



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** MND MNDC MNSD FF

## Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. As the tenants were awarded recovery of the security deposit in a decision dated November 20, 2008 (file #abc), the landlord's claim against the security deposit is extinguished. I therefore dismiss the portion of the landlord's application regarding the security deposit.

Both the landlord and the tenants participated in the conference call hearing.

## Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

## Background and Evidence

The tenancy began on June 1, 2000 and ended on July 31, 2008. The landlord has claimed damages and seeks compensation as follows.

(1) \$950 for various fines for late payments and NSF rental cheques.

The landlord provided documentary evidence to show that throughout the tenancy, the tenant made late rental payments and had cheques returned for insufficient funds. The tenancy agreement includes a clause regarding arrears that states: "Late payments are subject to a charge at the rate of \$5.00 per day. Returned and no-sufficient fund cheques are subject to a minimum service charge of \$30.00 each." The landlord also provided copies of one notice to end tenancy for repeated late payment of rent, dated September 27, 2006, and one notice to end tenancy for failure to pay rent, dated

October 2, 2006.

The tenants' response was that the landlord failed to act in a timely manner and never notified the tenants either verbally or in writing of any late fees.

(2) \$660 for cleaning

The landlord provided as evidence a receipt from "ABCCleaning" for \$220 for removal of oil stains from the tenant's parking stall, and \$440 for cleaning inside the suite, including all the appliances, kitchen, venetians and bathrooms. The landlord submitted additional evidence regarding this invoice, but as the landlord did not disclose that additional evidence to the tenants, I will not admit or consider that additional evidence. The landlord also provided photographs of the rental unit and parking stall. The landlord's testimony was that he attempted to arrange a move-out inspection with the tenants but they stated they would not be available because they were catching an early-morning flight. The landlord did not provide a copy of a move-in inspection report.

The tenants' response was that they had the unit professionally cleaned, at the cost of \$275. The tenants provided photographs to show the condition of the unit after it was cleaned, and stated that the landlord's photos were spot snapshots that do not show anything. The tenants disputed the validity of the cleaning invoice, as there is no "ABCCleaning" located at the address on the invoice. In regard to the parking stall, the tenants stated that it was oil-stained when they first moved in, and every parking spot on the 4<sup>th</sup> level had oil spots. The tenants were prepared to do a move-out inspection with the landlord, but he did not show up.

(3) \$50 for second cleaning of parking stall

The landlord's evidence was that the first attempted cleaning of the parking stall was unsuccessful, so the landlord arranged for the in-house janitor to attempt a second cleaning. The landlord provided photographs of an oil-stained parking stall. The landlord did not have an invoice for this work.

(4) and (5) \$200 for two replacements of lost storage room key

The landlord's evidence, supported by receipts, was that on two occasions, in June 2005 and November 2008, the landlord was required to pay the strata \$100 for a replacement storage locker key that the tenants lost or did not return.

The tenants' response was that they did not have a storage locker key at the outset of the tenancy, and that they can return the one key they have to the landlord.

(6) \$6622 for permanent damages to the parking stall

The evidence of the landlord was that the oil stains in the parking stall are permanent, and as the stall cannot be restored to its original condition, the landlord seeks compensation for reduction of the market value of the property.

The tenants' response is that the landlord's claim on this point is outrageous and ludicrous. The tenants contacted two major realty companies to check out the landlord's claim, the realtors thought it was a joke and said they had never heard of such a claim.

(7) \$2500 for lost rental revenue for August 2008

The evidence of the landlord was that the rental unit was very dirty and messy, particularly the carpets, and it was very difficult to show the property to prospective new tenants. The landlord decided there was no point in continuing to try to find a new tenant, so he decided instead to renovate the property, including removing the carpets and installing hardwood floors.

The tenants' response was that they did not clean the carpets at the end of the tenancy because the landlord specifically told them not to, as he was going to renovate the unit and install hardwood floors. The evidence of the tenants was that the carpets were stained when they moved in, and the landlord did not replace the carpets or do painting during the tenancy.

## **Analysis**

In considering all of the documentary and testimonial evidence, I find that the landlord is not entitled to most of the amounts claimed, for the following reasons.

### **(1) late fees and NSF fees**

A landlord may, if the tenancy agreement provides for it, charge a fee of no more than \$25 for late payment of rent or NSF cheques. As the clause in this tenancy agreement exceeds the maximum allowable fee, the clause in the agreement is void and unenforceable. I dismiss this portion of the landlord's claim.

### **(2) \$660 for cleaning**

I accept the evidence of the tenants on this point. I am not satisfied that the invoice is authentic, and the invoice fails to provide sufficient detail of the work done. See my reasons in point (6), below, regarding the parking stall. I dismiss this portion of the landlord's claim.

### **(3) \$50 for second cleaning of parking stall**

The landlord did not provide adequate evidence to support this claim. Also, see my reasons in point (6), below. I dismiss this portion of the landlord's claim.

### **(4) and (5) replacement storage locker keys**

I accept the evidence of the tenants that they did not receive a storage locker key at the outset of the tenancy. The tenants are therefore not responsible for the first \$100 charged for the key, and I dismiss that portion of the landlord's claim. The tenants acknowledged that they did not return the storage locker key, and I therefore find that the landlord is entitled to \$100 for replacement of the key after the tenancy ended.

(6) permanent damage to the parking stall

I am not satisfied that the oil stains were caused by the tenants, as the landlord could not establish through a move-in inspection report or other evidence, what the condition of the parking stall was at move-in. I am also not satisfied that the landlord has established that the stains are permanent. I dismiss this portion of the landlord's claim.

(7) lost rental revenue

As the landlord decided not to re-rent the unit, he cannot claim lost revenue. I dismiss this portion of the landlord's application.

As the landlord's claim was for the most part unsuccessful, I find that the landlord is not entitled to recovery of the filing fee for the cost of the application.

**Conclusion**

I grant the landlord an order under section 67 for the balance due of \$100. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 20, 2009