



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 28, 2022, and April 19, 2022. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing along with his partner, C.S. The Tenants also attended the hearing (collectively referred to as the “Tenants”). The Landlord acknowledged receipt of the Tenants’ application package and evidence. The Tenants acknowledged receipt of the Landlords’ application package, and initial evidence package. The Landlord explained that they delivered a second evidence package to the Tenants front door at the forwarding address that was provided to them when the Tenants moved out. The Tenants stated they did not get this second package because they moved in September 2021. I note the Tenants did not inform the Landlord that they had moved, nor did they provide the Landlord with an updated mailing address. I also note the Tenants filed a cross-application, set to be heard at the same time, and the address for service on the Notice of Dispute Resolution Proceeding was listed as their old address. I find the Tenants were responsible for providing the Landlord with an updated mailing address, given they had an active and ongoing dispute resolution proceeding.

I find the Landlord’s second evidence package is sufficiently served to the Tenants for the purposes of this proceeding, as it was delivered to the address the Tenants had provided in their dispute resolution package.

All parties provided testimony and were 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Are Tenants entitled to the return of the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that monthly rent was \$2,600.00, and was due on the first of the month. A copy of the lease agreement was provided into evidence, which shows that the tenancy started on August 1, 2016, and ended around June 30, 2021. The Landlord holds a security deposit in the amount of \$1,300.00.

The Landlord stated that he bought this rental unit on or around October 31, 2020, and he took over being this pre-existing tenancy at that time. The Landlord stated that he does not have a move-in condition inspection report, and it does not appear one was completed at the start of the tenancy by the previous Landlord. The Landlord stated that they only have some photos of the rental unit which he believes were taken around 2016, when the previous owner had bought the unit. The Landlord explained that the previous Landlord bought the house sometime in the spring/early summer of 2016, then rented the unit out to these Tenants starting a couple months later, on August 1, 2016.

The Landlord asserts that the “before” photos he provided into evidence were from that listing, and are a good representation of the state of the house right before the Tenants took possession.

One of the Tenants stated that he is a realtor, and was aware after looking at the listing history for this house, that the “before” photos provided by the Landlord were actually the same photos used in several previous listings for this same house. As such, the Tenants feel these photos are not an accurate depiction of the rental unit at the time they moved in. The Tenants assert that the rental unit was very dirty, dated, and in disrepair when they moved in. The Tenants did not provide copies of the listings to corroborate this assertion.

The Landlord stated that they checked with the previous owner, via text message, to confirm that the “before” photos were an accurate depiction of the rental unit at the start of this tenancy.

The Landlord is seeking the following items on his application for monetary compensation, which total \$20,798.06:

1) \$4,200.00 – Interior Painting

The Landlord provided an invoice to show he paid the above noted amount for the repainting of the entire rental unit after the Tenants moved out. The Landlord pointed to the photos he took at the end of the tenancy, on the day the Tenants moved out, to highlight that there were children’s drawings all over the walls, as well as marks, scratches, and scuffs. The Landlord also stated that there were areas where the Tenants had repainted sections of the walls in mismatched colors.

The Tenants stated that they had a close relationship with the previous owner, and he would come over regularly to work on the house, or do minor paint touch ups. The Tenants stated that the previous Landlord came and used mismatched paint, and didn’t seem to care about how it looked. The Tenants acknowledged that their children did some drawing on the walls, but do not feel it is as bad as the Landlord is asserting. The Tenants stated that the walls were not freshly painted when they moved in, and it has been many years since the walls were last painted.

2) \$2,042.25 – Flooring Labour

3) \$1,933.31 - Flooring Materials

The Landlord provided 3 different invoices and receipts to show that the above noted amounts were spent to install new laminate flooring. The Landlord stated that the carpet in the living room and bedrooms was beyond repair, as were both sets of stairs. The Landlord explained that there was carpet installed in the unit but they replaced it with laminate flooring of similar quality and cost.

The Landlord stated that when the Tenants moved out they failed to clean the carpets and there were stains all over the place, in various rooms. The Landlord stated that they had a “professional” come by who opined that the carpets were not salvageable, and that they needed replacement. No documentation was provided to support this opinion.

The Tenants stated that the interior carpets were very old, and were likely from around 1988 when the house was built. The Tenants stated that they had numerous conversations with the previous owners about the fact that he was planning on ripping the carpets out once they moved out, because they were at end of life. The Tenants stated that there were numerous stains on the carpets before they moved in.

4) \$8,512.00 – Upper-Level Kitchen Cabinets

The Landlord provided a copy of an invoice showing it cost the above noted amount to replace the kitchen cabinets. The Landlord stated that when the Tenants moved out, several of the hinges and related screws were missing and broken. The Landlord stated that initially they wanted to just repair and replace some of the doors, and hinges, and to repaint the surfaces. However, after looking more closely, the Landlord noticed what appeared to be mould and mildew on some of the surfaces. The Landlord pointed to a couple of photos of these stains and the damage, which were taken at the time of move-out. The Landlord pointed to the photos from the “start” to show that the cabinets were in good general condition at the start of the tenancy.

The Landlord is not seeking costs for the bathroom cabinets, as initially indicated.

The Tenants stated that when they moved into the rental unit, the cabinets were well used, worn, and very old. The Tenants stated that the cabinets were several decades old, and had already been painted once to extend their life and appearance. The Tenants assert the cabinets are likely original to the 1988 house. The Tenants stated that the cabinets were constructed of poor quality materials, and it is not reasonable that they should have to pay to replace particle board kitchen shelves and cabinets that are decades old. The Tenants deny doing any new damage to the cabinets, and assert it was all just normal wear and tear.

5) \$1,350.00 – Downstairs Refrigerator

6) \$749.00 - Dishwasher

The Landlords provided the invoice showing they spend the above noted amount on a new fridge and dishwasher. With respect to the dishwasher, the Landlord stated that at the end of the tenancy, the dishwasher was full of rust, and mould and water. A photo was provided into evidence showing the condition of the dishwasher at the end of the tenancy. The Landlord was unclear as to how old the dishwasher was, and other than a distant photo taken sometime before they purchased the house, no evidence was provided showing its condition at the start of the tenancy.

The Tenants stated that when they moved into the house, the dishwasher was not working, and they never once used it throughout their tenancy. The Tenants stated that this dishwasher is clearly decades old, and it was inoperable when they moved in. Since the Tenants wash their dishes by hand, the dishwasher was never used or repaired.

With respect to the downstairs fridge, the Landlords stated that they do not have any photos of the fridge, or any documentation supporting the condition of the fridge at either the start or the end of the tenancy. The Landlords were also unsure about how old the fridge was. The Landlords stated that there was a red substance inside the fridge, and they “assumed” it was blood, so they threw it out.

The Tenants stated that they didn’t use the second fridge downstairs, although they know it was working properly, and didn’t have any apparent issues. The Tenants do not feel they should be responsible for replacing a fridge that was not actually broken.

7) 211.50 – Air Duct Cleaning

The Landlord provided a copy of a receipt for the above noted amount so that they could have the furnace and ducts cleaned out after the Tenants moved out. The Landlord stated that this was required because when they removed the air vent covers for the forced air ducts, they found lots of dirt, garbage, and debris. The Landlord was unsure when the ducts were cleaned last.

The Tenants do not feel the ducts are their responsibility as they never put any garbage or debris into the ducts. The Tenants stated that the furnace worked fine, so they never opened or looked in the ducts.

8) \$1,800.00 – Indoor stair railing repairs

The Landlord provided a copy of an e-transfer showing they paid a contractor the above noted amount to repair the spindles/railing of the interior stairs. The Landlord stated that this was required because there were numerous paint chips and nicks on the painted wooden railings. The Landlords also stated that there was at least one railing spindle that was broken. The Landlords stated that when they spoke with the painter, he advised that it would be cheaper to replace the railings, rather than repaint and repair them.

The Landlord pointed to a couple of photos of the railing at the end of the tenancy, to show the chipped paint, although there is no documentation showing any broken spindles.

The Tenants stated that they should not be responsible for replacing railings that were 30+ years old that simply needed repainting. The Tenants deny that they broke any spindles, and stated that the railing was largely in the same condition at the start of the tenancy.

Tenants' Application

The Tenants filed an application to have their security deposit returned to them, plus the cost of the filing fee they incurred. The Tenants stated that, following their move out on June 30, 2021, they sent their forwarding address in writing to the Landlords via email on July 8, 2021. The Landlords acknowledge getting this forwarding address in writing that day, for the purposes of the return of the deposit. A copy of the email was provided into evidence. The Landlords never returned any of the deposit. The Landlords stated that Tenants offered to let them keep the deposit, but the Tenants deny that this occurred. The Landlord filed their application against the deposit on July 14, 2021.

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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence (photos and invoices) and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

I find there is insufficient evidence that the Landlord performed a move in inspection and that a proper inspection report was completed at the start of the tenancy. I find this is a breach of the Act. However, even though the Landlord failed to complete an inspection report in accordance with the Act, I have considered the photos presented into evidence.

With respect to the photos the Landlords state was taken at the start of tenancy, I note there is insufficient evidence showing when these photos were taken. The Landlords provided a text message from the previous owner, stating the photos were indicative of the condition when she sold the house, right at the start of the tenancy. However, I note the Tenants refute this. The Tenants stated that when they looked at previous listing for the house, from years prior to the start of the tenancy, the photos were identical, which makes it hard to know when they were taken. Although no evidence of this assertion was provided. The Tenants assert the photos must have been taken well before they moved in. Overall, I find the photos from the “start” of the tenancy, are of limited evidentiary value, due to the lack of resolution and the lack of time stamp on the photos. As a result, I have assigned little weight to the photos from the “start” of the tenancy.

There is no dispute that the photos taken at the end of the tenancy were indicative of the condition when the Tenants moved out.

The Landlords are seeking the following items on the application for monetary compensation, which totals \$20,798.06:

1) \$4,200.00 – Interior Painting

Having reviewed the testimony and evidence on this matter, I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which explains that the useful life expectancy of interior painted walls is around 4 years, under normal conditions. I note the Tenants lived in the unit for nearly 5 years. Also, the Landlord has also not sufficiently proven that the Tenants were the ones who applied the mismatched paint, as it could also have been done by the previous owner. That being said, I note the Tenants acknowledge that their child drew on the walls in numerous places. I find the majority of the wall/paint damage is superficial, and that only minimal wall repairs would have been required prior to repainting. I do not find drawing on the walls is considered reasonable wear and tear, as the drawing on the walls would have substantially contributed to the need to repaint. As such, I find the Tenants ought to be responsible for some of the costs to repaint. However, I decline to award the amount the Landlord is seeking on this item, since the interior wall paint was well beyond its useful life expectancy.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal award is more appropriate, after balancing out the fact that the Tenants did some damage to the walls, but also that the wall paint was beyond its useful life expectancy. I award \$300.00.

2) \$2,042.25 – Flooring Labour

3) \$1,933.31 - Flooring Materials

Having reviewed the evidence and testimony on this matter, I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which explains that the useful life expectancy of carpet is around 10 years, under normal conditions. The Landlord provided no evidence supporting the age of the carpets, and did not refute that they were likely installed in the late 1980's, as the Tenants assert. I find the appearance of the carpets is consistent with carpets that were at least 20 years old. In any event, I am satisfied the carpets were at least 20 years old at the end of the tenancy, like over 30 years old. I find there would have been little to no residual value in the carpets, given that they were well beyond their useful life expectancy of 10 years, as per the Policy Guideline.

I do not find the Tenants should be liable for the replacement of these carpets. However, I note the photos taken at the end of the tenancy show heavy staining and poor hygiene. I note the Tenants agreed, as part of the tenancy agreement, to shampoo the carpets before moving out, and it appears this was either not done, or done poorly. The Tenants should have at least left the carpets in a more reasonably clean and hygienic state. By failing to do so, they breached their tenancy agreement, and section 37(2)(a) of the Act. I award a nominal award of \$200.00 for failing to sufficiently clean the carpets. However, I decline to award the costs to replace all of the flooring.

4) \$8,512.00 – Upper-Level Kitchen Cabinets

Having reviewed the evidence and testimony on this matter, I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which explains that the useful life expectancy of kitchen cabinets is around 25 years, under normal conditions. The Landlord provided no evidence supporting the age of the cabinets, and did not refute that they were likely installed in the late 1980's, as the Tenants assert, which is around when the house was built. I find the appearance of the cabinets is consistent with cabinets that were at least 25-30 years old. I find there would have been little to no residual value in the cabinets, given that they were well beyond their useful life expectancy of 25 years, when the tenancy ended.

I do not find the Tenants should be liable for the replacement of these cabinets, particularly given their age, and their initial construction quality. However, I note the photos taken at the end of the tenancy show very poorly cleaned and maintained cabinet surfaces. There appears to be lots of debris, food, stains, and soiled surfaces. With respect to these cabinets, I find the Tenants' apparent lack of routine cleaning, and hygiene likely contributed to some of the staining, damage and potential mould growth. I

find it likely that this could have caused accelerated aging on some of the cabinets surfaces due to the Tenants' failure to maintain reasonable health and cleanliness standards, which is a breach of section 32(2) of the Act. In consideration of all of this, I find a nominal award is more appropriate. I award a nominal amount of \$200.00.

- 5) \$1,350.00 – Downstairs Refrigerator
- 6) \$749.00 - Dishwasher

Having reviewed the evidence and testimony on this matter, I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which explains that the useful life expectancy of a dishwasher is around 10 years, and a fridge is 15 years, under normal conditions. The Landlords provided insufficient evidence showing how old either of the appliances were, such that I could be satisfied there was any useful life expectancy left on either of the appliances. The dishwasher appears decades old, and there is no evidence it was actually functional at the start of the tenancy. Further, with respect to the fridge in the lower part of the house, the Landlords were vague and unclear about how old the fridge was. As such, I am not satisfied that there was any useful life expectancy left when the Tenants moved out. Further, I note the Landlord appears to have thrown the fridge out, largely because of a red substance in the fridge, which she assumed was blood. It is unclear what, if anything was actually broken. I find the Landlords have failed to sufficiently demonstrate that the Tenants caused damage to the fridge (no detailed move-in condition inspection report), during their tenancy, and also that the fridge had any useful life expectancy remaining. I decline to award either of these items.

- 7) 211.50 – Air Duct Cleaning

Having reviewed the evidence and testimony on this matter, I turn to *Residential Policy Guideline #1 – Responsibility for Residential Premises*:

FURNACES

- 1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.*

As noted above, the Landlord is responsible for cleaning of furnace air ducts. I do not find the Tenants are responsible for this item, particularly in light of the fact there is no

evidence as to when the ducts were cleaned previously, and whether any debris in the ducts was caused by the Tenants. I dismiss this item, in full.

8) \$1,800.00 – Indoor stair railing repairs

I have reviewed the evidence and testimony on this matter. I note there are no photos or documentary evidence supporting that the wooden spindles/railing was broken. The Tenants deny that the railing was broken. I find the Landlords have provided insufficient evidence that the Tenants caused any damage to the railing or broke the spindles, as alleged. I note the photos show that the paint was chipping off the surface of the railings and spindles. However, I also note there is no evidence showing when the railings were last painted. I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which explains that the useful life expectancy of interior painted surfaces is around 4 years. This tenancy is well over that. I find there is insufficient evidence that the Tenants caused any damage, such that they railings required replacement, and I find the Tenants are not responsible for any costs related to repainting the railings, as the painted surfaces were likely well beyond their useful life expectancy. I dismiss this item, in full.

Tenants' Application

I have reviewed the testimony and evidence on this matter. Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit. However, in this case, the Landlord filed this application against the deposit on July 14, 2021, which is within the allowable time frame. As such, I decline to award double the security deposit, and the remaining deposit, currently held by the Landlord will be addressed below.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since both parties were partly successful, I decline to award either party with the recovery of the filing fee.

In summary, I grant the monetary order based on the following:

Claim

Amount

Total of items listed above on Landlord's application	\$700.00
Less: Security Deposit currently held by Landlord	(\$1,300.00)
TOTAL:	(\$600.00)

I order the Landlords to return the remaining security deposit balance of \$600.00.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$600.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants 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: April 19, 2022

Residential Tenancy Branch