



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications. The tenants were seeking return of their security deposit and recovery of the filing fee. The landlord was seeking compensation for damages to the rental unit, unpaid rent and utilities, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and confirmed receiving the application and evidence of the other party. Both parties were provided the opportunity to be heard and to respond to the other parties' submissions.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damages to the rental unit and unpaid rent and utilities and if so, the amount?
2. Retention or return of the security deposit.
3. Award of the filing fee.

### Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The tenancy commenced April 1, 2008 and the tenants paid a \$400.00 security deposit. The tenants were required to pay rent of \$800.00 on the 1<sup>st</sup> day of the month plus ½ of the hydro and gas bills. The landlord and tenants occupied separate living accommodation on the same floor of the residential property. The tenants gave written notice to end the tenancy effective March 31, 2009; however, the notice is not dated. The landlord provided undisputed testimony that she received the tenant's notice to end tenancy under her door on March 1, 2009. A move-in and move-out inspection report was not prepared by the landlord. The tenants vacated the rental unit in the last week of March 2009.

The landlord claims when the tenants moved out they were to return in one hour and the parties were to conduct a move-out inspection; however, the tenants failed to return as promised. The tenants did not dispute this statement. The landlord stated the residential property was constructed in the 1920's and many of the fixtures, including the windows and doors, are original to the building. The rental unit had been painted approximately four years prior to the tenancy commencing.

With respect to the tenant's forwarding address, the tenants claim to have provided their forwarding address to the landlord in writing by way of a note left under the landlord's door on March 21, 2009. The landlord denied receiving such a note and claimed she learned of the tenant's forwarding address upon being served with the Tenant's Application for Dispute Resolution.

The landlord is claiming compensation of \$55.00 for ½ of the hydro costs up to March 31, 2009 and \$64.69 for ½ the gas charges. The tenants agreed to pay these costs.

The landlord testified the tenants left the rental unit dirty and smelling of cigarette smoke. As a result, the landlord claims she had to clean and repaint the unit and lost a month of rental income because prospective tenants were not interested in the unit. The landlord also claimed the tenants are responsible for breaking the cords in five wooden windows, removing a door in the kitchen, installing a latch on the bathroom door, cracking the ceiling and damaging the spindles on the veranda. The landlord's monetary claim related to damages is as follows:

Description	Payee	Amount claimed
Cleaning	Jan's Cleaning	150.00
Window cord repair	Roger Trimble	181.87
Reinstall door, fix bathroom door, remove hooks and wall repairs, repair ceiling, prep for painting	Help at Home Services	175.00
Labour for painting	Help at Home Services	462.50
Damage to veranda	estimate	200.00
Total		\$ 1,288.27

The tenants acknowledged smoking in the rental unit but claimed they left it clean. The tenants acknowledged cutting the cord on one window as it would not open but claimed they did not cut the cords on the other windows. The tenants described the windows as very old and the cords would catch on the inner working mechanisms in the window frames. The tenants acknowledged removing the kitchen door but claim they did so with the landlord's permission to accommodate the cupboards and counter installed by the tenants. The tenants acknowledged installing a latch on the bathroom door and that they did not notify the landlord that the door was not working properly. The tenants deny causing a crack in the ceiling. With respect to the veranda, the tenants explained that another tenant's dog was left running the neighbourhood while those tenants went on vacation and the RCMP put the dog on the tenant's porch. The tenants claimed the dog was on the porch for a short time and that they did not notice any damage.

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Although the landlord agreed the dog belonged to another tenant, the landlord refuted the tenants' statements that it was the police that put the dog on the porch and that the damage is not noticeable. Rather, the landlord claims the tenant told a neighbour that the tenant put the dog on the porch. Although the dog's owner promised to remedy the damage that tenant has not done so to date and the landlord is holding these tenants responsible for the damage caused by the dog.

The landlord also requested \$70.00 for her time spent dealing with a Shaw receiver and waiting for the tenants to show up for the move-out inspection.

## Analysis

The onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As the tenants were required to pay for ½ of hydro and gas consumption as part of their tenancy agreement the landlord has established an entitlement to receive \$55.00 and \$64.69 from the tenants.

As the tenants acknowledged smoking in the rental unit I accept that the landlord incurred additional cleaning costs in an effort to rid the rental unit of the smell and, on the balance of probabilities, find that the landlord lost rental income as a result of the smell. Also a consideration in my decision is that I heard the tenants gave notice to end tenancy on March 1, 2009 which is late notice. A tenant's notice to end tenancy must be given before the last rental period begins. Therefore, the tenants were required to give written notice to the landlord no later than February 28, 2009 to be effective for March 31, 2009. Therefore, I award the landlord \$150.00 for cleaning and \$800.00 for loss of rent.

As I heard the landlord has painted the unit more than four years prior I do not hold the tenants responsible for painting costs. As I heard the windows were very old and I was provided disputed verbal testimony concerning the condition of the windows, I do not find the tenants responsible for repairing the window cords. Rather, I find it more likely that with windows that old, repairs and maintenance are required from time to time due to normal usage. I do not find the landlord satisfied me that the tenants caused a crack in the ceiling. The landlord incurred an expense to fix the bathroom door but upon hearing testimony of both parties I find the landlord would have had to incur a cost to fix

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the door during the tenancy so it is not just to hold the tenants responsible for fixing the door after the tenancy ended. Therefore, I deny the landlord's claims with respect to compensation for the above repairs.

As I heard the tenants removed the kitchen door I find them responsible for reinstalling the door. I award the landlord \$20.00 for having the door reinstalled. As I heard the tenants installed cabinets in the kitchen, I award the landlord \$40.00 for patching the holes.

As the landlord bears the burden of proof with respect to damages to the rental unit, I find the disputed verbal testimony concerning the damage to the veranda is not sufficient for me to find these tenants responsible for paying for the damage to the spindles.

As explained to the landlord during the hearing, it is part of a landlord's duties to deal with inspections and the administration of other tenancy issues; therefore, I do not award the landlord compensation for her time with respect to the move-out inspection and releasing the Shaw receiver.

The tenants have the burden to prove when they provided the landlord a forwarding address in writing. I find the disputed verbal testimony insufficient for me to conclude the tenants provided their forwarding address on a note dated March 21, 2009 as they claimed. Therefore, I do not find the tenants entitled to double the security deposit. The return of the tenants' security deposit has been addressed below.

In light of the above findings, I authorize the landlord to retain the tenants' security deposit and accrued interest for damages to the rental unit and loss of rent. As the landlord was partially successful in this application, I award the landlord one-half of the filing fee. The landlord is provided a Monetary Order for the balance calculated as follows:

One-half hydro bill	\$ 55.00
One-half gas bill	64.69
Cleaning	150.00
Reinstall kitchen door	20.00
Patch walls	40.00
Loss of rent – April 2009	<u>800.00</u>
Sub-total	\$ 1,129.69
Less: security deposit and interest	(404.51)
Plus: one-half filing fee	<u>25.00</u>
Monetary Order	<u>\$ 750.18</u>



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The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

## Conclusion

The landlord established an entitlement to damages and unpaid rent of \$1,129.69 and is authorized to retain the tenants' security deposit and interest in partial satisfaction of that amount. The landlord is also provided a Monetary Order for the balance of \$750.18 to serve upon the tenants.

The tenant's application pertained to return of the security deposit. As the landlord was awarded the security deposit the tenant's application is dismissed.

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: July 29, 2009.

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Dispute Resolution Officer