



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On September 3, 2020 the Landlords applied requesting a monetary order for damage to the unit; to keep all or part of a security deposit, and to recover the cost of the application fee. On September 12, 2020 the Landlords amended the application to change the address of the respondent.

On October 8, 2020 the Tenant applied for the return of the security deposit and to recover the cost of the filing fee. On October 16, 2020 the Tenant amended the application to change the amount of their claim.

The matter was set for a conference call hearing. The Landlord and Tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Landlords entitled to compensation due to damage to the rental unit?
- Can the Landlords retain the security deposit in partial satisfaction of their claim?

- Are the parties entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began 14 years ago and was on a month to month basis. Rent in the amount of \$1,100.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$550.00. The Landlord did not prepare a written tenancy agreement.

The parties testified that the tenancy ended on August 31, 2020.

### Landlords' Application

#### Damaged Stair Repair \$1,163.97

The Landlord testified that about ten years prior to the end of the tenancy damage was observed to the carpeting of a stair. The Landlord testified that the carpet was 16 years old at the end of the tenancy. The stair was not repaired at that time, and the Tenant lived in the unit with the damaged stair for the last 10 years of the tenancy.

The Landlord is seeking compensation of \$1,163.97 for the cost to repair the stair by installing vinyl planking. The Landlord provided an estimated from a flooring company for the purchase and installation of 71 square feet of laminate flooring. The Landlord testified that she does not know the cost to have carpet installed.

In reply, the Tenant testified that the damage to the stair is limited to a 3 foot by 1-foot area. The Tenant testified that when she did not accept the Landlords claim, the Landlord applied for compensation and increased the amount she was seeking.

### Refrigerator Parts

The Landlord testified that the Tenant is responsible for damage to a bracket and shelf inside the refrigerator. The Landlord ordered replacement parts and is seeking to recover the cost of the replacements parts. The Landlord provided a copy of the receipts and photographs of the damage.

In reply, the Tenant testified that she lived in the rental unit with the same refrigerator for 14 years. She testified that the shelves broke due to normal wear and tear about two years prior to the end of the tenancy.

### Drain Plug

The Landlord testified that the bathroom drain plug was found to be broken at the end of the tenancy. The Landlord purchased a replacement part and is seeking the recover the replacement cost of \$8.76. The Landlord provided a receipt and photograph of the drain plug.

In reply, the Tenant testified that the drain plug was broken prior to her moving into the unit and sat under the bathroom cabinet for 14 years. She testified that the Landlord was aware that it was broken.

### Stove Top Damage

The Landlord testified that they discovered a chip on the stovetop at the end of the tenancy. The Landlord purchased appliance touch up paint and is seeking to recover the purchase cost of \$11.70.

In reply, the Tenant stated that she does not deny responsibility; however, she pointed out that the stove was there for 14 years.

### Dishwasher

The Landlord testified that the original Tenants purchased a used dishwasher and the Landlord agreed to permit them to have it in the unit. The Landlord testified that they replaced the dishwasher with a new dishwasher eight years ago. The Landlord testified that a part came loose and went on the heat element and melted. The Landlord is seeking \$37.85 for a replacement jet dry plug.

In reply, the Tenant testified that the dishwasher is 11 years old. She testified that the dishwasher worked fine, and she never noticed any issue with it.

### Carpet Cleaning Costs

The Landlord testified that the carpet was left unclean at the end of the tenancy. The Landlord hired a company to clean the carpets and the Landlord is seeking to recover the cleaning costs. The Landlord provided two color photographs of the carpet and a phot showing the dirty water after the carpets were cleaned. The Landlord provided a

copy of an invoice from a carpet cleaning company dated September 24, 2020 in the amount of \$171.15.

In reply, the Tenant testified that the male Landlord was asked if the carpets could be cleaned using the Tenant's mother's machine and he agreed. She testified that her mother cleaned the carpet using a steam /shampoo machine. The Tenant testified that the carpet was 16 years old.

### Tenant's Application

#### Security Deposit

The Tenant is seeking the return of her security deposits in the amount of \$550.00.

The Tenant testified that the Landlord did not perform an inspection at the start of her tenancy and did not arrange a move out inspection with her at the end of the tenancy.

In response, the Landlord testified that the Tenant originally moved in as a roommate of an existing Tenant without the Landlord's permission.

The Landlord applied for dispute resolution and made a claim against the security deposit three days after the tenancy ended.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. A tenant is not responsible for reasonable wear and tear to the rental unit or site. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications and determining damages. 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. The Guideline provides that 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.

Based on the evidence before me, the testimony of the Landlords and Tenant, and on a balance of probabilities, I make the following findings:

#### Damaged Stair Repair

I find that the damage to the carpeting on the stair was limited to a small area. The policy guideline provides that the useful life of carpet is 10 years. While the Tenant may be responsible for damage to the carpet, I find that the carpet was 16 years old and was at the end of its useful life. After considering the depreciated value of the carpet, I find that the Landlord is not entitled to compensation from the Tenant. The Landlords claim is dismissed.

#### Refrigerator Parts

I accept the testimony before me that the refrigerator was 14 years old. It is reasonable to accept that appliances will suffer wear and tear over a 14-year period of time. The useful life of a refrigerator is 15 years. I find that there is insufficient evidence from the

Landlord that the refrigerator bracket and shelf was damaged due to deliberate actions or neglect by the Tenant. The Landlords claim for replacement parts for the refrigerator is dismissed.

#### Drain Plug

I have considered the Landlords claim and evidence and I find that the drain plug was at least 14 years old. It is reasonable to conclude that a drain plug is subject to normal wear and tear. I find that there is insufficient evidence from the Landlord that the drain plug was damaged due to deliberate actions or neglect by the Tenant. The Landlords claim for the replacement cost of the drainplug is dismissed.

#### Stove Top Damage

I accept the testimony before me that the stove was 14 years old. The Tenant did not deny responsibility for the chip on the stove. I find it is reasonable to award the Landlord the cost of touch up paint to repair the chip. I grant the Landlord the amount of \$11.70 for the cost of the touch up paint.

#### Dishwasher

The Landlord stated that the dishwasher was eight years old and the Tenant replied that the dishwasher was 11 years old. Nevertheless, I find that there is insufficient evidence from the Landlord that the dishwasher plug fell off and was damaged to deliberate actions or neglect by the Tenant. It is reasonable to accept that appliances suffer wear and tear. The Landlords claim for a replacement part for the dishwasher is dismissed.

#### Carpet Cleaning Costs

A tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

I find that despite the age of the 14-year-old carpet, the Tenant was responsible for steam cleaning or shampooing the carpets at the end of the tenancy. I accept the Tenant's testimony that her mother cleaned the carpet using a steam vacuum/shampoo machine. However, I find that the Landlord has provided evidence to show that the carpet required further cleaning. I find that the Landlords are entitled to recover their cost for having the carpets cleaned.

I award the Landlords the amount of \$171.15.

### Tenant's Claim

The Tenant is seeking the return of the security deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

I find that the tenancy ended on August 31, 2020 and the Landlord applied for dispute resolution on September 3, 2020. I find that the Landlords made an application for dispute resolution and claimed against the security deposit within 15 days of the date the tenancy ended.

Based on the Landlords' documentary evidence that the tenancy began on November 22, 2004 and that they received a \$550.00 security deposit, I find that the security deposit has accrued interest of \$19.47. I find that the Landlords are holding a security deposit of \$569.47 that will apply towards any monetary awards granted to the Landlords.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords had some success with their application, I order the Tenant to pay the Landlords for the cost of the filing fee for their application.

The Landlord have established a monetary claim of \$282.85. I authorize the Landlords to retain the amount of \$282.85 from the security deposit of \$569.47. The Landlords are ordered to return the balance of \$286.62 to the Tenant.

I grant the Tenant a monetary order in the amount of \$286.62. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The

Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords established a monetary claim for cleaning and damage to the unit in the amount of \$282.85. The Landlord is authorized to retain \$282.85 from the security deposit.

The Landlords are ordered to return the balance of \$286.62 to the Tenant. I grant the Tenant a monetary order in the amount of \$286.62.

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 31, 2020

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Residential Tenancy Branch