



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY  
INC and [tenant name suppressed to protect privacy]

## **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.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 full satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on March 1, 2019. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenant paid a security deposit of \$675.00. The tenancy ended on or about March 29, 2020.

The parties agreed a move-in condition inspection report was completed.

The landlord claims as follows:

|    |  |                 |
|----|--|-----------------|
| a. | 50% of the replacement of the stove (\$1,023.13) | \$511.56        |
| b. | Filing fee                                       | \$100.00        |
|    | <b>Total claimed</b>                             | <b>\$611.56</b> |

The landlord's agents testified that the stove was damaged by the tenant at the end of the tenancy. The agents stated that the tenant used some type of product that destroy the coating inside the stove, which the stove was unsafe and had to be replaced. The agents stated that the stove was new in 2018 and was it only two years old at the time of replacement. Filed in evidence are photographs of the stove and a receipt.

The tenant testified that they signed the move-in inspection in good faith that there was no damage. The tenant stated that they seldom used the stove and it was in the same shape it was when they moved into the premise and they believe it is just normal wear and tear.

The tenant testified that a checklist was never completed with the previous renter who lived in the rental unit prior them, therefore there is no proof that the oven was in better condition than the current state upon me moving in.

The tenant testified that they used the oven product that was recommended by the building manager.

The tenant's witness MF testified that they have no first hand knowledge of the condition of the stove at the beginning or the end of the tenancy.

The landlord's agent argued that when they were inspecting the stove at the end of the tenancy the stove was already damaged. The landlord's agents stated they never told the tenant that the damage could be cleaned.

### 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.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit 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.

### **Evidentiary weight of a condition inspection report**

Section 21 of the Residential Tenancy Regulation states: 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.

In this case the move-in condition inspection was completed and signed by the tenant. The move-in condition inspection report does not note any damage to the oven, which was only one year old at the time when the tenancy commenced. I do not find it necessary or reasonable for the landlords to present prior condition inspection report from previous rents. A move-in condition inspection report sign by the parties is evidence of the state or repair and condition of the rental unit, unless in this case, the tenant has a preponderance of evidence to the contrary.

While I accept the tenant may have just signed the report in good faith. It was their responsibility to ensure the report was accurate prior to signing it. The tenant has not presented a preponderance of evidence to the contrary as required by section 21 of the regulation that proves the report is not accurate, such as notifying the landlord when they discovered the stove damaged or with photographs of the stove at the start of the tenancy. Therefore, I must accept the move-in condition report as evidence of the condition of the stove at the commencement of the tenancy.

The photographs submitted by the landlord show the interior coating of the stove was damaged, making it unsafe to use. I do not find this is reasonable wear and tear as this damage caused by neglect, which could be from either using the wrong product or not following the instructions properly or using the stove for a purpose it was not intended, which I cannot determine the cause. However, I accept the stove was not damaged at the start of the tenancy and was damaged at the end. I find the tenant is responsible for the damage.

Under the Tenancy Policy Guideline #40, a stove has a useful lifespan of 15 years, and was two years old at the time of replacement. While the landlord is entitled to a depreciated value of 86.66%, the landlord is seeking a lower depreciated value in the amount of 50%, I find this is reasonable and solely benefits the tenant. Therefore, I find the landlord is entitled to recover 50% of the stove in the amount of **\$511.56**.

I find that the landlord has established a total monetary claim of **\$611.56** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain from the security deposit of **\$675.00**, the above amount in full satisfaction of the claim. This leaves the balance of the security deposit of **\$163.44**, which must be returned to the tenant forthwith.

I grant the tenant an order under section 67 of the Act for the balance due of their security deposit in the amount of **\$163.44**. Should the landlords fail to comply with my order.

### Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. I grant the tenant a formal order for the balance due of their security deposit.

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 05, 2020

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Residential Tenancy Branch