



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. It is clear from the details of dispute the landlord was also seeking compensation for damage or loss under the Act, regulations or tenancy agreement but had not indicated that dispute code on the application; therefore, I amended the application to reflect that dispute code.

One of the named tenants appeared at the hearing as well as the tenant's aunt who participated in move-out inspections on behalf of the tenants. The second named tenant did not appear at the hearing. I was also provided documentary evidence by the tenant that both tenants had authorized the tenant's aunt to act on their behalf for all tenancy issues. The tenant's aunt is herein referred to as the tenants' agent.

I heard that the landlord sent each tenant a copy of the hearing documents via registered mail sent to the forwarding address provided on the move-out inspection by the tenants' agent. Section 89 of the Act provides that a landlord must serve a tenant by sending a copy of registered mail to the forwarding address provided by the tenant. I accept that the forwarding address provided by the tenants' agent was used by the landlord in serving each tenant with the hearing documents. Therefore, I find each tenant was sufficiently served and this decision, and the accompanying Monetary Order, names both tenants.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit and if so, the amount?
2. Has the landlord established an entitlement to unpaid rent?
3. Has the landlord established an entitlement to damage or loss under the Act, regulations or tenancy agreement?
4. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

I heard the following undisputed testimony. The one-year fixed term tenancy commenced August 1, 2009 and the tenants paid a \$540.00 security deposit on July 29, 2009. The tenants were required to pay rent of \$1,080.00 plus \$15.00 for parking on the 1<sup>st</sup> day of every month. A move-in and move-out inspection report was prepared by the landlord. The tenants' agent received a copy of a move-out inspection report. The tenants gave a Notice to end the tenancy to the building manager on April 5, 2010. Possession of the rental unit was returned to the landlord April 30, 2010 and the rental unit was vacant for the month of May 2010.

During the hearing the landlord reduced the monetary claims to the following amounts:

Replace vinyl decking	\$ 750.00
Repair carpet burns	105.00
Unpaid rent – May 2010	1,080.00
Liquidated damages	400.00
Filing fee	<u>50.00</u>
Total claim	\$2,385.00
Less security deposit	<u>(540.00)</u>
Net claim	\$1,845.00

The landlord testified that paint was spilt on the vinyl decking during the tenancy and that it had to be replaced at a cost of \$750.00. Upon enquiry, the landlord stated the vinyl decking was of roof grade quality and originally installed in 2005 with an estimated life of 15 years. The landlord also submitted that there were two or three burn holes in the carpeting that were repaired. Upon enquiry, the landlord testified the unit was vacant until August 15, 2010 despite advertising the unit for rent after receiving the tenants' notice to end tenancy; however, the landlord is only seeking loss of rent for one additional month.

The tenant acknowledged that green paint was spilled on the deck by a guest of the tenant and that it could not be removed. The tenants' agent testified that in an effort to cover up the spilled green paint, she painted the vinyl decking grey as it appeared the vinyl had been previously painted. The agent submitted that the grey paint was meant for porches previously painted. After the agent showed the landlord the grey paint job the landlord stated the vinyl should be beige. After the agent purchased beige paint the landlord then stated that vinyl decking could not be painted and to not use paint remover on the deck. Upon enquiry, the agent acknowledged that she did not have the landlord's permission to paint the deck grey. The agent questioned the age of the vinyl decking and submitted that it was in poor condition. The agent claimed she contacted two vinyl decking providers who advised her that such decking has an average life span of 10 to 12 years.

The landlord responded by stating the vinyl decking had not been previously painted but that the former concrete surface of the deck had been painted. The landlord explained that painting vinyl decking does not last as vinyl is soft and the paint will crack.

The tenant acknowledged that burn holes were apparent in the carpet at the end of the tenancy, giving the landlord notice to end tenancy in early April 2010, and that the tenancy agreement provided for liquidated damages of \$400.00. The tenants' agent

submitted that the move-out inspection was altered after she received a copy of it but acknowledged that the changes did not pertain to the vinyl decking.

The tenants' agent requested the landlord's request for recovery of the filing fee be denied as the agent claims that she attempted to reach a mutual agreement with a former building manager but was met with an angry reaction including a door being slammed in her face. The landlord could not respond to these allegations as the landlord was not present for the alleged incident and that building manager no longer works for the landlord.

In support of the landlord's claims the landlord provided a copy of the tenancy agreement, repair invoices, photographs, a condition inspection report and the tenant's notice to end tenancy.

Provided as evidence by the tenant was a copy of the authority granted to the tenants' agent to act on the tenants' behalf with respect to tenancy matters, photographs of the decking and other decks in the building, the agent's personal notes taken around the time the tenancy ended, as well as a copy of the cheque to pay the landlord for carpet cleaning originally claimed by the landlord.

### Analysis

The Act requires that a tenant leave a rental unit undamaged at the end of a tenancy. Based upon the undisputed testimony of the parties, inspection report and photographs it is clear the vinyl decking was damaged by green paint sprayed on the decking surface. Although I find the tenants' agent had good intentions when painting the deck grey, it was not in disputed that the tenants' agent did not have the landlord's permission to paint the deck grey. The disputed testimony that the vinyl covering can be painted does not satisfy me that the vinyl can be painted so that it sufficiently

covers the vinyl for several more years. Therefore, I find the tenants responsible for damaging the vinyl decking.

Although the landlord has established that the vinyl decking was damaged and the tenants are responsible for the damage I do not award the landlord the full replacement cost as claimed. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

The parties provided me with disputed positions with respect to the useful life of the original vinyl deck covering. Therefore, in order to estimate depreciation of the original decking, I have referred to the useful life of items as provided in Residential Tenancy Policy Guideline 37.

The policy guideline does not specifically identify vinyl decking. Rather, the closest item is waterproofing membrane which has an average useful life of 15 years. Based upon an average useful life of 15 years, I award the landlord \$500.00 ( $\$750.00 \times 10/15$  years) for replacement of the vinyl decking.

It was not in dispute there were burns to the carpet during the tenancy and the landlord provided sufficient evidence of the cost to repair the burn holes in the carpet; therefore, I award the landlord \$105.00 for this repair.

I am also satisfied, based upon the tenant's undisputed testimony, that the tenants gave notice to end the tenancy in April 2010 to be effective at the end of April. I find this is insufficient notice and the landlord suffered a loss of rent as a result of the tenants' actions. I award the landlord loss of rent for the month of May 2010 as claimed.

Upon review of the tenancy agreement I find the tenants had agreed to compensation the landlord \$400.00 for the cost to re-rent the unit should they end the tenancy before the expiration of the fixed term. Accordingly, I grant the landlord's request for liquidated damages of \$400.00.

In the absence of evidence to the contrary, I accept the tenants' agent's account of dealing with the former building manager and efforts to reach an agreement with respect to the damages to the deck. I find the tenant had conceded to all the other claims of the landlord. Therefore, I find this hearing may have been avoided had the

former building manager conducted himself professionally. Therefore, I find the landlord must bear the cost of the filing fee.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord. I calculate the interest on the security deposit is nil. Accordingly, I provide the landlord with a Monetary Order calculated as follows:

Vinyl decking replacement	\$ 500.00
Carpet repairs	105.00
Unpaid rent – May 2010	1,080.00
Liquidated damages	400.00
Less: security deposit	<u>(540.00)</u>
Monetary Order for landlord	\$ 1,545.00

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

Conclusion

The landlord is authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,545.00 to serve upon the tenants.

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: September 14, 2010.

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Dispute Resolution Officer