



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, LRE, OLC, FF, O

### Introduction

This hearing was scheduled for April 1, 2009 to hear cross applications filed by the parties. The landlord had applied for a Monetary Order for compensation for damage to the rental unit, unpaid rent, loss or damage under the Act, regulations or tenancy agreement, and to retain the tenants' security deposit. The tenants applied to compensation for damage or loss under the Act, regulations or tenancy agreement, orders for the landlord to comply with the Act, to set conditions upon the landlord's right to enter the rental unit and other issues. Both parties requested recovery of the filing fee from the other party. Both parties appeared at the hearing and were provided an opportunity to be heard. The tenants brought forth a witness who was excused from the teleconference call. After approximately 1 hour and 45 minutes of hearing from the parties with respect to the tenants' application the hearing was adjourned in order to hear the landlord's application on at a later time.

The hearing reconvened on May 25, 2009 to hear the landlord's application. Both parties appeared at the reconvened hearing and were provided the opportunity to be heard and to respond to the other parties' submissions.

### Issues(s) to be Decided

1. Have the tenants established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?
2. Need for conditions to be set upon the landlord or orders for the landlord to comply with the Act.
3. Has the landlord established that the tenants damaged the rental unit?

4. Has the landlord established an entitlement to recover unpaid rent from the tenants?
5. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
6. Retention or return of the security deposit.
7. Award of the filing fees.

## Background and Evidence

Upon hearing undisputed testimony of the parties and upon review of the tenancy agreement, I make the following findings. On May 26, 2008 the parties paid a security deposit and a furniture deposit of \$537.50 each and entered into an agreement to rent the rental unit for \$1,075.00 per month starting July 1, 2008. On or about July 1, 2008 the tenants noted the unsatisfactory condition of the carpets in the rental unit and the landlord agreed to install laminate floors. Due to the floor replacement, the tenants could not move in until July 7, 2008. Since the flooring was replaced the parties signed a fixed term tenancy agreement on August 2, 2008 that required the tenants to pay rent of \$1,125.00 per month. The tenancy agreement indicated an expiry date of August 31, 2009 and required the tenants to pay ½ of the gas and hydro bills. The rental unit is a basement suite with the landlord living upstairs with his family. The laundry room is in the basement level and access is gained by entering the rental unit.

Upon hearing testimony of both parties, the parties met in December 2008 to discuss ending the tenancy with 60 days notice as one of the co-tenants was going to move in with her fiancé but the landlord refused to agree to end the tenancy. The tenants then enquired about amending the tenancy agreement to accommodate a replacement tenant; however, the landlord was not provided with an application for a replacement tenant before the person moved in (herein referred to as the sub-tenant). The landlord wrote the tenants a letter dated February 13, 2009 requiring the sub-tenant to vacate

the rental unit by February 22, 2009. The tenants wrote a notice to the landlord on February 16, 2009 advising the landlord that they were vacating the rental unit that same evening.

### ***Tenants' Application***

The tenants filed an Application for Dispute Resolution on February 16, 2009 seeking release from their fixed term tenancy as they claimed they did not feel safe in the rental unit, that the tenants' right to quiet enjoyment had been violated, an illegal furniture deposit had been charged and the rent illegally increased \$50.00 per month by the landlord. The tenants sought compensation for their loss of quiet enjoyment in the amount equivalent to one month's rent of \$1,125.00, return of their \$537.50 furniture deposit and recovery of the rent increase of \$50.00 per month.

In summary, the tenants testified that the landlord frequently entered their rental unit without permission. The tenants claimed the landlord changed towels in their bathroom, left utility bills for them in their kitchen, took pictures of their rental unit, and used the laundry facilities more often than they had agreed upon. The tenants described an incident that took place on February 12, 2009 where the tenant and the sub-tenant came home after a late night movie and were talking in the rental unit when the landlord pounded on the floor, phoned the tenant several times and then pounded on the door to the rental unit. The tenant claimed this incident frightened her and the sub-tenant as they are young females. On February 13, 2009 the landlord gave the tenants a letter objecting to the loud sounds of the previous night and the unapproved sub-tenant and stating that he wanted the sub-tenant to move out by February 22, 2009.

The landlord testified that the tenancy agreement permitted the landlord to use the laundry facility in the rental unit two times per week and the days were agreed upon by the parties. The landlord explained that the tenants could latch the interior door from

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their side of the rental unit. The landlord explained that the kitchen was on the way to the laundry room and that he merely walked by the kitchen counter to place any mail or bills for the tenants. The landlord stated that the landlord was checking on a water leak issue in the bathroom when he went in the bathroom to change the towels on the floor. With respect to the incident of February 12, 2009 the landlord described how he was awakened by the tenant and sub-tenant talking loudly so he tried telephoning the tenant several times since she would not answer the telephone. Then the landlord smelled marijuana smoke so he went to the door to the rental unit to deal with the issue of smoking marijuana in the house once and for all.

With respect to smoking marijuana, the tenant was adamant that she did not smoke in the rental unit and only outside. The landlord was adamant that the tenant smoked in the house.

The landlord was of the position that the furniture deposit was not illegal as parties to a tenancy agreement may agree to additional terms with respect to deposits. The landlord was of the position that the increased rent was negotiated between the parties since the landlord installed new flooring and that the tenants agreed to \$1,125.00 per month as evidenced by the tenancy agreement they signed.

### ***Landlord's Application***

Taking into account that the rental unit has been re-rented effective June 1, 2009 and the actual utility bills, the landlord amended his claim for compensation to reflect the following amounts:

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Loss of rent – March 2009 to May 2009	\$ 3,375.00
Painting walls back to white	869.00
Cleaning (6 hrs @ \$25.00 per hour)	150.00
Scratches to laminate flooring (estimated depreciation)	600.00
February hydro and gas bills	109.74
Clean heat ducts (estimate)	210.00
Remove mirror from door (estimate)	<u>100.00</u>
Landlord's claim for damages and loss	\$ 5,413.74

The landlord described how he advertised the rental unit on various internet sites and other local postings but did not have any showings in the month of March 2009 so he remodelled the kitchen in four days in early April, staged the unit as furnished and continued advertising. The landlord eventually found tenants coming from Germany for two or more months starting June 1, 2009. The landlord explained how the rental market was saturated with 2 bedroom basement suites available for rent. The tenants pointed to the landlord's advertisement as more of a deterrent to prospective tenants and provided an example of the advertisement as evidence for the hearing. The tenants claimed they watched the internet site and found the landlord posted his advertisements several weeks apart so that the advertisement was very low down on the list of available rental units. The landlord testified that he could not re-post the advertisement more frequently or else it would be spam and that he did not state anything in the advertisement that he would not tell prospective tenants over the phone.

The landlord testified that the tenants painted the walls green and purple and that their tenancy agreement required them to paint it back to white before the end of their tenancy. The quote provided by the landlord includes the painting of the hallway which the landlord alleged was damaged by the tenants moving out furniture. The tenants acknowledged painting the walls; however, disputed that they damaged the hallway and

claimed the landlord's quote to be excessive given they had painted the unit for \$500.00.

The landlord testified that the stove, kitchen tiles, baseboard and wall behind a door required additional cleaning. The landlord also offered one of the tenants the opportunity to clean the rental unit after the tenants vacated. The tenants claimed that the rental unit was sufficiently cleaned on the day they vacated.

The landlord submitted that the tenants failed to place felt pads under their furniture. The landlord had supplied the tenants with pads to use. As a result, the landlord explained that the new laminate floors were scratched in several places but most concentrated in the living room by the couch and coffee table and in one of the bedrooms. The landlord testified that the floors originally cost \$2,154.80 plus \$206.50 to remove the old carpeting, for a total of nearly \$2,400.00 of which the landlord is claiming depreciation of \$600.00. The tenants testified that their furniture had felt pads already and they did not need the pads provided by the landlord. The tenants also submitted that they had already paid \$400.00 towards the laminate flooring by the increase in rent of \$50.00 over eight months and by losing one week of occupancy at the beginning of the tenancy.

The landlord provided a copy of a \$140.48 gas bill as evidence for the hearing and testified that hydro cost \$79.00 for hydro based on an estimate by BC Hydro and the tenants' share of these bills is \$109.74. The tenants acknowledged that the tenancy agreement required them to pay  $\frac{1}{2}$  of these bills; however, the tenants do not feel it is fair to pay that much for gas as the gas furnace provided very little heat to their unit. Rather, the tenants used electric space heaters for heat.

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The landlord estimated that it will cost \$210.00 to clean the ducts and explained that the ducts need cleaning before the fall due to the tenant smoking in the rental unit. Upon enquiry, the landlord testified that he has the ducts cleaned every year or two due to his son's allergies. The last time the ducts were cleaned was just before the tenancy commenced. The tenants did not agree with having to pay for the duct cleaning as the tenant denied smoking in the rental unit.

The landlord testified that a mirror was attached to a bedroom door with tape and upon its removal the door was damaged and had to be sanded and repainted. The landlord submitted that he paid more than \$100.00 to the painter for repairing the door but is only claiming \$100.00 based on his estimate that it would take the landlord four hours to do the work. The tenants submitted that they left the mirror in place and they thought it was an enhancement to the rental unit and that tape was used to as to not put nail holes in the door.

Evidence submitted for my review included advertisements, written communication between the parties, a condition inspection report, an audio tape of the move-out inspection, photographs, invoices and quotes.

## Analysis

### ***Tenants' application***

A tenancy ends in a manner that complies with section 44 of the Act. Section 44 of the Act provides that a tenancy ends when a tenant vacates or abandons the rental unit. I find the tenants vacated the rental unit on February 16, 2009 and the tenancy ended on that date. Since the tenancy ended when the tenants vacated the rental unit, there is no longer a need for orders for the landlord to comply with the Act, regulations or tenancy agreement or to suspend or set conditions on the landlord's right to enter the rental unit.

With the remainder of this decision I will consider whether the tenants' are entitled to compensation for damage or loss under the Act, regulations or tenancy agreement.

I was not provided with a copy of a tenancy agreement that pre-dates the agreement signed by the parties August 2, 2008. The Act recognizes tenancy agreements reached orally as per the definition of "tenancy agreement" in section 1 of the Act. Section 16 of the Act provides that the rights and obligations of a landlord and tenant commence from the date the tenancy agreement is entered into. Upon hearing testimony of both parties, and considering that the tenants paid a security deposit of \$537.50 on May 26, 2008 I find that the parties entered into a verbal tenancy agreement on May 26, 2008 which required the tenants to pay rent of \$1,075.00 per month starting July 1, 2008. Then, nearing the date the tenants were to take possession, the condition of the carpet was noted and the landlord agreed to install laminate flooring. The parties signed a written tenancy agreement on August 2, 2008, requiring the tenants to pay \$1,125.00 per month in recognition of the new laminate flooring.

A tenancy agreement may be changed by mutual consent in limited circumstances as per section 14 of the Act. The parties cannot change a tenancy agreement to increase the rent. I find that a tenancy agreement was formed orally on May 26, 2008 and the tenancy agreement was changed on August 2, 2008. Since the change reflects a rent increase, the change to the agreement does not comply with section 14 and is not enforceable against the tenants. Therefore, the additional \$50.00 collected by the landlord from July 2008 through February 2009 is recoverable by the tenants. The tenants are entitled to recover \$400.00 (\$50.00 x 8 months) in overpaid rent.

The tenants claimed the landlord illegally charged a furniture deposit. The Act and Residential Tenancy Regulations limit the amount a landlord may charge for deposits. The landlord is permitted to charge a security deposit and pet deposit of up to ½ a



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month's rent for each deposit. In addition, a refundable deposit may be charged for keys in certain circumstances. Although the landlord submitted that the parties may make additional terms with respect to deposits, those additional terms cannot conflict with the requirements of the Act and regulations. Therefore, I find a furniture deposit in addition to a security deposit is not permissible under the Act and the landlord did not have the lawful right to charge a furniture deposit. An overpayment of a deposit is deductible from rent or otherwise recoverable by a tenant and I find the tenants entitled to recover the \$537.50 furniture deposit from the landlord.

The tenants are seeking loss of quiet enjoyment of the rental unit in an amount equivalent to one month's rent. Having laundry facilities that are only accessible by entering the rental unit is problematic where a landlord wishes to access the facilities without proper notice. While a tenant has possession of the rental unit, a landlord's right to access the rental unit is restricted to situations where:

- an emergency exists and the entry is necessary to protect life or property.
- tenant is at home and agrees to let the landlord in.
- tenant agreed, not more than 30 days before, to let the landlord enter.
- tenant was given at least 24 hours and not more than 30 days written notice before entry telling the purpose for entering, which must be reasonable, and the date and time of entering, which must be between 8:00 am and 9:00 pm unless the tenant otherwise agrees.

The landlord testified that the tenancy agreement provides that the landlord could use the laundry facilities two days per week. Upon review of the tenancy agreement, I find that clause 22 provides "Tenant also agrees to 2-days use of washer and dryer a week and it tenant's personal items only." I interpret this clause to pertain to the tenant's use of the washer and dryer, not the landlord's. Furthermore, even if the landlord is

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permitted to use the washer and dryer two days per week, the landlord is not exempt from abiding by the restrictions on the landlord's entry as provided by the Act.

I have been provided evidence that the landlord obtained consent from the tenants to access the laundry facilities on occasion. On other occasions, the landlord gained entry when an interior door was left unlatched by the tenants. I do not find that leaving the interior door unlatched to constitute the tenant's consent for the landlord to enter. I also heard that the landlord used the opportunity to leave bills for the tenants in their kitchen, take photographs of the rental unit, including the tenant's personal possessions, and check on the status of a water leak in the bathroom. Again, the landlord needs to obtain consent or post a Notice to Enter before entering the rental unit where the repair is not an emergency.

Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides that frequent and ongoing interference by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment. The guideline further provides that an example of significant interference by the landlord includes the landlord entering the rental unit frequently, or without notice or permission. I find the landlord's actions diminished the tenants' right to quiet enjoyment of their rental unit. I award the tenants \$100.00 per month for loss of quiet enjoyment of the rental unit.

In summary, I have found the tenants entitled to compensation in the total amount of:

Overpaid rent	\$ 400.00
Furniture deposit	537.50
Loss of quiet enjoyment	<u>800.00</u>
Total award to tenants	<u>\$ 1,737.50</u>

## ***Landlord's application***

Upon hearing all of the testimony and reviewing the evidence before me, I make the following findings with respect to each of the landlord's claims.

### Loss of rent

As the landlord has re-rented the unit for June 2009, at issue is the loss of rent for the months March, April and May 2009. Having heard the tenants gave the landlord written notice and vacated on February 16, 2009 but had only paid rent until February 28, 2009 the tenants essentially gave the landlord only two weeks of notice. Although I found the landlord had breached the tenants' right to quiet enjoyment, I did not find the breach to be so severe as to warrant an immediate end to the tenancy. Also, the tenants had applied for dispute resolution in order to seek remedies against the landlord yet the tenants did not remain in the rental long enough in order to determine whether the situation would improve with dispute resolution. Upon review of the tenancy agreement, I note that where a tenant ends the fixed term tenancy early, the tenant must pay one month's rent. Also, had this tenancy been on a month-to-month basis, the tenants could not have ended the tenancy any earlier than March 31, 2009. Therefore, I find the landlord entitled to recover loss of rent for March 2009 in the amount of \$1,075.00.

I deny the landlord's claims for loss of rent for April and May 2009. Under section 7 of the Act, where a party makes a monetary claim against another party, the party making the claim must do whatever is reasonable to minimize their loss. Upon review of the advertisements placed by the landlord, I find the wording of the advertisement to sound rather hostile and to be more of a deterrent than an attraction for prospective tenants.

## Painting

It is not in dispute that the tenants had painted the walls and the tenancy agreement provides that the tenants must return any painted walls to a white colour. The landlord provided an estimate to substantiate his damage or loss. The tenants claimed they had spent \$500.00 to paint the walls and the landlord's claim was high. The onus is up to the tenants to show that the expenditure is unreasonable. The tenants could have painted the walls themselves prior to vacating and the tenants did not provide sufficient evidence to satisfy me that the landlord's estimate was unreasonable. Therefore, the landlord is awarded \$869.00 for painting.

## Cleaning

The condition of the rental unit at the end of the tenancy was in dispute. The landlord provided an inspection report that the tenant indicated she did not agree with. Upon review of the photographs submitted as evidence, and considering the tenants vacated the rental unit rather quickly, I prefer the landlord's submission that the rental unit needed additional cleaning. I accept the landlord's submission that he spent 6 hours cleaning the unit; however, I find \$25.00 per hour to be unreasonable for cleaning and I award the landlord \$20.00 per hour, including cleaning supplies, for a total of \$120.00.

## Damage to floors

It was in dispute that the tenants had felt pads under their furniture to protect the laminate floors. The landlord satisfied me that he had informed the tenants about the proper care of the floors at the commencement of the tenancy and that the landlord had even provided felt pads for the tenants to use. Scratches are visible in the photographs submitted as evidence by the landlord; however, upon listening to the move-out inspection audio tape, I note that the person that conducted the move-out inspection on behalf of the tenants indicated the grade of the flooring was low and the person was a

floor installer. I find the tenants caused damage to the floors in excess of normal wear and tear; however, I have reservations about the quality of the flooring and I determine the landlord has suffered diminished value of approximately 10% of the cost of the floors, and not the carpet removal, equal to \$215.48. However, I also heard that the tenants were not able to occupy the rental unit during the first 7 days of their tenancy, yet I did not hear evidence that their rent was reduced or otherwise pro-rated. Therefore, I reduce the landlord's award to nil in recognition of the full rent the landlord received for July 2008.

## Utility bills

It was not in dispute that the tenants had agreed to pay  $\frac{1}{2}$  of the hydro and gas bills as part of their tenancy agreement. The tenant alleged that they obtained most of their heat from electric heaters and, arguably, the tenants could have used more electricity than the landlord but the tenants' share of the hydro bill is limited to  $\frac{1}{2}$  by contract. Therefore, I find the tenants contractually obligated to pay for  $\frac{1}{2}$  of the hydro and gas bills and I grant the landlord  $\frac{1}{2}$  of the \$140.48 gas bill and  $\frac{1}{2}$  of the \$79.00 hydro bill for an award of \$109.74.

## Duct cleaning

The landlord testified that the ducts need cleaning because of the tenant smoking in the rental unit and that the cleaning will be performed in the fall before the furnace is turned on. As the landlord has the ducts cleaned every one or two years for the landlord's own purposes, I do not find sufficient evidence that it was the tenant's actions that necessitate the cleaning of the ducts more frequently than otherwise required by the landlord. Therefore, I do not award duct cleaning costs to the landlord.

## Door repair

I find that without the landlord's permission to leave the mirror on the door, the tenants were responsible for removing the mirror and repairing any damage caused by the tape. I find the landlord's claim reasonable to sand and repaint the door and I award the landlord \$100.00.

As the landlord requested retention of the security deposit, I authorize the landlord to retain the security deposit of \$537.50 plus accrued interest of \$4.85 in partial satisfaction of the amounts owed the landlord. The landlord has established an entitlement to recover the following amount from the tenants:

Loss of rent – March 2009	\$ 1,075.00
Painting	869.00
Cleaning	120.00
Utilities	109.74
Door repair	<u>100.00</u>
Sub-total	\$ 2,273.74
Less: security deposit and interest	<u>(542.35)</u>
Total monetary award	<u>\$ 1,731.39</u>

As both claims had merit, each party will bear the costs of making their application and I make no award for recovery of the filing fee.

Pursuant to section 72, I net the amounts owed to each of the parties and I calculate the tenants entitled to the difference \$6.11. As this net award is insignificant I do not provide the tenants with a Monetary Order. Rather, this matter is considered resolved and each party is considered to have been sufficiently compensated for their losses with the set off of these awards.



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## Conclusion

The tenants established an entitlement to compensation from the landlord in the amount of \$1,737.50. The landlord established an entitlement to compensation from the tenants in the amount of \$1,731.39 after deducting the security deposit and accrued interest. I have set off the award to the landlord and the award to the tenants and since the difference between the awards is insignificant, neither party is provided with a Monetary Order. This matter is considered resolved and the parties are considered to be compensated for their respective losses.

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: June 4, 2009.

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Dispute Resolution Officer