



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, 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. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on December 1, 2009 and ended on December 31, 2010 and that the tenants paid a \$325.00 security deposit and a \$200.00 pet deposit. The parties further agreed that rent was set at \$650.00 per month.

The parties agreed that a condition inspection was performed at the beginning of the tenancy and a report was generated at that time, but that at the end of the tenancy, the parties did not inspect the unit together. The landlord testified that this was because the tenants did not ask for an inspection and because the landlord had accused the tenants of damaging her property and she therefore felt it best to avoid an altercation with them.

The landlord seeks to recover \$38.00 as the cost of changing the locks of the rental unit and an accompanying shed. The landlord acknowledged having received keys from the tenants but testified that for security reasons, she changed the deadbolts on the doors. The landlord stated that the tenants had changed the lock on the shed and that at the end of the tenancy she had to change it back. The tenants acknowledged having changed the lock on the shed but stated that they left the old lock and the key in the shed and also gave the landlord the key to the new lock.

The landlord claimed to have spent 45 hours cleaning, painting and repairing the rental unit at the end of the tenancy. The landlord claimed that 8 hours were spent cleaning the

refrigerator, stovetop and oven and kitchen cupboards. She claimed that a further 8 hours were spent washing windows and cleaning the bathroom including the walls and cupboards and that 8 hours were spent by her to remove carpets in the bedrooms and an additional 5 hours paid to a T.Q. to install new carpets and clean mould from the floor beneath the carpets. She claimed that a further 16 hours were spent cleaning mould from walls, repairing walls and a closet in a small bedroom and preparing the walls for painting before repainting as well as cleaning the laundry room. The landlord provided a number of photographs showing the condition of the refrigerator and the walls.

The landlord claimed that the carpets were heavily soiled at the end of the tenancy and that there was a large damaged area which could not be repaired, necessitating the replacement of the carpets. The landlord provided photographs of the carpets and claimed that the carpets were just a few years old. T.Q. testified as a witness and stated that within a few days of the time the tenants vacated the rental unit, the landlord asked him to inspect the unit and determine whether the carpets were salvageable. T.Q. stated that the carpet was extremely soiled and that there was an area approximately 18" wide by 3 feet long had been pulled up. In T.Q.'s opinion, the carpets could not be adequately cleaned or repaired. T.Q. stated that he was paid \$100.00 for 5 hours of work in which he pulled out old carpets, scrubbed the floor beneath the carpets which was black with mould and installed new carpet and underlay.

The tenants testified that they cleaned the oven and wiped out kitchen cupboards and that they cleaned the walls of the unit during the tenancy, but the mould regrew so fast, they were unable to keep up with it. They acknowledged that they did not clean walls immediately before they vacated the rental unit. The tenants testified that during the tenancy they complained to the landlord about excessive moisture in the rental unit. The tenants stated that water would occasionally run down walls, it regularly pooled on window sills and that their boxes which were left on the carpet in a bedroom became mouldy after a very short period of time. The landlord claimed that she knew nothing about excessive moisture prior to August 2010 and suggested that the tenants may have been operating a marijuana grow-operation which caused the moisture build up.

The tenants claimed that there was no damaged area in the carpet when they vacated the rental unit and stated that it was their belief that the landlord purposely damaged the carpet. The tenants stated that when they moved in, the carpet had been freshly shampooed and that one of the bedrooms remained damp for months. The tenants argued that the rental unit was less than 650 square feet and that the claim for 45 hours of cleaning was excessive. They further argued that it was unreasonable for the landlord to charge \$20.00 per hour for cleaning when they had heard that a professional cleaning service charged \$25.00 per hour for 2 professional cleaners.

The landlord claimed a further \$8.00 for the cost of dump fees for disposing of carpet, \$331.97 as the cost to replace the carpet and underlay, \$18.58 as the cost of replacing door trim which she claimed was damaged by the tenant when he drilled holes in it to allow a power cord to run underneath, \$69.01 as the cost of paint and \$51.52 as the cost of replacing 2 window screens which were missing.

The tenants denied having drilled holes in the door trim and testified that it frequently “popped off” and that they would put it back on. The tenants denied having taken window screens and testified that there were only 2 screens in the rental unit when they occupied it, both of which were still in place at the end of the tenancy.

The landlord further claimed recovery of unpaid rent for December and loss of income for January as she claimed she could not re-rent the unit until February due to the extensive cleaning and repairs required. The landlord claimed that she advertised the rental unit in early January as being available for February 1.

The tenants acknowledged that they had not paid rent for December but testified that they withheld rent because they had a monetary order from a previous dispute resolution hearing awarding them \$1,300.00. The tenants have since filed that order in Small Claims Court to enforce it. The tenants argued that they should not be held responsible for January’s rent.

### Analysis

The landlord bears the burden of ensuring that a time is set to perform a condition inspection of the rental unit at the end of the tenancy. I find no compelling evidence to show that the landlord had reason to be fearful of meeting with the tenants to perform an inspection and I find that she failed to meet her statutory obligation to schedule a time for she and the tenants to inspect the unit together. As a result, where the testimony of the parties conflict and there is no evidence to corroborate the landlord’s testimony as to damage done to the rental unit, I have preferred the tenants’ testimony as to the condition of the unit as they were not given an opportunity to record the condition of the unit during an inspection.

I find that although the tenants changed the lock on the shed, they left the original lock and key for the landlord. I note that the landlord did not claim the cost of labour for changing the lock, but simply the cost of purchasing new locks. I find that the landlord must bear the cost of purchasing new locks as this is part of the cost of doing business as a landlord. The tenants returned all keys and cannot be held liable for this cost. The claim is dismissed.

Having viewed the photographs provided by the landlord, it is clear that the walls in the rental unit needed to be cleaned. The tenants argued that the unit was not properly vented and therefore allowed mould growth and I accept that, particularly as the parties agreed that at

some point during the tenancy the landlord installed some sort of additional ventilation. However, the tenants still bore a responsibility to wash walls at the end of the tenancy. I accept that the landlord is entitled to the cost of her labour but I find her estimation of her time to be grossly exaggerated. The landlord provided photographs of the refrigerator and claimed that it was filthy requiring hours of cleaning, but the photograph shows only mild soiling which could have been cleaned in less than half an hour. The landlord inexplicably provided no photographs of the stove and oven which she claimed were extremely soiled and in light of the tenant's testimony that they had substantially cleaned the stove and oven and in the absence of a condition inspection report, I find it more likely than not that only minor cleaning was required in the kitchen. The carpet in 2 bedrooms was replaced and the landlord paid T.Q. for 5 hours of labour to remove the old carpet, scrub the floor beneath and install new carpet. In addition to this, the landlord claimed to have spent 8 additional hours of labour to remove the carpets. I find this unlikely. I find it more likely than not that the landlord's exaggeration extends to her entire claim for labour.

I find that the claim for \$20.00 per hour is not unreasonable. In the absence of a reliable estimate of hours spent cleaning, I find that an award for 6 hours of cleaning will adequately compensate the landlord and I award her \$120.00. This award includes only labour for cleaning and a small part of the labour for removing carpets. It does not include labour involved with painting or repairing walls for reasons which are explained below.

I accept that the carpet was heavily soiled and that the tenants did not shampoo it prior to vacating the rental unit. I find it unlikely that the landlord would have caused the tear in the carpet and find that the tenants likely caused that damage. I accept that the carpet had to be replaced. However, I find that the underlay should not be the responsibility of the tenants. I have already found that there were problems with excessive moisture in the rental unit as a result of inadequate ventilation and I find it more likely than not that there was mould under the carpet prior to the tenancy. It therefore stands to reason that the underlay was affected by that mould rather than the surface soiling caused by the tenants. The landlord submitted no evidence showing the age of the carpet although she should reasonably have known that the value of her loss would be determined in part by the age of the item lost. While the landlord claimed that the carpet was only a few years old, the tenants claimed it was much older. Residential Tenancy Policy Guideline #37 contains a depreciation table which identifies the useful life of carpet as 10 years. In the absence of proof of the age of the carpet, I find it was 6 years old and that the tenants deprived the landlord of the use of 40% of the useful life of the carpet. The cost of the carpet and HST was \$266.11. I award the landlord \$106.44, which is 40% of that cost.

I accept the testimony of T.Q. and find that he performed 5 hours of labour at a rate of \$20.00 per hour. I find that the landlord is entitled to recover 40% of that invoice and I award the

landlord \$40.00. I find that the landlord is also entitled to recover 40% of the dump fee and I award her \$3.20.

I am not persuaded that the tenants caused the damage to the door trim. The holes showing in the photographs provided by the landlord are not large enough to accommodate an electrical cord and rather, it looks like the trim was removed from the door at some point and not properly reattached. I find that the landlord has not proven that the tenants caused this damage and I dismiss the claim for the cost of replacement trim. I further find insufficient evidence to prove that the tenants removed screens from the unit and I dismiss the claim for the cost of screens.

I dismiss the claim for the cost of paint as well. I find on the balance of probabilities that painting and wall repair was most likely required because there was pre-existing mould in the unit which was not completely removed prior to painting before the tenancy began. For this reason I also have not awarded labour costs associated with preparing and painting the walls.

I find that the tenants had the right to withhold rent for the month of December because they had a monetary order against the landlord. However, the tenants provided evidence showing that they have taken steps to enforce the entire order against the landlord. Because the tenants are seeking payment of the \$650.00 they withheld, I find it appropriate to award the landlord \$650.00 in rent for December.

I dismiss the landlord's claim for lost income for the month of January. Despite knowing that the tenants would be vacating the rental unit on December 31, the landlord did not begin advertising the rental unit until January and even then, advertised that it would be available in February. I find that the landlord failed to take reasonable steps to minimize her loss.

I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring her application and I award her that sum.

### Conclusion

The landlord has been successful in the following claims:

Cleaning	\$120.00
Carpet replacement	\$106.44
T.Q. labour	\$ 40.00
Dump fees	\$ 3.20
December rent	\$650.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$969.64</b>

Although under section 36(2) the landlord has extinguished her right to claim against the security and pet deposits by failing to perform a condition inspection at the end of the tenancy, under section 72(2)(b) I am empowered to apply a security and pet deposit to an award made to the landlord and I find it appropriate to do so in these circumstances.

I order the landlord to retain the \$325.00 security deposit and the \$200.00 pet deposit in partial satisfaction of her claim and I grant the landlord a monetary order under section 67 for the balance due of \$444.64. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The parties are encouraged to set off their respective orders as against each other.

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: April 15, 2011

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Residential Tenancy Branch