



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDL-S, FFL**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and

Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

All named parties attended the hearing. As both parties were present, service of documents was confirmed. The tenants confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation, as sought?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

### **Background and Evidence**

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is over a hundred years old, built in 1912. The floors in the unit are original fir and have not been refinished in over 30 years. The landlord has owned the house for the past 46 years.

The tenancy began on February 1, 2018. There were multiple tenancy agreements signed, the first and second one were year-long, the third one was for 3 months. A condition inspection report was done on February 3, 2018 and a security deposit of \$950.00 was collected from the tenant. The landlord testified that a year later, due to damage observed, he collected a further pet damage deposit of \$1,000.00.

Throughout the tenancy, the landlord made further condition inspections upon the rental unit and each of the reports with the exception of the original condition inspection report done on February 3, 2018 were provided as evidence by the landlord.

The tenancy ended when the tenant found a new accommodation. He left before the end date stated on the fixed term tenancy, however that was agreeable between the parties. The landlord testified that he invited the tenant to attend at the end of March or early April for a condition inspection report to be done however when the tenants attended, they disagreed as to the damages the landlord pointed out and they left.

When the tenants left, there was damage done to the hardwood floors in the front bedroom and the living room by the tenant's dogs. Photos of the damaged floors were provided as evidence. According to the landlord, the old floors were undamaged except for some patina before the tenants moved in. He points to the condition inspection report dated December 18, 2018 as proof of the condition at move in. (not the one done on February 3, 2018). In evidence, the landlord also provided a screenshot of an email exchange dated December 10, 2018 where the tenants agreed to purchase rugs and hard plastic sheets to alleviate the landlord's concerns about scratches on the floor.

The fridge was damaged because the tenant's cats scratched the paint, causing it to rust. The fridge was in clean condition at the commencement of the tenancy but because of the rust due to scratches, the landlord had to replace it with a used fridge of similar age and quality. Photos of the damage was provided.

The bathroom sink had a quarter inch chip in it from what appears to be a blunt object falling on it. The landlord estimates it would cost \$50.00 to fix the chip.

The plastic laminate countertops, aged approximately 15 years, looks like it had a hot iron put on it, according to the landlord. Repairs have not yet been done to the counters, however the landlord estimates it would cost \$200.00 to call a guy in to do a repair or he could do it himself. Photos were provided, however no estimate from a tradesperson was submitted.

The tenant gave the following testimony. The final condition inspection report submitted by the landlord was not mutually agreed upon. The landlord's perspective on the flooring differed greatly from the tenant's. To prevent damage to the floors, the tenant put new floor area rugs and plastic sheeting. The landlord knew about the efforts put in because he regularly visited the tenant.

The tenant submits that the floors were already in poor shape and that any damage alleged by the landlord cannot be proven.

The landlord chose to present a small sample of the condition inspection reports done with the tenant for this hearing. The fact that the landlord chose to omit the original one done with the tenant is compelling because the original condition inspection report notes damage to the flooring. The hall floors were '*worn but with no major gauges (sic), one gauge, one dent*'; the front bedroom floors '*good, some scratches, but one long bruise*'. Based on the lack of supplying the initial condition inspection report, the landlord didn't establish the baseline conditions for his claim. A copy of the February 3, 2018 initial condition inspection report was provided by the tenant for the hearing.

The fridge did not suffer any damage other than normal wear and tear. The 'cat scratches' damage alleged by the landlord appears to be nothing more than water moisture reacting with metal or simply rust. It is unavoidable. The fridge was still completely useable and in perfect working condition. The tenant points out that in the various condition inspection reports done by the landlord throughout the tenancy, no mention of fridge damage was ever made.

The claim to repair the chip in the sink is unreasonable. It's an old sink that is perfectly functional and the repair can be repaired with a 15 dollar tube of enamel chip repair from the local hardware store. The landlord failed to provide a receipt or estimate for the repair to the sink and the tenant finds the quote supplied by the landlord excessive.

During various walkthroughs, the landlord saw the mark on the counter and stated to the tenant that it was not a concern. In any event, the repair is not worth \$200.00. It didn't require replacement and the landlord would incur little to no cost to repair it.

### Analysis

Section 7 of the Act states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 21 of the Residential Tenancy Regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I look to the first condition inspection report written when the tenant first moved in. Noticeably, the landlord failed to provide a copy of this report with his evidence. The initial condition inspection report provides a baseline for me to determine the condition of the rental unit when the tenancy began. While the landlord prefers to use later inspection reports to show the floors gradually worsened during the tenancy the original condition inspection report indicates the floors were generally worn with scratches. In conjunction with the initial report, I look to the photos of the floors provided by the landlord. The landlord submits that the damage to the floors were caused by the abnormal damage from the tenant's pets. I find the evidence does not support this. To

me, the damage to the floors does not appear fresh, or having been done during the term of the 2 year tenancy.

Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises] states:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

When the landlord asked him to, the tenant took necessary steps to prevent damage to the floors by putting down carpets and plastic protection. I find that any marking done to the floors was reasonable wear and tear, not deliberate damage or neglect by the tenant. Section 32(4) of the Act states that a tenant is not required to make repairs for reasonable wear and tear. The landlord's claim for hardwood floor repair is dismissed.

While the landlord did not provide photographs of the fridge for me to determine its overall state of condition, I am not satisfied the fridge was deliberately damaged or neglected by the tenant. The landlord submits that cat scratches caused the discoloration to the fridge, however he has not provided sufficient evidence to satisfy me that this was the case. It can be expected that an older appliance, exposed to moisture in the air would eventually show signs of age, including small rust marks. The tenant is not responsible for replacing the fridge that has naturally deteriorated due to aging. The landlord's claim for a replacement fridge and transport is dismissed.

The tenant did not dispute the fact that the sink suffered a chip during the tenancy. While the landlord has established the existence of the damage, the value of the damage has not been established. The landlord provided an estimate of \$50.00 to repair the sink which I find to be unreasonable. The repair to the sink can be made by filling it with a standard enamel repair kit available at any hardware store at a cost of **\$20.00** and I award the landlord that amount in accordance with section 67 of the Act.

The tenant likewise did not deny the stain or chip to the countertop happened during the tenancy. Section 32(3) of the Act states 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. While the tenant is

responsible for repairing the damage, the landlord has not provided sufficient evidence to satisfy me it should cost \$200.00 to repair it. I award the landlord **\$50.00** in nominal damages, recognizing there has been a loss, but the landlord hasn't established the value of the damage.

The majority of the landlord's claim was dismissed. The filing fee will not be recovered.

The landlord continues to hold the tenant's security deposit and pet damage deposit in the sum of \$1,950.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain \$70.00 of the tenants' deposits in satisfaction of the monetary order. The remaining \$1,880.00 is to be returned to the tenants.

#### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,880.00.

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: September 1, 2020

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Residential Tenancy Branch