



# 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 was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 26, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act; and,
- 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.

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. I find this package was sufficiently served.

The Tenant stated she sent her evidence package by registered mail to the Landlord's address for service, as listed on the Notice of Dispute Resolution Proceeding. Proof of mailing was provided into evidence, showing 2 different notice cards were left for the package. However, this package was never picked up. Although the Landlord stated she never received these notice cards, or the evidence package, I find the Tenant sufficiently served the Landlord, and the Landlord is deemed served with the Tenant's package 5 days after it was mailed, on November 10, 2021, pursuant to section 90 of the Act.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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

- Is the Landlord entitled to a monetary order for damage to the unit or for damage or loss under the Act?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

### Background and Evidence

Not all documentary evidence and testimony will be summarized and addressed in full, unless it was specifically pointed out by the parties and is pertinent to my findings.

Both parties agree that:

- The Tenant moved into the rental unit on or around July 1, 2015, and moved out on or around September 30, 2021.
- The Landlord initially collected \$1,250.00 as a security deposit and \$1,250.00 as a pet deposit. The Landlord has returned \$100.00 at the end of the tenancy and retained the rest.
- Monthly rent was \$2,600.00 at the end of the tenancy.
- A move-in and move-out inspection was completed and a condition inspection report was completed. Both parties agreed to the condition as noted at the start of the tenancy. However, the Tenant signed the move-out portion of the condition inspection report and indicated she did not agree to the condition and the proposed deductions.

The Landlord is seeking compensation for the following items:

- 1) \$2,100.00 – Wall Damage

The Landlord stated that the Tenant left an unreasonable number of wall patches from all the nail holes that she filled just before she left. The Landlord provided several photos of the interior of the home taken at the end of the tenancy, which show many wall patches, and mismatched paint colors. The Landlord stated that a couple of weeks before the tenancy ended, she had her handyman come by to look at the walls, and he decided that the walls were in acceptable condition, and would likely not need

repainting. The Landlord stated that when the Tenant moved out, there was an excessive number of patches, which were not visible or present on the pre-inspections.

The Landlord stated that she paid her handyman \$2,100.00 (invoice provided) to repaint the walls and ceiling of the house, and this was required because there were so many patches. The Landlord stated that the house was last repainted in 2015.

The Tenant stated that the house was not repainted before they moved in in 2015, and that it was likely 2014 or earlier. The Tenant stated that prior to moving out, the Landlord presented her with a checklist for cleaning and repairing before she moved out, and in that list was a recommendation from the Landlord to fill and sand any nail holes. The Tenant feels she did all she should have done, and she does not feel she should have to pay to repaint walls that would have already needed repainting.

2) \$200.00 – Oven Glass

The Landlord stated that the Tenant broke the interior pane of a double paned glass oven window. The Landlord stated that this would cost around \$200.00 to replace, and she provided a part replacement estimate but she stated that she would likely have to replace the oven. The Landlord stated that the oven was over 20 years old.

The Tenant stated that in February of 2020, she was using the self-clean cycle on the stove, and she noticed that a small crack in the interior glass pane had formed in the oven window. The Tenant stated that she notified the Landlord that this had happened, but she never addressed it. The Tenant stated that the crack did not spread further until around mid-September 2021, when she used the self-clean cycle to prepare for the end of the tenancy. The Tenant stated that the glass pane cracked fully at this time.

3) \$100.00 – Filing Fee

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or

damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

With respect to the Landlord's claim for damages and loss, I will address the items in the same order as above:

- 1) \$2,100.00 – Wall Damage

*Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* provides the following guidance with respect to walls and painting:

### **WALLS**

*Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.*

### **Nail Holes:**

*1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.*

*2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.*

*3. The tenant is responsible for all deliberate or negligent damage to the walls.*

### **PAINTING**

*The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the*

*premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.*

I accept that the Tenant tried to patch all holes, as the Landlord had asked. However, I find the number of holes/patches shown in some of the rooms is excessive and goes beyond reasonable wear and tear, which is a breach of section 37(2) of the Act. I find the Tenant ought to be responsible for some of the repair costs for the walls. However, I also not the Landlord is responsible for repainting the interior walls at reasonable intervals.

I turn to the following portion of *Residential Policy Guideline #40 - Useful Life of Building Elements*, to assist with determining what residual value remains, and what is reasonable for compensation amounts. This guideline states as follows:

*This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.*

*When applied to damage(s) caused by a tenant, the tenant's guests 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.*

In the above policy guideline, there are specific time periods for each type of item. The useful life expectancy of interior painted walls is 4 years. I note the walls had not been repainted in at least 6 years, at the end of the tenancy. I find the interior wall paint was beyond its useful life expectancy and I hereby reduce the Landlord's entitlement for this item to a nominal amount of \$200.00. This nominal award is granted because the

Tenant breached the Act, and the Landlord incurred expenses as a result of this breach. However, the interior paint was past its useful life expectancy.

2) \$200.00 – Oven Glass

I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which specifies that the useful life expectancy of a stove is 15 years. I note this stove is at least 20 years old, which means it is likely well beyond its useful life expectancy. Further, I note the Tenant asserts the door broke under normal use, when she engaged the self-clean function, which the Landlord did not refute. I find this is reasonable wear and tear, and I do not find she is responsible for this item. I dismiss the Landlord's claim for this item, in full.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partly successful, I award her the recovery of the filing fee she paid. The Landlord is entitled to \$300.00 for the above noted items.

The Landlord still retains \$2,400.00 of the Tenant's security and pet deposit. The Landlord may deduct \$300.00 from this amount, and I order the Landlord to return the balance \$2,100.00, forthwith.

Conclusion

The Tenant is granted a monetary order in the amount of **\$2,100.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 27, 2022

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Residential Tenancy Branch