that occurred. The tenant stated it occurred before the tenancy started. While the landlord denied that, the landlord has the burden of proof and I find the opposing testimony insufficient to persuade me this was the fault of the tenant. Therefore, I dismiss the landlord's claim for repairing the shelf.

The landlord claimed to repair a leaking faucet; however, there is no indication from the landlord that the tenant's actions or neglect caused the faucet to leak. The tenant stated it was not leaking when she left. In any event, faucets, along with most other mechanical elements deteriorate and fail due to aging and wear and tear. I find I am not satisfied the faucet repair is due to damage caused by the tenant as opposed to wear and tear over a number of years. Therefore, I dismiss this claim.

With respect to painting, policy guideline 40 provides that interior paint has an average useful life of four years. The landlord claimed the unit was painted right before the tenancy started which was over three years prior. The tenant, however, refuted that claim, indicating it was not freshly painted prior to the start of her tenancy, and the landlord failed to prove otherwise. Therefore, I find the landlord failed to meet her burden that the tenant is responsible to compensate the landlord for repainting the walls and I dismiss this claim.

As for replacing the carpeting, policy guideline 40 provides that carpeting has an average useful life of 10 years. The carpeting in the rental unit was well beyond that and I find it was at or near the end of its useful life. I find the landlord needed, or ought to have expected, to replace the carpeting at the end of the tenancy and if I were to award the landlord compensation to install new laminate flooring would amount to a betterment for the landlord. Therefore, I dismiss this claim.

### **Cleaning claim**

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy.

Both parties provided invoices indicating they paid to have the unit cleaned. Both parties provided photographs; however, the tenant's photographs do not include some

of the same areas captured by the landlord and those areas are quite dirty, especially around the kitchen appliances and the windows. The tenant denied that the dirty areas under the appliances and the mouldy windows were of her rental unit; however, I find it hard to accept that the landlord would stage dirt, garbage and mould to take a picture. Also, the dirty blinds are seen in the landlord's video and it is apparent it is in the kitchen of the rental unit because the poorly constructed cabinets are visible in the video as well. As such, I accept, on a balance or probabilities, that the landlord provided photographs and video of the rental unit as it was returned to her by the tenant on October 2, 2019.

While the tenant may have had a cleaning lady come to the unit, according to her own testimony she left the unit before the cleaning lady was finished and I find it would be difficult for her to verify the extent of cleaning that was accomplished if she did not return to the unit after the cleaning lady finished. Further, the cleaning invoice prepared for the tenant did not indicate specific areas or tasks performed and lacked veracity. However, the landlord's cleaning invoice also lacked veracity since it was written on a generic invoice available at any stationary store and not accompanied by proof of payment..

All things considered, I find I am satisfied that the windows, blinds and around the appliances required additional cleaning and I award the landlord compensation for cleaning these areas. However, I limit the landlord's award to \$200.00. Although the landlord produced a receipt for cleaning in the amount of \$400.00, the invoice lacked veracity and the cleaning was purportedly done by the same person who replaced the flooring and I find it reasonable to expect this his cleaning tasks included debris and dust that would result from flooring replacement, which is not the tenant's responsibility. Also, \$400.00 appears to be excessive given the areas that I am satisfied required additional cleaning. Therefore, I grant a partial award to the landlord in the amount of \$200.00.

### **Filing fee, security deposit and Monetary Order**

Given the landlord's very limited success in this application, I award the landlord recovery of \$25.00 of the filing fee she paid for this application.

In total, I have awarded the landlord \$225.00 and I authorize the landlord to deduct this sum from the tenant's security deposit. I further order that the landlord return the balance of the security deposit in the net amount of \$175.00 to the tenant without further delay.



In keeping with Residential Tenancy Policy Guideline 17: *Security deposit & set-off*, I provide the tenant with a Monetary Order in the amount of \$175.00 to ensure payment is made by the landlord.

### Conclusion

The landlord had limited success and has been awarded compensation totalling \$225.00 that she recover by deducting from the tenant's \$400.00 security deposit. The landlord has been ordered to return the balance of the security deposit, in the net amount of \$175.00, to the tenant without further delay.

Provided to the tenant with this decision is a Monetary Order in the amount of \$175.00.

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: July 10, 2020

---

Residential Tenancy Branch