



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for monetary orders for repairs made and cleaning the rental unit, for unpaid rent, to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The Tenant's spouse, who lived in the rental unit with her, appeared and testified as well.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

### Background and Evidence

The parties entered into a written tenancy agreement on April 6, 2009, with the tenancy beginning on May 1, 2009. The monthly rent was \$2,000.00, and the Tenants paid the Landlord a security deposit of \$1,000.00, and a pet damage deposit of \$1,000.00. At the end of the tenancy the monthly rent was \$2,064.00. The relevant terms of the tenancy agreement include section 2.12, which allowed the Tenants to have one Chihuahua dog.

On January 1, 2011, the Tenants phoned the Landlord and told her they were ending the tenancy on January 31, 2011. On January 10, 2011, the Tenants sent an email to the Landlord with a letter attached informing her in writing they were ending the tenancy.

An outgoing condition inspection report was performed by the parties on February 1, 2011. At the time of this the Tenants agreed to pay the Landlord for cleaning charges for four hours.

The testimony of the Tenants was that on February 1, 2011, they gave the Landlord a copy of their written forwarding address to send the deposits back to. The Landlord denies this and testified she did not get the Tenants forwarding address until February 21, 2011, when the Tenants telephoned her with this information. The Landlord testified that after the phone call, she got the forwarding address in writing on February 23, in an email from the Tenants.

The Landlord filed her Application on February 21, 2011. The Landlord is claiming for one month of lost rent because the Tenants failed to give her the Notice to End Tenancy as required under the Act.

The Landlord claims the Tenants failed to return all the keys and she had to re-key the door locks.

The Landlord claims the Tenants failed to clean the rental unit to a reasonable standard when they vacated and additional cleaning was needed.

The Landlord alleges that the Tenants damaged windows catches and a door frame around the shower.

The Landlord is claiming that the Tenants damaged the hardwood floors with many scratches and the floors need to be refinished. The floors were three years old at the start of the tenancy.

The Landlord claims the Tenants had two Chihuahua dogs in the rental unit, contrary to the tenancy agreement. The Landlord claims the dogs and the Tenants scratched the floors beyond normal wear and tear. The Landlord testified that the incoming condition inspection report shows there were a few scratches on the floors when they moved in, however, there are now hundreds of scratches. The Landlord has provided a quote for the refinishing of the floors. The quote indicates the repairs to the floor are for dog scratches, scratches from furniture and from high heeled shoes.

The Landlord alleges that there was additional cleaning required and that the garbage disposal had to have a metal item removed from it.

The Landlord claims as follows:

a.	Loss of rent for February 2011	2,064.00
c.	Cleaning of rental unit	150.00
d.	Broken window catches	40.00
e.	Bent shower door frame	200.00
f.	Refinishing of scratched hardwood floors	3,136.00
g.	Additional cleaning and repair of garburator	65.00
h.	Filing fee	50.00
	<b>Total claimed</b>	<b>\$5,821.48</b>

In reply, the Tenants testified they agreed to four hours of cleaning at the time of the outgoing condition inspection report. They did not agree to anything else and did not sign off on the outgoing condition inspection report.

The Tenants testified that they kept the rental unit in lovely condition and it was easy to show to prospective new renters.

The Tenants testified that they had two dogs in the rental unit, but one of the dogs belonged to a third party and they were just looking after it. They claim the two small dogs each weigh less than five pounds and they could not do that much damage to the hardwood floors. The Tenants allege the Landlord gave tacit approval for the second dog, because she saw the second dog in the rental unit and did not mention it.

The Tenants testified that the floors look fine and were almost identical to when they moved in. They testified that the floors show regular wear and tear and that the Landlord is exaggerating the damage to the floors. They testified that the incoming condition inspection report indicates there were already a few scratches on the floor when they moved in.

The Tenants agree they did not return the keys at the time of the outgoing condition inspection report, because they had inadvertently packed the keys in with their property when moving out. The Tenants testified that they gave the Landlord back the keys six days after they moved out.

### Analysis

Based on the testimony, evidence, photographs and on a balance of probabilities, I find as follows:

To prove her loss and have the Tenants pay for the loss requires the Landlord to prove four different elements: First, proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find the Tenants breached the Act by failing to give the Landlord a Notice to End Tenancy as required under section 45 of the Act. If the Tenants had wanted the tenancy to end on January 31, 2011, the latest they could have given the Notice to the Landlord was December 31, 2010. They did not provide the Notice to End Tenancy in writing to the Landlord until January 10, 2011, for the end of January 2011.

Furthermore, the Tenants were required under the Act and the tenancy agreement to provide the Landlord with the Notice in writing either by mail or in person. Neither the Act nor the tenancy agreement allows service of documents by email.

I also find the Tenants did not provide their forwarding address in writing to the Landlord as required under the Act, and that the written forwarding address was not provided to the Landlord until February 23, 2011.

I find the Tenants breached the section 37 of the Act and the tenancy agreement by failing to clean the rental unit to a reasonable condition and by failing to do repairs to the rental unit before they vacated it.

I also find the Tenants breached the tenancy agreement by having two pets in the rental unit. Whether or not the Tenants owned the second dog, they had it in the rental unit contrary to the tenancy agreement. While the Landlord may have known there was a second dog in the rental unit, I do not find the Landlord allowed the Tenants to keep two pets.

I find the Tenants damaged the hardwood floors in the rental unit beyond normal wear and tear. The Landlord submitted many photographs of the floors, and in fact the cleaning of the rental unit as well.

Although the photographs show many small scratches in the floors, I do not find the dogs were the sole cause of damage to the hardwood floors. There were also some deep gouges that could only have been caused by heavy furniture or other heavy objects being moved across the floor. These gouges appear to be repetitive in nature, such as a chair being moved over and over with weight on it, or some other heavy object being moved over and over. There is also a photo of one long, deep gouge that could not have been caused by a light dog or object. Based on the incoming and outgoing reports, photographs, the quote, the testimony and the evidence, I am satisfied the Tenants were responsible for these damages to the floor.

I also find that the Landlord has mitigated her losses in a reasonable manner.

Therefore, I find the Landlord has established claims for loss of rent for one month, for cleaning and repairs to the rental unit and for damages to the hardwood floors.

I do not find the Landlord has verified the amounts claimed for the broken window latches and the frame for the shower, and I dismiss those portions of the Landlord's claim.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As to the cost of refinishing the hardwood floors, the useful life expectancy of hardwood floor finishes is 20 years as set out in policy guideline 37 to the Act.

The floors were three years old at the start of the tenancy and the tenancy lasted approximately two years. Therefore, the floors had already depreciated by five years or approximately 25%, leaving 75% of useful life. I find that the Landlord is entitled to 75% of the cost of refinishing the floors in the amount of \$2,352.00.

Therefore, I find that the Landlord has established a total monetary claim comprised of the following amounts:

a.	Loss of rent for February 2011	2,064.00
c.	Cleaning of rental unit	150.00
d.	Prorated refinishing of scratched hardwood floors	2,352.00
e.	Additional cleaning and repair of garburator	65.00
f.	Filing fee	50.00
	<b>Total claimed</b>	<b>\$4,797.48</b>

I order that the Landlord retain the deposits of **\$2,000.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,797.48**.

This decision and order is final and binding on the parties, except as otherwise provided in the Act. If the Tenants do not abide by the order it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 24, 2011.

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Residential Tenancy Branch