



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing was convened in response to applications by the landlords and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit and pet damage deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking an order as follows:

1. Return of double the security deposit and pet damage deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### **Issues to be Decided**

Are the landlords entitled to monetary compensation for damages to the rental unit?

Are the landlords entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Is the tenant entitled to double the security deposit and pet damage deposit?

### Background and Evidence

The parties agreed that the tenancy began on June 1, 2020. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. The tenancy ended on June 30, 2021.

The parties agreed a move-in and move-out condition inspection report was completed.

### Landlords' application

The landlords testified that the quartz countertop was in good condition when the tenants took possession of the rental unit; however, it had a 9 inch crack at the end of the tenancy. The landlords stated that when they filed their application, they had obtained an estimate for replacement in the amount of \$3,519.86. The landlords stated they were able to have the countertop repaired and the actual cost they are seeking is the lower amount of \$945.00. filed in evidence are photographs of the countertop.

The male landlord testified that the tenant admitted in September of 2020 they had crack the countertop by standing on it.

The tenant testified that they never admitted or had any conversation with the landlord that they broke the countertop by standing on it. The tenant denied they caused the damage to the countertop.

The advocate for the tenant submits that the countertop cracked because it was not installed correctly.

The witness for the tenant testified that they are an expert and a certified artisan for the installation of cabinetry and countertops. The witness stated they have over 34 years of experience and have had many roles, such as a director of manufacturing, been on many boards and have had their own business.

The witness for the tenant testified that they have reviewed all photographs provided by the landlord, and they have determined that the cabinetry does not have sufficient support for a quartz countertop and that the countertop was not properly installed as you can see a gap between the countertop and the lower cabinet. The witness stated that the countertop is also one continuous L shape where it should have been in two

pieces. The witness stated that this is a stress fracture due in insufficient support and installation.

The landlords responded that they had an assessment done of the countertop and they were told that the damage was done from blunt object hitting the quartz, or a could be from thermal shock from and item with high heat coming into contact with cold quartz. Filed in evidence is email from a countertop company.

The witness for the tenant testified that quartz countertop is very resistant to both cold and heat. That they can obtain coldness at -25 C and heat to the boiling point. The witness disagrees with the statement made in the assessment report made by the other company.

#### Tenant's application

The advocate for the tenant stated that the tenant should be entitled to double the security deposit and pet damage deposit because the landlord extinguished their rights to claim against the deposits because they did not give the tenant a copy of the move-out condition inspection in accordance with Act, and regulations. The advocate stated that the landlord told the tenant they could take a picture.

The advocate for the tenant stated that the landlord did not have the right to keep the pet damage deposit because there were no damages to the rental unit caused by a pet.

The tenant testified that they did not take a picture of the move-out condition inspection report.

The landlords testified that they did mail a copy of the move-out condition to the tenant on July 7, 2021.

The advocate for the tenant stated that the tenant did receive a copy of the move-out condition inspection report; however, it was not sent in its own package.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Landlords' application

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

#### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I do not accept the landlord's testimony that they were told by the tenant in September 2020 that they broke the countertop by standing on it. If this was true, it would have been reasonable for the landlord to request the tenant to make the repair at that time.

Further, if the landlords already knew how the damage was caused to the countertop there would not be a requirement to have an assessment done of how the damage was caused. It would be reasonable if they knew it was from the tenant standing on the countertop that this would have been told the assessor, which the assessor states from their experience the damage was caused from a blunt object hitting the countertop or from thermal shock, not standing.

The witness for the tenant was very detailed in their testimony and went over the photographic evidence. I find it more likely than not that the damage was caused from stress on the countertop due to lack of support, poor installation, and design. Therefore, I dismiss the landlords' claim without leave to reapply.

As the landlords were unsuccessful with their application, I find the landlords are not entitled to recover the cost of the filing fee.

### Tenant's Application

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlords sent the tenant a copy of the move-out condition inspection report in accordance with the Act and regulations. I find there is no requirement that the landlords must send the inspection report in a separate package. I find the landlords complied with the Act and regulation and have not extinguished their rights under the Act based on this argument.

In this case, I am satisfied that landlord had the right to retain the security deposit as the had landlords claimed against the security deposit for damages to the countertop within 15 days of the tenancy ending. The landlords' claim was dismissed. I find the landlord no longer has the right to retain the security deposit. Therefore, I find the landlords must repay the security deposit to the tenant in the amount of **\$750.00**.

I do not find the tenant is entitled to the return of double the security deposit as I have found that the landlords did not extinguish their rights to claim against the security deposit for damages as they did provide the tenant with a copy of the move-out

condition inspection report and claimed against the security deposit within 15 days of the tenancy ending. Therefore, I dismiss the tenant's application for double the security deposit.

However, in this case the tenant also paid a pet damage deposit. The landlords were not claiming for damages caused by the pet and were required to return the pet damage deposit to the tenant within 15 days of the tenancy ending. The landlords did not comply with the Act or the Residential Tenancy Branch Policy Guideline 31. I find the tenant is entitled to the return of double the pet damage deposit of \$750.00 in the total amount of **\$1,500.00**.

I find that the tenant has established a total monetary claim of **\$2,250.00** comprised of the above described amounts. Should the landlords fail to pay the tenant the above amount, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

### Conclusion

The landlords' application is dismissed without leave to reapply.

The tenant is granted a formal order for return of the security deposit and return of double the pet damage deposit.

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: February 2, 2022

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Residential Tenancy Branch