



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

In filing the application the landlord indicated he was seeking monetary compensation of \$2,000.00. The landlord did not provide a detailed calculation or Monetary Order worksheet at the time of filing but subsequently provided an itemized list of seven items totalling \$967.50. The landlord also submitted photographic evidence less than 14 days before the hearing date. Although the landlord did not serve the tenant with a detailed monetary calculation and evidence in accordance with the Rules of Procedure, the tenant indicated that she understood the claims made against her and was prepared to respond to each of the items. Accordingly, I deemed the tenant sufficiently served and I considered the landlord's documentation and photographic evidence. The landlord's monetary claim was also amended to the lesser amount of \$967.50.

The tenant had also submitted and served the landlord with a detailed response and photographic evidence and I have accepted and I considered her evidence in making this decision.

During the hearing, the landlord referred to documentation that I did not have in the evidence package he had submitted, namely the tenancy agreement and condition inspection reports. The landlord stated that he had submitted this documentation to the Residential Tenancy Branch shortly after filing his on-line application. The tenant pointed out that she had submitted copies of the condition inspection reports. The landlord confirmed that the copies the tenant submitted appeared to be the same as his

copies. Accordingly, where it is necessary to view the condition inspection reports I have viewed the copies in the tenant's evidence package. As for the tenancy agreement, the tenant had not supplied a copy; however, I confirmed the basic terms of tenancy orally with both parties during the hearing and the parties were not in dispute as to the terms of the tenancy agreement. Therefore, I found it unnecessary to order the landlord to re-submit the tenancy agreement.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The tenancy started March 1, 2014 and the tenant paid a security deposit of \$970.00. The tenant was required to pay rent of \$1,940.00 every month. The tenancy ended June 30, 2016. The landlord and tenant participated in the move-in and move-out inspection together and condition inspection reports were prepared.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

### **Bar back damage -- \$572.50 (\$472.50 materials + \$100.00 labour)**

The rental unit appears to have an open concept design. There is a raised eating bar affixed to the kitchen cabinet that houses the kitchen sink. The panelling below the raised eating bar faces the living area and has water damage (this area is referred to as "bar back damage").

The landlord obtained a quote for the purchase of materials (\$472.50) that he will attach to the cabinet and cover up the damage (\$100.00 estimated for his labour). The landlord seeks to recover this sum from the tenant.

The landlord is of the position that the tenant, or her son, caused the damage by way of negligent use of the pull-out kitchen faucet. The landlord suspects the tenant's son may have been using the pull out faucet to wash down the countertop which resulted in the water damage.

Both parties were in agreement that the tenant had reported the water damage to the landlord during the tenancy on two occasions, starting in October 2015. The landlord stated that he inspected the inside of the cabinet and found that it was dry so the water damage is not from the plumbing which comes up from the floor. Further, the landlord stated that plumbing is lower than the damage. The tenant stated that during the landlord's inspection he did not indicate that the damage was from anything that she had done but indicated he may have to install grout. The tenant submitted that the landlord did install more grout and informed the tenant that the issue was fixed.

The tenant is of the position that the water damage is from a water leak and not from negligent use as suggested by the landlord. The tenant pointed out that the raised eating bar acts as a roof for the bar back and she cannot understand the landlord's logic for asserting the damage is caused by spraying the countertop with the pull out faucet on the other side of the eating bar. The tenant pointed out that the shape of the water damage is circular and that if water was being sprayed onto the countertop from the faucet the water would run down the cabinet. The tenant stated that she showed the pictures of water damage to a plumber and the plumber's opinion was that the damage was from a water leak.

**Cabinet touch-up/repairs -- \$200.00**

The landlord submitted that the kitchen cabinets were damaged in two areas: near the fridge and beneath the kitchen sink. The landlord suspects the damage near the fridge is from sliding cooking sheets in and out of the space and installing a hook to hang a dish towel near the sink.

The tenant was of the position that the marks on the cabinetry were pre-existing. The tenant stated that she did not install a hook on the cabinet as she does not use dish towels but that she dries dishes in the dishwasher and wipes up using paper towels.

The landlord pointed out that the move-in inspection report indicates there was no pre-existing damage to the cabinetry. The tenant stated that she was not looking to have minor issues added to the move-in inspection report.

The landlord did not produce documentary evidence to support the amount claimed. The tenant also questioned the amount claimed by the landlord, pointing out that the amount claimed is not supported by other evidence. The landlord stated that he had furniture repaired in the past and the amount he claimed is an approximation based upon previous furniture repairs. The landlord pointed out that the repair would require

multiple coats of stain and sealant. The landlord acknowledged that the repairs have yet to be made.

**Carpet cleaning - \$125.00**

The landlord withdrew this claim during the hearing and it was not considered further.

**Light bulbs - \$40.00**

It was undisputed that at the end of the tenancy there were five light bulbs missing from the dining area light fixture. The parties were in dispute as to where those light bulbs had gone.

The landlord stated that the light bulbs were in place at the start of the tenancy and he pointed to the move-in inspection report where it states "all light bulbs working".

The tenant submitted that near the start of the tenancy she advised the landlord that the dining area would be used as a bedroom area and that the light fixture was too bright for a bedroom. In response, the landlord brought a ladder and removed most of the light bulbs, taking them with him.

I noted that the landlord had not submitted a receipt to show the purchase of light bulbs or that these light bulbs cost \$8.00 each. The landlord stated that he had light bulbs "in stock" and no longer had a receipt as he had submitted it to "head office".

**Shower curtain -- \$25.00**

It was undisputed that a shower curtain was in the rental unit at the start of the tenancy and the tenant disposed of it.

The landlord was of the position that the tenant should compensate him the purchase price which was \$25.00 to \$30.00 approximately one year before the tenancy started. The landlord stated that he purchased the shower curtain when his daughter lived in the rental unit.

The tenant stated that the shower curtain was not new and that the rental unit had been tenanted prior to her tenancy. She stated that she did not want to use somebody else's shower curtain as it was unhygienic and that she told the landlord she would not use it. The tenant acknowledged that she offered to buy the landlord a new one when it became an issue at the end of the tenancy but not at the price he is seeking s the

tenant was of opinion the shower curtain was not that nice. The tenant provided a photograph of a shower curtain that may be purchased for \$9.00. Again, the tenant pointed out that the amount claimed is not supported by other evidence.

**Tub strainer - \$5.00**

It was undisputed that there was a tub strainer in the bathtub at the start of the tenancy and it was gone at the end of the tenancy. The tenant stated that she used the tub strainer throughout her tenancy but that she disposed of it at the end of the tenancy as she considered it unhygienic to leave it for the next tenants.

I noted that the landlord had not submitted a receipt for the purchase of a new tub strainer. The landlord explained that the incoming tenants had their own tub strainer but that he will probably have to purchase another one eventually.

The landlord stated that the tenant had told him she was willing to pay for the tub strainer. The tenant acknowledged this but claimed tub strainers may be purchased at the dollar store for less than the \$5.00 the landlord is seeking. The tenant provided a photograph of a tub strainer that may be purchased for \$1.50. Again, the tenant pointed out that the landlord did not provide evidence to support the amount he is claiming.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that 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.

A tenant is required to repair damage they cause by way of their actions or neglect, or the actions or neglect of persons they permit on the property and the tenant is required to leave the rental unit undamaged at the end of the tenancy, as provided in section 32 and 37 of the Act. These sections of the Act also provide that reasonable wear and tear is not damage.

Awards for damages are intended to be restorative. Where an item is missing or so damaged that it must be replaced, it is generally appropriate to reduce the replacement cost by the depreciation of the original item to reflect that most building components have a limited useful life. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the landlord's claims against the tenant.

### **Bar back damage**

Upon review of the photographs submitted by both parties, it appears to me that the water damage is located at and around the height of the kitchen countertop where the kitchen sink is located. The landlord did not include pictures of the sink side of the countertop and raised eating bar, but the tenant's photographs did show the countertops and backspace to some extent. It would appear that there is a tiled backslash with what appears to be a rather large grout line between the countertop and the tiles. This is consistent with the tenant's submissions that the landlord had spoken of installing more grout after she pointed out the water damage; however, there was no mention of installation of new caulking by either party.

It is common for a bead of caulking to be placed between two surfaces that meet near a source of water. I find it reasonable to expect that some water will find its way on to a countertop around a sink from ordinary use. As such, I would expect that a sufficient quantity and quality installation of caulking would be installed to keep a reasonable amount of water from seeping between the countertop and the backslash.

I note that in Policy Guideline 40 waterproofing sealant has an average useful life of five years. I was not provided the age of the rental unit but it appears to be of relatively new construction based upon the photographs presented as evidence. However, this tenancy was more than two years in duration, and I heard that it was tenanted previously and the landlord's daughter had also lived in the unit. Accordingly, I find it

reasonable that any caulking installed at the time of construction was likely at or near the end of its useful life.

The landlord points to negligent use of the pull out faucet, leading to an excessive amount of water on the countertop, as being the most likely reason for the damage since the inside of the kitchen cabinet was dry. I accept this to be a reasonably likely explanation, in part, because the water damage is of a significant size and I find it unlikely that a small amount of water on the countertop would result in such a large area of damage.

In light of the above, I find it reasonably likely that the water damage is the result of a combination of inadequate waterproof caulking and excessive water on the countertop. Therefore, I apportion the value of the damage equally among the two parties and, as a result, I order the tenant to compensate the landlord the sum of \$286.25.

### **Cabinet touch-up/repair**

It is undisputed that there were two areas of damage to the cabinets at the end of the tenancy. The tenant submits that the damage was pre-existing; however, no damage is reflected on the move-in inspection report.

Section 21 of the Residential Tenancy Regulations provide that

**21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary

I find the disputed verbal testimony as to the thoroughness and accuracy of the move-in inspection is not a preponderance of evidence that would satisfy me the move-in inspection report is not accurate. Therefore, I accept, based on the move-in inspection report, that the damage to the cabinetry was not present at the start of the tenancy.

In light of the above, I find the damage to the cabinetry was caused during the tenancy and the tenant is liable to compensate the landlord for the repairs. The tenant questioned the amount claimed by the landlord as it was not supported by other evidence. While \$200.00 may or may not be a reasonable approximation, it is upon the applicant to prove the value of the loss and I am not satisfied that he has met this burden. Therefore, I award the landlord a nominal award of \$50.00.

### **Light bulbs**

It was undisputed that light bulbs were missing at the end of the tenancy; however, I find the tenant's clear recollection that the landlord removed them and took them with him at the start of the tenancy to be reasonably likely and may explain why he had light bulbs "in stock". Further, the landlord did not provide evidence to establish the value of the light bulbs as costing \$8.00 each. Therefore, I find the landlord did not meet his burden to prove the tenant is responsible for compensating him \$40.00 for light bulbs and I dismiss this portion of his claim.

### **Shower curtain**

It was undisputed that the shower curtain in the rental unit at the start of the tenancy was disposed of by the tenant. The landlord seeks to recover the original purchase price of the shower curtain from the tenant but the landlord is only entitled to the depreciated value of the shower curtain. I find the value of a used shower curtain that is a number of years old is likely at or near nil and I dismiss this portion of the landlord's claim.

### **Tub strainer**

It was undisputed that the tub strainer provided with the rental unit was disposed of by the tenant at the end of the tenancy. The tenant established that a tub strainer costs \$1.50 new and since the tub strainer was a number of years old I find the value of a used tub strainer to be at or near nil and I dismiss this portion of the landlord's claim as being frivolous.

### **Filing fee, Security deposit and Monetary Order**

As the landlord was partially successful in his claims against the tenant, I award the landlord recovery of a portion of the filing fee from the tenant in the amount of \$40.00.

I authorize the landlord to deduct the amounts awarded to the landlord in this decision from the tenant's security deposit and I order the landlord to return the balance of the security deposit to the tenant without further delay, calculated as follows:



Amounts of security deposit		\$970.00
Less: authorized deductions –		
Bar back damage	\$286.25	
Cabinetry touch-up/repairs	50.00	
Filing fee	<u>40.00</u>	
Total authorized deductions	\$376.25	<u>(376.25)</u>
Balance owed to tenant		\$593.75

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, I provide the tenant with a Monetary Order for the balance of the security deposit, or \$593.75, to ensure the landlord makes the payment as ordered.

### Conclusion

The landlord was partially successful and has been authorized to deduct \$376.25 from the tenant's security deposit. The landlord has been ordered to return the balance of the security deposit in the amount of \$593.75 to the tenant without further delay and the tenant has been provided a Monetary Order to ensure the payment is made.

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: January 26, 2017

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Residential Tenancy Branch