



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlords' agent and the tenant.

At the outset of the hearing, I confirmed with the parties that matter of the security deposit had been dealt with at a previous hearing and cannot be dealt with at this hearing, as such I amended the landlords' Application to exclude the matter of the security deposit.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding; for damage to the rental unit; for monies owed or compensation for damage or loss; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

Both parties submitted into evidence a copy of a tenancy agreement signed by the parties on February 12, 2010 for a month to month tenancy beginning on March 1, 2010 for a monthly rent of \$2,000.00 due on the 1<sup>st</sup> of each month and a security deposit of \$1,000.00 was paid.

The landlords' agent testified and provided substantial evidence to confirm the rental unit had been purchased by the landlords brand new in 2008 and that the unit remained unrented until this tenancy began in 2010. In addition the unit had been for sale during that time frame and was again put on the market for sale at the end of the tenancy. There are currently tenants renting the unit.

The landlords' agent confirmed through testimony that other than a written submission from the landlords' realtor there is no record of the condition of the rental unit at the start of the tenancy. The landlords' realtor states in a "witness letter" dated April 6, 2011

“The condition was very clean and good as a brand new apartment at that time (March 1, 2010). The realtor was not in attendance at the hearing.

The tenancy ended on February 28, 2011 and on July 7, 2011 the landlords were ordered to provide the tenant with the return of double the security deposit as the landlords had made no claim against the security deposit nor returned any portion to the tenant. The landlords filed this Application for Dispute Resolution on July 18, 2011.

The parties agreed that after the end of the tenancy the parties met to conduct a move out inspection and that originally it was decided the tenant would complete some additional cleaning and remove a couch from the rental unit.

The landlord asserts the tenant did not contact the landlord to obtain a key, as the landlord thought all keys had been returned, but that the couch had been removed. The parties met again and the parties agreed the landlord would hire cleaners. As a result, the landlord seeks compensation for overholding because the tenant did not return all keys.

The landlords’ agent testified the tenant caused damage to the walls by filling holes with a compound that was not finished or sanded and in any case was a different colour than the wall colour and in certain spots the tenant had rubbed the walls and removed the finish.

The landlords submit photographic evidence of the condition of the granite countertops in the kitchen. The landlords assert the tenant caused severe damage to countertops. The landlord did not provide any photographic or other documentation of the condition of the countertops at the start of the tenancy. The landlords’ agent testified the landlord did not give the tenant any instruction on the care and use of granite countertops at the start of the tenancy.

The landlords seek the following monetary claim:

Description	Amount
Cleaning	\$134.40
Painting & Repair	\$896.00
Granite Countertop replacement	\$3,089.00
Overholding – 8 days @ \$64.52 per day	\$516.13
<b>Total</b>	<b>\$4,635.53</b>

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept, based on the tenant's submissions and testimony that the landlord has established the tenant had agreed to cleaning charges; that the landlord acted on that agreement and I find based on the photographic evidence that the charge of \$134.40 to be reasonable for that matter.

Section 37 of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I accept the landlords' position that the rental unit was new at the start of the tenancy. I also accept that no one else had lived in the rental unit prior to the start of the tenancy. However, as the landlord has failed to provide any evidence of the specific condition of any part of the rental unit I find the landlord has failed to establish the condition of the unit at the start of the tenancy.

From the photographic evidence and in the absence of evidence of the condition at the start of the tenancy, I am not satisfied the landlord has established the repairs and painting the walls were for anything more than wear and tear. As such, I find the landlords have failed to show the damage or loss results from a violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of the landlords' Application.

I also find that as the landlord has failed to establish the specific condition of the granite countertop at the start of the tenancy and therefore that the damage results from a violation of the *Act*, regulation or tenancy agreement. I therefore dismiss this portion of the landlords' Application.

Residential Tenancy Policy Guideline #3 states if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. In the case before me, I find the tenant had relinquished possession on February 28, 2011 when he returned the keys to the landlord.

While the tenant may or may not have had additional keys, I find that did not impede the transfer of possession from the tenant back to the landlord. The landlord had possession on that date and could have changed the locks at anytime. As such, I find the tenant was not overholding and therefore not responsible to pay occupation rent to the landlord. I dismiss this portion of the landlords' Application.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$134.40** comprised of \$compensation for cleaning. As the landlord was mostly unsuccessful in their Application I dismiss their request to recover the \$50.00 fee paid for this application.

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: October 11, 2011.

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Residential Tenancy Branch