# Decision

**Dispute Codes**: MNR, MND, MNDC, MNSD, FF

## Introduction

This hearing was convened in response to 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security & pet damage deposits / and recovery of the filing fee; ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and return of the security & pet damage deposits. Both parties attended and gave affirmed testimony.

## Issues to be decided

- Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement

## Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from March 1 to September 30, 2009. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of $1,250.00 was payable in advance on the first day of each month. During the hearing, the parties agreed to agree that a security deposit of $615.00, and a pet damage deposit of $625.00 [combined total: $1,240.00] were collected at the start of tenancy. A move-in condition inspection and report were completed on March 2, 2009.

Arising from rent which the landlord alleges was unpaid when due on January 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated January 12, 2011. The notice was served by way of posting on the tenants' door on that same date. A copy of the notice was submitted into evidence. The landlord testified that the tenants did not subsequently make any payment toward rent and vacated the unit on January 31, 2011. A move-out condition inspection and report were completed on February 1, 2011, and new tenants later took possession of the unit effective March 1, 2011.

As a preliminary matter at the hearing, the parties exchanged views on the nature of documentary evidence which had been provided by one to the other. In the result, the parties agreed to proceed with the hearing, and to make use of the documentary evidence currently available to each, rather than delay the process with an adjournment.

Pursuant to section 63 of the Act, the prospect of resolving the dispute during the hearing was raised, however, no settlement of any aspects of the dispute was achieved.

**Analysis**

At the outset, I will address return of the security & pet damage deposits. Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

> 38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

> 38(6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

There was discussion during the hearing around the timing of the landlord's application to retain the tenants' security & pet damage deposits. The related chronology is as follows:

> January 31, 2011: end of tenancy
>
> January 31, 2011: letter to landlord from tenants' legal counsel in which landlord is informed of tenants' forwarding address

February 11, 2011: landlord's application for dispute resolution in which, further to other things, landlord applies to retain the security & pet damage deposits

April 1, 2011: date of hearing convened in response to the landlord's application, as above. In the decision of the same date, the dispute resolution officer granted the landlord's request to withdraw the application with leave to reapply. It appears that the withdrawal and granting of leave to reapply arose out of acknowledgement that, as a result of the tenants' cross application for dispute resolution, a hearing had been scheduled for July 13, 2011. Following the hearing on April 1, 2011, the landlord re-applied for dispute resolution on April 13, 2011 and the cross - applications were heard together during this present hearing on July 13, 2011.

In summary, I find that the landlord's application to retain the security & pet damage deposits was made within 15 days after the date when tenancy ended, which is also the date when, through their legal counsel, the tenants informed the landlord in writing of their forwarding address. In summary, should the tenants establish entitlement to repayment of the security & pet damage deposits, following from all of the foregoing I find that the statutory doubling provisions for repayment do not apply.

The attention of the parties is also drawn to the provisions set out in section 32 of the Act, which speaks to **Landlord and tenant obligations to repair and maintain:**

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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While all of the documentary evidence and testimony have been carefully considered, not all aspects of the evidence or details of the parties' arguments and submissions are set out here. A relatively concise presentation of all aspects of the respective claims and my findings around each are set out below.

LANDLORD'S CLAIM

**$1,250.00***: *unpaid rent for January 2011.* While the landlord takes the position that preferred methods for payment of rent do not include cash, and that the tenants were "never told to leave cash in the drop box," a practice appears to have been established pursuant to which the landlord accepted the tenants' payment of rent by way of cash delivered to the drop box. The tenants claim that even while they requested receipts in exchange for this method of payment, none were ever issued. The landlord states that the drop box is "located on the ground floor of the building, in the locked electrical room and is additionally secured with a padlock inside and the padlock is only accessible by property managers."

Evidence submitted by the landlord includes a spreadsheet showing the dates when rent was received late for the period between March 2009 and December 2010. The spread sheet further documents that no rent was received for January 2011.

The testimony of the parties around whether or not rent was paid for January 2011 is at odds, the tenants claiming that cash was delivered to the drop box, the landlord claiming that it was not.

In this aspect of the dispute I prefer the evidence and testimony of the landlord. I note, in particular, the landlord's apparently complete record showing dates when rent was received. Further, I note the drawing up by the tenants of a comprehensive description of alleged problems with the unit, but only following issuance of the 10 day notice to end tenancy for unpaid rent. Having considered the documentary evidence and testimony, I find on a balance of probabilities that the tenants have failed to meet the burden of proving that they paid rent for January 2011. I find, then, that the landlord has established entitlement to the full amount claimed.

**$1,250.00***: *loss of rental income for February 2011*. Following the landlord's issuance of a 10 day notice to end tenancy dated January 12, 2011, by way of letter dated January 19, 2011, the tenants' legal counsel informed the landlord that the tenants would vacate the unit effective January 31, 2011.

Tenants' legal counsel argues that as the landlord improperly ended the tenancy by erroneously alleging a failure to pay January's rent, the landlord has no entitlement to compensation for loss of rental income for February. However, following consideration of all the documentary evidence and testimony, I find on a balance of probabilities that the landlord has established entitlement to the full amount claimed. I make this finding mainly on the basis of the comparative results of the move-in and move-out condition inspection reports, as well as evidence that the landlord undertook to mitigate the loss by advertising the unit. In short, I find that at the end of tenancy, considerable cleaning and repairs were required; more detailed findings in this regard are set out below.

$625.00: *liquidated damages*. My findings around this aspect of the application are made with direct reference to the term "liquidated damages" as it appears in the tenancy agreement. Clause #5 of the tenancy agreement provides for the assessment of these damages in the event that the tenants end the tenancy before the end of the fixed term. When the tenancy came to an end on January 31, 2011, the fixed term had long since expired on September 30, 2009, and the tenancy had continued on a month-to-month basis. Accordingly, this aspect of the landlord's application is hereby dismissed.

$375.00: *fees for late payment of rent*. Clause #10 in the tenancy agreement ("ARREARS") provides for the assessment of a $25.00 "administrative fee" on each occasion when rent is paid late. The total amount claimed in the landlord's application is calculated on the basis of the documented record of late payment for each of the 15 months in total from March to December 2009 [10 months], and February, March, April, May & August 2010 [5 months].

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

> [The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.
>
> …neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to collect the $25.00 administrative fee for late payment of rent in a timely fashion, or shortly after each of the occasions when it

became due, pursuant to the doctrine of laches, I find that this aspect of the landlord's application must hereby be dismissed.

$1,218.56: *repairs to hardwood floor.* Residential Tenancy Policy Guideline #37 provides for the "Useful Life of Work Done or Thing Purchased." In the case of the finish on hardwood floors, the useful life is estimated to be 20 years.

Based on the testimony of the parties and on the documentary evidence which includes photographs, the comparative results of the move-in and move-out condition inspection reports, and an invoice reflecting the total cost for labour, materials and tax, I find that scratches on the hardwood floor are in excess of reasonable wear and tear for a tenancy just short of 2 years. Further, I find no evidence that the tenants formally took any concern to the attention of the landlord that "exterminators tossed furniture around, scratching and scuffing the wood floor." In the result, I find on a balance of probabilities that the landlord has established entitlement limited to **$1,096.74***, calculated as follows:

> $1,218.56: total cost of repairs
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> $1,218.56 ÷ 20 = $60.93 (pro-rated cost per each of the 20 years of useful life)
>
> $60.93 x 18 = $1,096.74 (total cost of repairs for balance of 18 years useful life)

$392.00: *cleaning required in the unit*. Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and…

Based on the testimony of the parties and on the documentary evidence which includes photographs, the comparative results of the move-in and move-out condition inspection reports and a receipt, I find on a balance of probabilities that the landlord has established entitlement limited to **$196.00***, or half the amount claimed.

**$238.56***: *window repair.* The tenants acknowledge responsibility for this cost and claim that they have reduced their own claim for compensation by this amount. However, it is not clear from the tenants' application where this amount has been deducted from their own overall claim for compensation. Based on the testimony of the parties and on the documentary evidence which includes, but is not limited to, photographs and the comparative move-in and move-out condition inspection reports, I

find on a balance of probabilities that the landlord has established entitlement to the full amount claimed.

**$393.10***: *window blinds*. The tenants acknowledge that the blinds were damaged as a result of the actions of their dog(s). However, the tenants claim that as the landlord removed the damaged blinds during the tenancy but never replaced them before tenancy ended, the tenants are not responsible for the replacement costs. Despite the tenants' protest, I find there is no evidence that they took any concern about the removal of the damaged blinds and the subsequent failure to replace them to the landlord's attention during the tenancy. In the result, based on the testimony of the parties and on the documentary evidence which includes, but is not limited to, a receipt, photographs and the comparative move-in and move-out condition inspection reports, I find that the landlord has established entitlement to the full amount claimed.

$554.40: *repairs and painting of walls*. Residential Tenancy Policy Guideline #37, as earlier referenced above, provides that the useful life of interior paint is 4 years. Based on the testimony of the parties, and the documentary evidence which includes, but is not limited to, photographs and the comparative results of the move-in and move-out condition inspection reports, as well as the nearly 2 year length of tenancy, I find on a balance of probabilities that the landlord has established entitlement limited to **$277.20***, which is half the amount claimed.

$300.00: *landlord's time "for putting evidence package [together] / hearing preparation"*. Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the claim is hereby dismissed.

**$100.00*:** *filing fee*. As the landlord has achieved some success with his application, I find that the landlord has established entitlement to the full amount claimed.

Following from the detailed findings set out above, I find that the landlord has established entitlement to a claim of $4,801.60. I hereby ORDER the landlord to retain the combined security & pet damage deposits of $1,240.00, leaving a balance owing to the landlord of **$3,561.60** ($4,801.60 - $1,240.00).

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TENANTS' CLAIM

$221.76: *2 bookshelves*. There is no conclusive evidence as to the age or condition of these bookshelves at the start of tenancy, and while the tenants submitted evidence in support of the cost of replacing them, the tenants also testified that they have not actually been replaced. This aspect of the application is, therefore, hereby dismissed.

$1,321.60: *queen size bed*. Following careful consideration of the documentary evidence and testimony of the parties, I find on a balance of probabilities that there is insufficient evidence that the queen size bed was a replacement purchase required as a direct result of either bedbugs or mice in the unit. Specifically, there is reference to only one episode of bedbugs requiring pest control treatment, there is insufficient evidence of a mouse "infestation" *per se*, and there is no conclusive information as to the age or condition of the bed that may have been discarded. Further, the invoice included in the tenants' evidence shows an address for purchase (January 23, 2011) and delivery (January 29, 2011), which is different from the subject rental unit address, different from the forwarding address provided to the landlord on January 31, 2011, and different from the current address shown for the tenants in their application. In the result, this aspect of the application is hereby dismissed.

$2,767.89: *purchase of single couch to replace 2 recliners, 1 chair & 1 couch*. Evidence provided in relation to this aspect of the application includes an invoice with reference to an address for purchase (January 30, 2011) and delivery (February 2, 2011). For reasons similar to all those set out immediately above, this aspect of the application is hereby dismissed.

$369.58: *stereo amplifier*. The tenants testified that this item was several years old and that it has not been replaced. While the tenants submitted evidence in support of the cost of replacing it, again, no replacement cost has actually been incurred. This aspect of the claim is, therefore, hereby dismissed.

$100.00: *several books*. The tenants testified that no books were discarded as a result of the alleged damage arising from the activities of mice. Rather, the tenants testified that the books were simply cleaned up. Evidence does not include the identification of the exact number of books at issue, specific titles allegedly damaged or the age and condition of the books at the start of tenancy. Accordingly, I find that as there is insufficient evidence to support any entitlement to compensation, this aspect of the claim is hereby dismissed.

$335.96: *ottoman*. The tenants testified that this item is several years old and that it has not been replaced. In the absence of any replacement cost having been incurred, or sufficient evidence to support the claim that the ottoman suffered damage beyond normal wear and tear as a result of the activities of mice, this aspect of the application is hereby dismissed.

$375.00: *dry cleaning*. The tenants claim this cost was incurred to have their "business attire dry cleaned," after mice had "infested" the closet without their knowledge. In the absence of sufficient evidence that the tenants' business attire required dry cleaning as a direct result of the activities of mice, or a receipt in support of this cost having actually been incurred, this aspect of the application is hereby dismissed.

$120.00: *dumping costs for furniture.* The tenants claim that certain furnishings were required to be discarded as a result of damage from mice and bedbugs. In the absence of conclusive evidence concerning the age and condition of the particular furnishings, or sufficient evidence that discarding of furnishings was required as a direct result of the activities of mice and/or bedbugs, and in the absence of a receipt in support of this cost having actually been incurred, this aspect of the application is hereby dismissed.

$10,080: *compensation for breach of the right to quiet enjoyment (renovations and mouse infestation) calculated on the basis of approximately $675.00 per month for the period from September 2009 to January 2011.*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides in part:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (b) freedom from unreasonable disturbance;

As to the tenants' alleged disturbance from renovations, the landlord states in part:

> The unit and the whole building were completely renovated and the tenants were first occupants of the unit after the renovation of the unit has been completed.

In their documentary submission the tenants make reference to a "mouse infestation" and claim they reported the problem to the landlord in August 2009 and again in "late 2010." While the landlord does not dispute the existence of mice, the landlord also testified that there was nothing resembling an infestation. Further, by way of invoices the landlord claims there was "regular service" provided by a pest control company in order to monitor the requirements for pest control in the building.

During the tenancy, there is no evidence that the tenants took their concerns about mice to the attention of the landlord in writing, or evidence of written requests by the tenants for the services of pest control, or evidence of written requests by the tenants for a reduction in rent for repairs, services or facilities agreed upon but not provided.

In regard to bedbugs, the tenants claim that in 2009 "exterminators were also sent to take care of bedbugs, at half cost to us, despite the bugs being transported via mice from other infected suites in the building." However, the tenants' principal concern in relation to bedbugs appears to be limited to the allegation that "the exterminators tossed furniture around, scratching and scuffing the wood floor." The tenants claim they orally informed the landlord of this damage to the floor.

Residential Tenancy Policy Guideline #6 speaks to "Right to Quiet Enjoyment," in part:

> **Claim for damages**
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> In determining the amount by which the value of the tenancy has been reduced, the dispute resolution officer should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

Following careful consideration of all the documentary evidence and testimony, I find on a balance of probabilities that the tenants have failed to meet the burden of proving entitlement to compensation as a result of a breach of the right to quiet enjoyment. This aspect of the application is, therefore, hereby dismissed.

In summary, the tenants' application is hereby dismissed in its entirety, and the tenants did not apply to recover the filing fee.

## Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **$3,561.60.** This order may be served on the tenants, filed in the Small Claims Court 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*.

DATE: August 4, 2011

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Residential Tenancy Branch