



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the *Residential Tenancy Act*, (the “Act”), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord’s agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on June 6, 2016, Canada post tracking numbers were provided as evidence of service. The agent stated that the packages were returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act. Refusal or neglect to pick up the packages does not override the deemed service provisions.

The landlord’s agent testified that they also sent a copy of the Amended Application which reduced the original claims on October 1, 2016. The agent stated that the tenants received the amendment to the application.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on April 1, 2013. Rent in the amount of \$1,144.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenants. The tenancy ended on April 30, 2016.

The landlord claims as follows:

a.	Replace flooring	\$6,398.85
b.	Repair blinds	\$ 315.00
c.	Paint and labour	\$2,795.17
d.	Rekey the lock	\$ 79.80
e.	Broken stove knobs	\$ 210.21
f.	Cleaning	\$ 100.00
g.	Filing fee	100.00
	<b>Total claimed</b>	<b>\$9,999.02</b>

### Replace flooring

The landlord's agent testified that the tenants breached their tenancy agreement by smoking in the rental unit. The agent stated that the flooring was ruined by cigarette burns. The agent stated that there were burns in the kitchen linoleum, the main bathroom linoleum, the living room carpet, the master bedroom carpet and in the ensuite. Filed in evidence are photographs which supports the flooring was burned by cigarettes.

The landlord's agent testified that the living room carpet was extremely dirty and the bedroom carpet had what appeared to be dried vomit on it. Filed in evidence are photographs which supports the carpets were dirty.

The landlord's agent testified that rental unit was brand new when the tenancy commenced. The landlord seeks to recover the cost of replacing the flooring in the amount of \$6,398.85. Filed in evidence is a receipt.

### Repair blinds

The landlord's agent testified that the tenants did not clean the blinds at the end of the tenancy. The agent stated for some unknown reason the tenants had cut the strings on the blinds. The agent stated as a result they had to get the blinds cleaned and repaired.

The landlord seeks to recover the amount of \$315.00. Filed in evidence is a receipt for blind repairs and cleaning.

#### Paint and labour

The landlord's agent testified that as a result of the tenants smoking in the rental unit, the entire premises needed to be painted, which included the ceilings. The agent stated two coats of paint were required. The landlord seeks to recover the cost of painting in the amount of \$1,400.00. Filed in evidence is a receipt.

The landlord's agent testified that receipt for painting also includes labour for removing the burn carpet and linoleum floor. The landlord seeks to recover the amount of \$1,395.17.

#### Rekey the lock

The landlord's agent testified that they had to rekey the lock as the keys the tenant had cut were not returned. The landlord seeks to recover the amount for rekeying the premise the amount of \$79.80. Filed in evidence is a receipt.

#### Broken stove knobs

The landlord's agent testified that all the knobs on the stove were broken and had to be replaced. The landlord seeks to recover the cost of replacing the stove knobs in the amount of \$210.21. Filed in evidence is a receipt.

#### Cleaning

The landlord's agent testified that the tenants did not clean the rental unit to a reasonable standard. The agent stated that there was food in the cupboard draws, the bathrooms were dirty, the sliding bars on the floors were filthy and the windows needed to be cleaned. The agent stated that it took four hours to clean the rental unit and they seek compensation at the rate of \$25.00. The landlord seeks to recover the cost of cleaning in the amount of \$100.00.

#### 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 party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the *Act*, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

#### Replace flooring

In this case the rental unit was new when the tenants took possession. I accept the undisputed evidence of the landlord's agent that the tenants caused damage to the floors by burning with cigarettes. This is supported by photographic evidence. I find the tenants have breach the *Act* when they failed to leave the rental unit undamaged and this caused losses to the landlord.

Under the Residential Policy Guideline #40, if the tenants damaged an item, the age of the item may be considered when calculating the cost that the tenants' are responsible to pay.

I have determined that the flooring had a useful life span of ten years, and the flooring was three years old at the time of replacement. I find the landlord is entitled to the depreciated value of 70 percent. The evidence of the landlord's agent was that the cost of replacing the flooring was \$6,398.85. Therefore, I find the landlord is entitled to compensation for the cost of replacing the flooring in the depreciated amount of **\$4,479.19.**

#### Repair blinds

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the *Act*, the tenants are expected to clean the blinds at the end of the tenancy

I accept the undisputed evidence of the landlord's agent that the tenants did not clean the blinds at the end of the tenancy. I further accept the undisputed evidence of the landlord's agent that the blinds were damaged by the tenants cutting the strings.

I find the tenants breached the *Act* when they failed to leave the blinds clean and undamaged. Therefore, I find the landlord is entitled to compensation for cleaning and repairing the blinds in the amount of **\$315.00.**

### Paint and labour

I accept the undisputed evidence of the landlord's agent that the tenants breached the tenancy agreement by smoking in the rental unit. As a result the rental unit needed to be repainted. Two coats of paint had to be applied to the walls and ceilings.

Under the Residential Policy Guideline #40, I have determined that the paint had a useful life span of four years, and the paint was three years old at the time.

In this case, I find the tenants breached the Act and are responsible for the full cost of the first coat of paint to cover the smoke damage walls and ceilings, as it is reasonable to conclude this coat of paint would not have been needed if they had not breached the Act. Since the landlord paid the amount of \$1,400.00 for the two coats of paint. I find the tenants are responsible for the first coat of paint in the amount of \$700.00.

I find the tenants are responsible to pay the depreciate value of 25 percent for the second coat of paint in the amount of \$175.00. Therefore, I find the landlord is entitled to recover for painting the amount of **\$875.00**.

I have reviewed the balance of the invoice, I am satisfied that it relates to labour that was required to remove the flooring. Therefore, I find the landlord is entitled to recover the balance of the invoice in the amount of **\$1,395.17**.

### Rekey the lock

I accept the undisputed evidence of the landlord's agent that all the keys that gave access to the premises were not returned at the end of the tenancy. I find the tenants breached the Act when they failed to return all the keys and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost for rekeying the premises the amount of **\$79.80**.

### Broken stove knobs

I accept the undisputed evidence of the landlord's agent that the tenants caused damage to the knobs on the kitchen stove. I find the tenants breached the Act when they failed to leave the appliance undamaged. Therefore, I find the landlord is entitled to recover the cost of the repair in the amount of **\$210.21**.

### Cleaning

I accept the undisputed evidence of the landlord's agent that the tenants did not leave the rental unit reasonable clean as the cupboards, flooring, window and bathrooms required cleaning. I find the tenants breached the Act when they failed to leave the rental unit reasonable clean. I find the amount claimed reasonable. Therefore, I find

the landlord is entitled to compensation for cleaning the rental unit in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$7,554.37** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$550.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$7,004.37**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: December 12, 2016

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Residential Tenancy Branch