



# Dispute Resolution Services

Page: 1

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 May 18, 2023. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' Notice of Dispute Resolution Proceeding and evidence package well in advance of the hearing. The Tenant did not submit any documentary evidence. No service issues were raised.

The hearing was conducted before another arbitrator, who is now unable to render a Decision in this matter. Staff from the Residential Tenancy Branch (RTB) contacted both parties, explained the situation, and both the tenant and the landlord agreed that another arbitrator could write a Decision based on the RTB recording of the hearing and the filed evidence. I was designated to write the Decision.

The original arbitrator explained in detail to the tenant the requirements for their burden of proof on the monetary claim and what that burden requires under the Act and Tenancy Policy Guideline. The arbitrator provided an example of mitigating a claim.

Both parties were instructed to refer to any evidence at the hearing that they requested the arbitrator to consider for this Decision.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to the original arbitrator.

I have reviewed all oral, written, and other evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

### Background and Evidence

The parties agreed that the tenancy started sometime around December 18, 2015, and ended on or around July 31, 2022. Monthly rent was \$1,450.00 and the Landlord collected and still holds a security and pet deposit totalling \$1,450.00. At the start of the tenancy, a move-in inspection was completed, and a report was filled out and given to the Tenant. At the end of the tenancy, the Landlord offered two opportunities for a move-out inspection, the second of which being on an approved form for final notice for inspection. The Tenant acknowledged that this was done, and that he opted not to attend the move-out inspection, as he was busy moving. A copy of the inspection report was provided into evidence.

The Landlord provided numerous photos of the various items, as well as receipts for all items claimed. The items sought by the Landlord are:

1) \$111.86 – Curtains

The Landlord explained that the Tenant ripped several of the curtains and stained some of them beyond repair. The Landlord stated that they were new in 2013, and were in good shape at the start of the tenancy.

The Tenant stated there is “not much I can add”.

2) \$55.99 – Laundry sink

The Landlord explained that the sink in the basement laundry area was so heavily soiled and stained with grease, that it could not be cleaned. The Landlord also stated that the sink was plugged with small round balls and could not be cleaned out so that it would drain properly. The Landlord stated that the sink was new in 2012.

The Tenant acknowledged that the sink was dirty, but said it was a “poor setup”.

3) \$5.92 – Cleaning supplies

4) \$46.94 – Cleaning supplies

The Landlord explained that the Tenant failed to clean up before he left, as shown in the photos and the condition inspection report. The Landlord stated that this was to pay for some additional cleaning supplies. A receipt was provided.

The Tenant acknowledged that he didn't do a thorough job cleaning before he left.

5) \$28.16 – Basement light fixture

The Landlord stated that the ceiling light fixture in the basement was cracked at the end of the tenancy, but was in good condition at the start of the tenancy, and was new in 2010.

The Tenant stated he has no idea what happened to the light and did not confirm or deny causing the damage.

6) \$12.37 – Painting supplies

The Landlord stated that this item was to purchase some painting supplies to repaint all the excessive gouges in the trim. The Landlord stated that the unit was last painted in 2015.

The Tenant stated that the damage may have been caused by his movers, but he is not sure.

7) \$615.99 – Storm door replacement

The Landlord explained that there is a glass panel in the screen door which was broken at the end of the tenancy. The Landlord stated that it was new in 2013, and it was not repairable so the door needed to be replaced. A receipt was provided.

The Tenant was unclear about how the door was damaged but suggested that it was maybe due to a storm. The Tenant did not inform the Landlord about the damage.

8) \$785.23 – Window pane replacements

The Landlord stated that there were 9 window panes that were cracked in the house, and she asserts that there were no cracks at the start of the tenancy. The Landlord stated this item is material costs for the new window panes.

The Tenant stated that the windows are quite old and when he tried to remove the window panes so he could install his air conditioner unit, several of the windows broke because the frames were seized.

9) \$206.16 – various items – Key cutting, cleaning products, new co2 alarm, light bulbs

The Landlord explained that the Tenant failed to return the keys at the end of the tenancy, after he changed the locks, and the Landlord had to get new keys re-cut. The Landlord also stated that there was some more cleaning products, and there was also a missing CO2 detector, and several burned out light bulbs.

The Tenant stated he does not have much to say for this item other than acknowledging that he changed the locks during the tenancy. The Landlord stated that the Tenant failed to give back both keys for both locks when he left, hence the key cutting fees.

10) \$96.03 – Replacement dryer vent and painting supplies

The Landlord explained that the dryer vent on the outside of the house was missing at the end of the tenancy, and she also had to buy some extra painting supplies due to the excessive wall and trim damage.

The Tenant had no comments.

11) \$30.25 – Garbage disposal fees

The Landlord stated there was a whole variety of garbage and debris left behind at the end of the tenancy, which she had to pay to dispose of.

The Tenant agreed that he left behind some items.

12) \$4,480.00 – Driveway and lawn damage repair

The Landlord stated she had a contractor come by to give an estimate to repair the lawn and driveway. The Landlord stated that the driveway had no cracks or damage at

the start of the tenancy, despite the driveway being potentially as old as the 1970's. At the end of the tenancy, the Landlord explained that there were multiple large cracks in the driveway surface, and the lawn had been driven and parked on for the duration of the tenancy, which caused excessive damage to the lawn, and the edge of the driveway. The Landlord also stated that the Tenant left several large diesel and oil stains on the driveway surface which would not come out.

The Tenant stated that the driveway was old and likely original to the house, and it was in poor shape at the start of the tenancy. The Tenant acknowledged that the driveway broke down while he was living there, as he has a large pickup truck and he parked partially on the lawn at times.

13) \$6,547.50 – Siding repair, master bedroom flooring, basement ceiling repair

The Landlord stated that this was an estimate from a contractor to repair the siding (\$2,300.00) on the back of the house that was melted by the Tenant's BBQ. The melted area was 4 foot by 4 foot area but the whole back side needs to be replaced, because it cannot be matched. The Landlord also noted this was to repair the water damaged wood flooring (\$2,900.00) from the Tenant's air conditioner that leaked water all over the floor, which also leaked into the basement ceiling (\$1,125.00).

The Tenant acknowledged that he placed an air conditioner in the affected area, and he acknowledged that it had leaked several times in the past.

14) \$1,550.00 – Labour costs for cleaning and repairs

The Landlord stated that she utilized a contracting company to complete the repairs and the cleaning, and a detailed itemization was provided. Generally, there was about 62 hours spent and was billed at \$25.00 per hour. The labour was to replace all of the above items.

The Tenant had no comment.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

The burden of proof is on the applicant 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 other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the *Act* states:

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

The meaning of “reasonable wear and tear” is set out in Policy Guideline 1 as follows:

*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.*

I also note the *Residential Policy Guideline #40 - Useful Life of Building Elements*, to assist with determining what residual value remains for damaged building elements, and what is reasonable for compensation amounts. This guideline states as follows:

*This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.*

*When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*

*If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.*

In the above policy guideline, there are specific time periods for each type of item. The useful life expectancy of listed items is intended as a guideline, and is not prescriptive. When damage has occurred that stems from abnormal use, or use that goes beyond reasonable wear and tear, Policy Guideline #40 may not be applicable.

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

1) \$111.86 – Curtains

The Tenant did not refute damaging these items. I award this item in full, as it is not disputed, and I decline to apply policy guideline #40 with respect to depreciation of the item, as it appears this item was damaged in a manner that is inconsistent with reasonable wear and tear.

2) \$55.99 – Laundry sink

I note the Tenant acknowledged that the sink was dirty, but said it was a “poor setup”. However, I find the photos show an excessively dirty sink, and I note it was plugged and stained beyond repair. I find the Tenant is liable for this item in full. I decline to apply policy guideline #40 with respect to depreciation of the item, as it appears this item was damaged in a manner that is inconsistent with reasonable wear and tear.

3) \$5.92 – Cleaning supplies

4) \$46.94 – Cleaning supplies

I award these items in full, as the Tenant did not refute the fact that the unit was not properly cleaned before the end of the tenancy. I note the Landlord provided photos which show it was not left in a reasonably clean state.

5) \$28.16 – Basement light fixture

Although the Tenant is not sure what happened, he does not refute that it broke during his tenancy. I award this item in full, as it is not disputed, and I decline to apply policy guideline #40 with respect to depreciation of the item, as it appears this item was damaged in a manner that is inconsistent with reasonable wear and tear.

6) \$12.37 – Painting supplies

The Tenant did not refute damaging the trim and several wall areas that appear to show excessive dirt and wear and staining. I award this item in full, as it is not disputed, and I decline to apply policy guideline #40 with respect to depreciation of the item, as it appears this item was damaged in a manner that is inconsistent with reasonable wear and tear.

7) \$615.99 – Storm door replacement

I note the Landlord asserts that the door panel was broken during the tenancy, and there were photos provided to support this. The Tenant was somewhat vague about the cause of the damage, and suggested that it may have been from a storm at some point. However, I find the Tenant's explanation of this issue lacked clarity and detail, such that I could find it occurred through normal wear and tear, or due to circumstances beyond the Tenant's control. I am satisfied this occurred during the tenancy, and I find the Tenant is responsible for this item, in full.

8) \$785.23 – Windowpane replacements

The Tenant did not refute that these windows broke during his tenancy, in fact, he suggested that it occurred while he was trying to use them, and when he was trying to install an air conditioner unit in the window frame. I find this is not normal wear and tear, and I decline to apply policy guideline #40 with respect to depreciation of the item. I award this item in full.

9) \$206.16 – various items – Key cutting, cleaning products, new co2 alarm, light bulbs



I find the Tenant is liable for these items. I already found the unit was not left reasonably clean, and it is reasonable that some cleaning products were required. Further, the Tenant did not refute that one of the CO2 alarms went missing while he was living in the unit. Also, since the Tenant replaced the locks, and didn't return all the keys to the Landlord at the end of the tenancy, I find he is liable for the key cutting. I also find he is liable for the replacement of burned out light bulbs, as Tenants are generally responsible for the replacement of light bulbs that burn out during the tenancy.

10) \$96.03 – Replacement dryer vent and painting supplies

The Tenant did not dispute or refute either of these items. I am satisfied that the dryer vent went missing during the tenancy, and that the painting supplies are reasonable expenses, given the state of the walls and trim. I award this item in full.

11) \$30.25 – Garbage disposal fees

The Tenant agreed that he left some items behind. I find this expense is warranted, as the Tenant was supposed to provide vacant possession at the end of the tenancy. I award this item, in full.

12) \$4,480.00 – Driveway and lawn damage repair

I have reviewed the photos and testimony on this matter. I note the policy guideline #40 states that the useful life expectancy of asphalt and concrete is about 15 years under normal use. Although the Tenant had a large pickup truck, I am not satisfied that his use of the driveway was beyond normal wear and tear. The Landlord did not know how old the driveway was but it could be as old as 40 years old. In any event, I am satisfied that the age of the driveway made likely substantially contributed to its accelerated decay during the tenancy. I find the driveway is likely well beyond its useful life expectancy, and I decline to award this item.

13) \$6,547.50 – Siding repair, master bedroom flooring, basement ceiling repair

I have reviewed the testimony and evidence on these items. I find the Tenant is liable for all items, in full. With respect to the siding, the Landlord stated that the siding was melted, which is not normal wear and tear, and the Tenant did not refute causing this damage. With respect to the master bedroom flooring and basement ceiling repair, I note the Tenant admitted to installing an air conditioner, which periodically leaked water

onto the floor. I find it likely that this was the cause of the flooring and ceiling damage. I award this invoice in full.

14) \$1,550.00 – Labour costs for cleaning and repairs

I find the Tenant is responsible for this invoice as well, since I found he is largely responsible for the cleaning and repairs, as noted above. I find the hourly rate is reasonable, and given the extensive nature of some of the issues, I find this amount is warranted. I award this item, in full.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with the application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. Interest is payable on the deposit, but only for the year 2023. The total that should be returned is \$1468.69 based on the \$18.69 of interest that is owed on the deposit. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Total of items above	\$10,092.40
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$1,468.69)
<b>TOTAL:</b>	<b>\$8,723.71</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$8,723.71**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord 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: August 29, 2023

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Residential Tenancy Branch