



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MND, FF

### Introduction

This hearing dealt with the landlord's application for a monetary order for damage to the rental unit and for unpaid rent, to keep all or part of the security deposit and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their 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.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

### Background and Evidence

The parties were previously in dispute resolution on the tenants' application for a monetary order for a return of their security deposit, which resulted in the tenants being granted a Decision and monetary order, dated March 22, 2011, in the amount of \$532.00, double the portion of their security deposit deemed owed to them.

The March 22, 2011, Decision stated that the parties agreed, in part, that this tenancy started on August 1, 2009, that the tenants paid a security deposit of \$600.00, that the "parties agreed to end the tenancy on October 6, 2010, and that rent for October would be paid on a per diem basis, totalling \$184.00," and that there was no move-in or move-out inspection report.

The landlord has applied for a monetary order in the amount of \$1,722.67, which includes lost rent of \$950.00 for October, a new refrigerator for \$683.12, damaged cabinet doors for \$75.00 and a new light fixture, for \$14.55.

The landlord's relevant evidence included the tenancy agreement, photos of the rental unit, a light fixture receipt, a receipt for a new refrigerator, and communication between the landlord and tenant.

The landlord reaffirmed that there was no move-in or move-out inspection report. The landlord submitted that the tenants violated the tenancy agreement by not supplying a condition report within one week of moving in.

In support of her application, as to the lost rent, the landlord stated that the tenants provided insufficient notice of their intent to vacate, causing her to lose rent for October 2011. The rental unit has since been re-rented beginning November 1, 2010.

The landlord stated that the tenants caused significant damage to the refrigerator door, causing severe dents in several places resulting in the door not properly closing. As the door was no longer sealing properly and the freezer lining had been cracked, air escaped and icicles formed inside the unit. The landlord further submitted that the refrigerator was brand new at the start of the tenancy and that the tenants were the first persons using the appliance.

The landlord submitted that she obtained estimates for the repair, but that it was cheaper to replace the unit.

The landlord stated that the tenants left water damage to the bathroom and kitchen cabinet doors, which the landlord has or will be repairing herself.

The landlord submitted that when the tenant's father-in-law changed the light fixture, he damaged the electrical box, causing the original light fixture to not fit.

Upon my first query, the landlord stated that the photos were taken on October 9, 2010, when she met with the tenants after they moved out. However, upon further query, the landlord admitted that some photos were taken in September while the tenants still resided there for purposes of posting the unit online, after the tenants moved out, and after the next tenant moved in.

In response, the tenant stated that the refrigerator worked fine and there was no damage when they lived there and that she was shocked by the landlord's allegations that the tenants had caused the damage.

The tenant pointed out that the landlord took photos of the rental unit in September and would have seen the large dents if there had been any.

The tenant acknowledged that the electrical box had been altered, which is why she agreed in the previous hearing to allow the landlord \$50.00 for electrical work. The tenant questioned why the landlord had to buy a new light fixture with the electrical work done to repair the box.

The tenant stated that the tenants were not offered any opportunity for a condition inspection, either prior to moving in or after moving out.

### 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 claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

As I explained in the hearing, I find that the rent for October has previously been decided upon by the March 22, 2011, Decision, and I cannot re-decide that issue as I am bound by this earlier Decision, under the legal principle of *res judicata*. I therefore **dismiss** the landlord's claim for \$950.00.

Section 23(3) of the Residential Tenancy Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy and Section 35, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

In the absence of a condition inspection report, I find there to be insufficient evidence to meet the burden of proof establishing that the tenants damaged the rental unit or the refrigerator. A condition inspection would easily reveal such a large dent as depicted in the photos. Further I am troubled that the landlord provided contradictory testimony as to when the photos were actually taken, finding that some photos were taken while the tenants still resided in the rental unit and some after the subsequent tenant had moved in.

Due to the above, I **dismiss** the landlord's remaining claim for a new refrigerator and damaged doors, in the amount of \$758.12.

I dismiss the landlord's claim for a new light fixture as I find that the tenants have previously made restitution for the issue surrounding the light fixture, in the amount of \$50.00 awarded to the landlord in the previous Decision.

As I have dismissed the landlord's claim in its entirety, I decline to award the landlord the filing fee.

### Conclusion

The landlord's claim is dismissed.

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: July 07, 2011.

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Residential Tenancy Branch