



# Dispute Resolution Services

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

## DECISION AND REASONS

Dispute Codes: MND, MNR, MNDC, MNDS, & FF

### Introduction:

This hearing dealt with the landlord's application for a monetary claim relating to loss of rent, damage to the rental unit and for other damage or loss under the *Act*. The landlord is also seeking to retain the tenants' security deposit plus interest in partial satisfaction of this claim.

Both parties appeared for the hearing and were provided the opportunity to present affirmed evidence and respond to the evidence of the other party. In addition the landlord requested that a portion of the tenants' evidence be removed from the proceeding. The landlord stated that the tenants tape recorded the move-out condition inspection report without her knowledge.

Although the rules of evidence do not apply under this *Act* I have not considered the transcripts of the tape recorded conversations submitted in the tenants' evidence.

### Issues to be Determined:

Has the landlord established a monetary claim related to damage to the rental unit or its furnishings due to breach of contract or negligence by the tenants?

### Background and Evidence:

This tenancy began on September 1, 2008 for a fixed term period ending on November 30, 2008. The monthly rent was \$1,000.00 and a security deposit of \$500.00 was paid on September 1, 2008. The rental unit was fully furnished and the furnishings in the rental unit were listed on the tenancy agreement.

According to the landlord this tenancy was a problem from the start when the tenants failed to appear for the scheduled move-in condition inspection on September 1, 2008. The landlord had intended to have the tenants complete a Form K required by the strata and to collect key deposits. The move-in condition inspection was not completed until September 4, 2008 in the evening after the tenants missed another scheduled appointment. The landlord stated that the tenants filled out the move-in inspection form themselves and told her it was unnecessary to complete it together.

The landlord then stated that she was informed by a friend in the building that some of her furnishings and plants had been placed outside on the balcony by the tenants. The landlord was especially upset about this as she had entrusted her possessions to the tenants. The landlord then stated that on approximately September 16, 2008 she was informed that the tenants had a dog in the rental unit contrary to the tenancy agreement

and the strata bylaws. The landlord also submits that there were numerous complaints about noise and disturbance and failure by the tenants to pay the utilities on time.

Despite all these alleged infractions the landlord did not write the tenants about the breaches until September 29, 2008. The landlord submits that after receiving this warning letter the tenants had indicated that they would be vacating effective October 15, 2008. However, this did not occur and the tenants stayed for the full length of the tenancy.

At the end of the tenancy the landlord stated that several move-out condition inspection appointments were made which the tenants failed to attend. The move-out inspection did not occur until the afternoon of November 30, 2008. The landlord stated that she showed the tenants all the damage caused and that the tenants denied that they caused any of the damage and that it was there at the start of the tenancy.

The landlord seeks the following damages due to the tenants' breach of the tenancy agreement and negligence:

Damage to surface of bath tub due to chemical damage from varnish	\$609.00
Replacement of underlay to carpets due to pet urine	\$977.72
Loss of tropical plants due to exposure and lack of care	\$149.97
Replacement of damaged furniture due to improper varnishing	\$627.20
Twelve hours cleaning – everything stained with varnish	\$240.00
Replacement of missing mattress pad	\$59.99
Recovery of filling fee for application	\$50.00
Recovery of taxes on above	\$319.67
<b>Total</b>	<b>\$3,033.55</b>

The tenants deny the allegations of the landlord and submitted that the rental unit was cleaner than when they occupied the unit. The tenants submitted that they did not have a dog staying with them, but only had a dog visiting during the day as the tenant's wife was along all day. The tenants deny that the pet urinated on the carpets. The tenants submit that the surface of the bath tub is in the same condition as when they moved in. The tenants also stated that the varnish, or wood treatment, was left behind by the landlord and they treated the table and chairs before vacating. The tenants also deny the landlord's claims that they did not appear for scheduled appointments and stated that they arrived at when it was agreed to meet.

Both the landlord and the tenants included photographs as part of their evidence. The tenants also provided a copy of a receipt showing that the carpets were cleaned on November 29, 2008. I note that the receipt indicates that there is no visible pet urine. The landlord made arguments alleging that this receipt and the note that there is no pet

urine is a false document. However, the landlord had no evidence to support this allegation.

### Analysis:

The landlord carries the burden of proof on this application as she is the one claiming that the tenants have breached the tenancy agreement and have damaged the rental unit. The issue comes down to an assessment of the evidence presented by each and to credibility because both parties contradict each others evidence.

I have considered the photographic evidence. The photographs submitted by the tenants clearly depict a clean and undamaged rental unit. The tenants' photographs show a clean kitchen and living plants. However, the tenants' photographs only depict a narrow view of certain arrears of the rental unit. The landlord's photographs cover the rental unit more thoroughly; however, they are not very good quality. My general impression from the landlord's photographs is that the rental unit is clean and in good condition. I do find that the oven was not very clean from the landlord's photographs and there are a couple of spots on the bathroom floor which are dirty. I am unable to determine where these spots were in the bathroom.

The photographs of the bath tub show two distinct stains however I cannot determine what the stains consist of or whether this is permanent damage. In addition to the photographs the landlord also provided a letter from a bathtub refinishing company which states that it, "...appears the tub has had the finish damage by the use of inappropriate cleaners, i.e. furniture cleaner or similar and the staining that this cleaner has left cannot be removed under normal cleaning products, therefore the only solution would be have the tub re-glazed..."

Both the tenants' photographs and the landlord's photographs show that the cushions of the kitchen table chairs are a beige or light brown colour. These photographs are not helpful as I have no reference of how the cushions appeared prior to the tenancy. None of the photographs submitted depict the landlord's claim that there was varnish splashed around the rental unit or any damage to the carpeting. I have no evidence from the landlord substantiating her allegation that the carpet underlay was damaged due to pet urine.

Turning to the landlord's claims I find that the landlord has established that the bath tub was stained. I accept the photographic evidence and the tenants' acknowledgement that they stained the furniture. I find it is more likely than not that the tenants' cleaned the product in the bathtub causing the staining. However, I find that the tenants are not responsible for the replacement of the finish on the bathtub. Rather, the tenants are responsible for a reasonable assessment of the damage to the value of the bathtub. I accept that the bathtub is likely five years old and has depreciated by 25 percent. I find that the damage caused by the tenants is estimated at 50 percent of  $\frac{3}{4}$  of the value of the depreciated bathtub. I accept that the average cost of a bathtub is \$600.00 so the damage caused by the tenants is 50% of \$450.00 equalling \$225.00.

On the balance of probabilities I find that the landlord has failed to establish that the underlay to the carpets had to be replaced. I have no evidence from the landlord

confirming the damage or its cause and the photographic evidence was insufficient to determine the landlord's claim. I also considered the evidence from the tenants showing the carpet had been cleaned and that no visible pet urine was detected at that time. I deny this portion of the landlord's claim.

I also deny the landlord's claim that she had to clean the rental unit for 12 hours. This claim is not supported by the photographic evidence. As stated earlier, there is no evidence of varnish staining throughout the unit as the landlord claimed. The photographs from both parties establish that the rental unit was reasonably cleaned at the end of the tenancy.

I deny the landlord's claim for the replacement of a mattress pad. The tenants denied any knowledge of this item and the tenancy agreement does not provide it as part of the furnishings included in the rental unit. The landlord has failed to establish that a mattress pad was part of the original agreement and that it is now missing.

I also deny the landlord's claim for the cost of replacing the seats of the kitchen chairs. The evidence does not establish that the cushions are ruined or unusable and I have no evidence supporting that they were damaged. I have no photographic evidence showing what the conditions of the cushions were prior to the tenancy and no evidence confirming that the cushions were stained as claimed by the landlord.

Finally, I deny the landlord's claim for the replacement of tropical plants. This claim is very problematic. First of all, the tenancy agreement does not list all the plants or provide any specific directions of their care. Also the care of plants and the viability are dependent on multiple factors. I agree with the submission of the tenants that they cannot be held responsible for the care of house plants. In my mind, if these plants had any significant value then the landlord would not have left them in the rental unit.

Based on the evidence before me and on the balance of probabilities I find that the landlord has only established a portion of her claim. I find that the landlord has established a total monetary claim for the sum of \$300.00 including the recovery of the \$50.00 filing fee paid for this application.

I Order that the landlord may recover this sum from the tenants' security deposit plus interest of \$502.50. The remaining balance of \$202.50 is owed to the tenants and should be returned.

Conclusion:

The landlord's application is accepted in part. There is a remaining balance owed to the tenants from their security deposit plus interest in the sum of \$202.50. This sum should be returned to the tenants.

Dated February 05, 2009.

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Dispute Resolution Officer