



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord JS ("landlord") and "landlord KS," and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both landlord agents confirmed that they had permission to represent the landlord company named in this application.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's two agents and the two tenants all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties did not make any adjournment or accommodation requests.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

The tenant confirmed that he served a copy of the tenants' evidence package to the landlord's email on August 20, 2021. The landlord said that he did not receive the tenants' evidence package. As per section 88(j) of the *Act* and section 44(1) of the *Residential Tenancy Regulation*, I find that the tenants failed to show that the landlord provided his email address for service to the tenants. I find that the landlord was not served with the tenants' evidence, so I did not consider it in this decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of the tenant's surname. The tenant confirmed the correct spelling during this hearing. The tenant consented to this amendment during this hearing.

#### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

#### Background and Evidence

The landlord testified regarding the following facts. This tenancy began on April 1, 2017 and ended on March 30, 2021. Monthly rent in the amount of \$1,012.70 was payable on the first day of each month. A security deposit of \$475.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The move-out condition inspection report was not signed by the tenants because they disagreed with it. The landlord received the tenants' written forwarding address on March 29, 2021, by way of the move-out condition inspection report. The tenants did not provide written permission for the landlord to keep any amount from their security deposit. The landlord's application to retain the tenants' security deposit was filed on April 12, 2021.

The landlord seeks a monetary order of \$815.70 plus the \$100.00 application filing fee. During this hearing, the tenants agreed to pay \$95.00 for cleaning and \$0.70 for rent, totalling \$95.70, as requested by the landlord. The tenants dispute the remaining \$720.00.

The landlord testified regarding the following facts. The kitchen countertop has marks and stains, which requires replacement of \$600.00. The fridge has damage and will cost an estimated \$120.00.

Landlord KS stated the following facts. The fridge was bought in 2014, it is 7 years old, and its useful life is 15 years, so there are 8 useful years left. The fridge functions fine but the physical appearance is an issue because the bottom part is scratched. The landlord provided photographs of same. The repair would cost too much because it costs a \$75.00 flat fee just to look at the fridge and \$100.00 per hour for labour and material. The landlord seeks \$120.00 to repair the fridge, for which there is no written estimate, since it is based on a verbal quote. The useful life of the fridge is reduced. New tenants moved into the rental unit on May 1, 2021, they are using the same fridge, and the landlord is charging an increased rent of \$1,450.00 per month based on the market rent rate.

Landlord KS testified regarding the following facts. The kitchen countertop is from 2014, it is 7 years old, its useful life is 25 years, and there are 18 useful years left. There is a chip and a stain on the countertop, there is no guarantee that a repair will fix the stain, so no repair quote was provided, since there was no interest from companies to repair it. The landlord provided an estimate of \$750.00 to replace the countertops in the rental unit and another unit in the same building. The minimum charge for the company just to come out and replace the countertop in the rental unit is \$750.00. The landlord received an email quote of \$1,000.00. The landlord received another quote for \$612.12, which includes the labour from the company and the material as per the landlord's own calculation, to replace the countertop. The landlord is seeking \$600.00 to replace the countertop.

The tenant stated the following facts. The kitchen countertop stain, which the tenants were unable to remove by cleaning, is from under the dish rack. The tenant did research about this granite countertop and read that it is supposed to be sealed every year and it was not done by the landlord. The tenants were not given special instructions from the landlord on how to clean the counter. The landlord submitted photographs from a different unit, not the tenants' kitchen. The fridge was already stained and damaged from when the tenants moved in, but it was useable, and the

tenants did not pay attention to these things when they completed the move-in inspection because they were so excited to move in. The landlords' own estimates show that the same problem with kitchen countertops occurred in two different units in the same building. The landlord's own email indicates that they were told to put in a "decent product" when they replace the countertop. The landlord just wants money to do more renovations inside the rental unit. The landlord has new renters since May 2021, they did not suffer a loss, and this is wear and tear to the countertop.

### Analysis

I award the landlord \$95.70 for cleaning and rent because the tenants agreed to pay this amount during this hearing.

### Refrigerator and Countertop Damage

The following RTB *Rules of Procedure* state, in part:

#### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

#### *7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

#### *7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord's two agents did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. During this hearing, they failed to properly go through this claim and the documents submitted in support of this application. This hearing lasted 46 minutes, so they had ample opportunity to present the landlord's application.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties and the documentary evidence of the landlord.

I dismiss the landlord's application for a refrigerator repair of \$120.00, without leave to reapply. The landlord did not provide documentary evidence, such as an invoice, estimate, or quote for same. The landlord has not repaired the refrigerator and did not indicate when any repairs would be done. I find that this damage is reasonable wear and tear, as the refrigerator is still functioning properly. I further find that new tenants are using the same refrigerator since May 1, 2021, so the landlord has not suffered a loss and has in fact, re-rented the unit for a higher rent of \$1,450.00 from \$1,012.70.

I dismiss the landlord's application for a kitchen countertop replacement of \$600.00 without leave to reapply. The landlord has not replaced the countertop and did not indicate when any repairs would be done. I find that this damage is reasonable wear and tear, as the countertop is still functioning. I further find that new tenants are using the same countertop since May 1, 2021, so the landlord has not suffered a loss and has in fact, re-rented the unit for a higher rent of \$1,450.00 from \$1,012.70.

Moreover, the landlord provided an estimate for \$472.50, for labour to replace the countertop, but it does not have a date or indicate when it was provided to the landlord. The landlord provided its own calculation for material of \$139.62 based on an online advertisement printed on August 10, 2021, months after the tenants moved out and new tenants moved in.

Further, one of the landlord's email quotes from April 30, 2021, a month after the tenants moved out, recommends that the landlord use a "decent product" to replace the counter. This quote also indicates it is based only on the landlord's photographs, not inspection of the counter in the rental unit because the contractor said that he only previews jobs that are close to him or large in nature. Another undated email quote from the landlord states that the contractor does not do "smaller jobs" because the "crew" is busy with "large commercial and residential work" so the minimum charge is \$750.00 for the contractor to even come out to the rental building for two countertop replacements. Another email quote from the landlord from July 30, 2021, months after the tenants moved out and new tenants moved in, indicates "we don't repair granite countertops" and provides a quote for replacement only. Therefore, some of these companies did not examine the specific rental unit countertop and indicated a replacement cost only, rather than a repair cost, because the job was not large enough for the contractor to repair it.

As the landlord was only partially successful in this application, based only on what the tenants agreed to pay during this hearing, I find that the landlord is not entitled to recover the \$100.00 application filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$475.00. No interest is payable on this deposit during this tenancy. I order the landlord to retain \$95.70 from the tenants' security deposit in full satisfaction of the monetary award for the cleaning and the unpaid rent.

I order the landlord to return the remainder of \$379.30 from the tenants' security deposit to the tenants. The tenants are provided with a monetary order for same. Although the tenants did not apply for the return of their security deposit, I am required to consider it on the landlord's application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$379.30 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for damages of \$720.00 and to recover the \$100.00 filing fee is dismissed without leave to reapply.

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 07, 2021

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Residential Tenancy Branch