



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 11, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord and the Tenant both attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlord's Notice of Hearing and evidence packages. The Tenant did not take issue with the service of those packages and stated he was able to open and read all evidence provided. The Tenant did not provide any evidence of his own.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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

- Is the Landlord entitled to a monetary order for damage to the unit and for damage or loss under the Act?

- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties agree that the tenant moved in around September 1, 2019, and moved out at the end of July 2020. Both parties agree that monthly rent was set at \$3,300.00 per month, and the Landlord still holds a security deposit in the amount of \$1,650.00.

The Landlord provided a monetary order worksheet which shows he is seeking 3 items as follows:

1) \$346.50 – General Cleaning and Carpet Cleaning

The Landlord stated that the Tenant failed to properly clean before he left, and the above amount (as shown in the invoice provided), is what it cost to hire a company to clean the unit at the end of the tenancy.

The Tenant acknowledged the unit was not clean and required cleaning. The Tenant is willing to pay for this amount, in full.

2) \$157.50 – Countertop Stain Removal

The Landlord stated that the Tenant stained the kitchen counters in several spots, and the stains were such that a professional stone countertop cleaning company had to come in and removed the stains with special products. The Landlord stated that this rental unit was brand new in 2019, and the Tenant was the first person to live in the unit. The Landlord explained that the counters are engineered quartz, and are resistant to stains. The Landlord stated that he went over and tested the counter stain resistance himself with coffee and other items, but he could not recreate the staining. The Landlord stated he did this to highlight that under normal circumstances, the counters are quite stain resistant, and the stains left by the Tenant go beyond reasonable wear and tear. The Landlord provided a copy of a receipt showing what it cost to remove the stains, as well as photos of the actual stains.

The Tenant does not dispute that the counters became stained while he was residing there. The Tenant stated that the stains were actually quite minimal, and could only be seen from certain angles. The Tenant stated that the staining should be considered

reasonable wear and tear, and it should not be his expense. The Tenant stated he took good care of the countertops and this should not have happened.

3) \$100.00 – Carpet Damage

The Landlord stated that the carpet was damaged and this was directly caused by the Tenant. The Tenant acknowledged that he damaged the carpet and was willing to pay the above noted amount for the damage he caused. This amount was not in dispute.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Having reviewed the 3 items the Landlord has applied for, I note the first and the third item on his worksheet are not in dispute. The Tenant agreed to pay for those items, and these items and did not take issue with the amounts noted. Accordingly, I award the Landlord item #1 and #3 in full.

With respect to item #2, I note the Landlord is seeking \$157.50 for Countertop Stain Removal. Having reviewed this matter, I note the countertops were new prior to the Tenant taking possession of the rental unit. I do not find the Landlord's attempt to re-create and test the stain resistance of the counters to be particularly helpful or informative on this issue. I have reviewed the photos provided, and although the staining is not extreme, I find the stains are clearly visible.

I note that Tenants are generally not required to pay for normal wear and tear. However, if the damage goes beyond reasonable wear and tear, then the may be responsible for the damages. I turn to Policy Guideline #1, which states the following:

*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.*

In this case, I find it more likely than not that the Tenant was not sufficiently careful with his use of the counters, and the Tenant may have neglected to sufficiently clean up spilled items, which allowed staining in certain areas. The counters were stone, and nearly brand new, and I find it unlikely that this staining would occur with normal wear and tear. I find the Landlord's costs to remove the stains are reasonable, and I find the Landlord is entitled to this item, in full.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I also order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount owed by the tenant.

The Landlord holds a security deposit of \$1,650.00. I allow him to retain \$704.00 from this deposit for 3 items above, plus the filing fee. I order the Landlord to return the balance, \$946.00.

### Conclusion

The Landlord is authorized to retain \$704.00 from the security deposit and must return the balance.

The Tenant is granted a monetary order in the amount of **\$946.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: January 11, 2021

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Residential Tenancy Branch