



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EASYRENT REAL ESTATE SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

MND MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for damage to the unit pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the evidentiary submissions for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit and any other loss as well as to retain the tenant's security deposit in satisfaction of the monetary order?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began on December 12, 2013 as a fixed term tenancy of "2 years less 12 days" with a monthly rental amount of \$7000.00. The tenant paid a \$3500.00 security deposit and a \$3500.00 pet damage deposit at the outset of the tenancy. The tenant vacated the rental unit on December 1, 2015. At that time, a condition inspection move-out report was completed and the tenant provided his forwarding address to the landlord. The landlord applied to retain a portion (\$955.63) of the tenant's pet damage deposit towards damage to the rental unit floors.

The landlord testified that, at the end of this tenancy, the hardwood floors were damaged by a dog that the tenant cared for in the rental unit on a part-time basis. The landlord testified that the damage to the floors was throughout the rental unit and that the excessive damage was beyond reasonable wear and tear. The landlord submitted that while the dog was intended, as an

addendum to the rental agreement to reside in the unit part-time, she believes the dog was in the unit full-time based on the level of damage at the end of the tenancy.

he landlord provided a quote or estimate for work to rebuff, retouch and apply a coat of stain to the floor at a cost of \$1150.00, submitting that the tenant should be responsible for 84% of that cost as well as the taxable portion. The landlord submitted photographic evidence - close-up photographs of the floor with small scratch marks. Three of the photographs showed larger scratch marks and two of those photographs showed (scruff) marks. The landlord submitted that these photographs showed clear evidence of scratches and indents in "pet like patterns". The landlord acknowledges that some of the scratch marks were present prior to the outset of this tenancy, as noted on the condition inspection move-in report.

The landlord completed both a move-in and move-out condition inspection report. The move-in report indicated floor damage existing prior to the start of the tenancy including but not limited to; scuffs in front of the sink (in kitchen); large scratch on the hardwood (living room); small scratch on hallway, large scratch by vanity, and nick in floor (bedrooms). At the end of the report, referencing the end of the tenancy, the landlord wrote that "the owners would like compensation for wear and tear on the floors in the suite and around the kitchen island of flooring". The tenant submitted, at this hearing and wrote in the condition inspection move-out report that he believed the damage to the floors could be categorized as normal wear and tear over the course of a two year tenancy.

The tenant provided sworn undisputed testimony that there had been at least 1-3 prior tenants at this rental unit. The landlord testified that this rental unit was approximately 6 years old at the end of this tenancy and that the flooring had not been renovated in those 6 years.

### Analysis

At the outset of a tenancy, the tenant may pay to the landlord a security deposit and, if required, a pet damage deposit. At the end of a tenancy, given that the landlord meets their obligations to conduct a condition inspection, and provide proper notice, a landlord may seek to retain a portion of one or both of those deposits towards any damage within the rental unit that the tenant may be responsible for. Pursuant to section 37(2)(a) of the Act, at the end of a tenancy, a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Residential Tenancy Policy Guideline No. 1 describes reasonable wear and tear 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. ...

The tenant submits that any damage to the floors within the rental unit was within the realm of reasonable wear and tear while the landlord submits that the damage is well beyond reasonable wear and tear over the course of this two year tenancy. The landlord submitted that this damage as a result of the allowance of a pet within the rental unit.

As with security deposits, the landlord may retain all or a portion of a tenant's pet damage deposit if,

- at the end of the tenancy, the tenant agrees in writing;
- if a previous award relating to damage by the pet remains unpaid by the tenant;
- if the tenant does not provide a forwarding address within 1 year;
- if the landlord applies within 15 days of the end of the tenancy or the provision of the tenant's forwarding address AND the damage was caused by (a/the) pet.

Residential Tenancy Policy Guideline No. 40 refers to the "useful life" of building elements for residential premises. The Guideline states,

When applied to damage(s) caused by a tenant... 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.

Under the Guideline, hardwood floors are said to have a useful life of 20 years. These floors had reached approximately 6/20 years at the end of this 2 year tenancy. The photographs provided show very specific areas of the floor and very specific damage: small scratch marks. It is the tenant's position that the floors are not actual wood and therefore decreased durability. Further, it is the tenant's position that the damage shown by the landlord is within the realm of reasonable wear and tear over the course of a 2 year tenancy. The landlord provided a quote or estimate for work to rebuff, retouch and apply a coat of stain to the floor at a cost of \$1150.00, submitting that the tenant should be responsible for a large portion of that cost. I note that the estimate provided to the landlord refers to rebuffing and retouching/staining without further detail.

The landlord did not present photographs of the condition of the floor prior to the start of this tenancy. The landlord did however present the condition inspection report from the start of this tenancy which references existing damage (scratches and scuff marks) in the floor. I find that the landlord's documentary evidence does not provide evidence of damage beyond wear and tear over the course of a two year tenancy. I find that the landlord's photographic evidence at

the end of the tenancy shows isolated damage to the floor that is within the realm of reasonable wear and tear over the course of the life of this floor and particularly over this two year tenancy. Furthermore, I find that the landlord does not have evidence to reflect the condition of the floor at the outset of this tenancy.

I accept the testimony of the tenant that the floors had already been subject to some wear at the outset of this tenancy. I accept the testimony of the tenant, supported by the photographic evidence submitted by the landlord and described by the tenant that the floors were subject to reasonable wear and tear over the course of the tenancy. Therefore, I find that the landlord is not entitled to recover the cost of a repair application to the floors within the rental unit from the tenant.

As the landlord has not been successful in this application, I find that the landlord is not entitled to recover the filing fee for this application.

### Conclusion

I dismiss the landlord's application in its entirety.

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 19, 2016

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Residential Tenancy Branch

