



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF, O

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on June 20, 2011 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of double the security deposit – Section 38;
3. An Order to recover the filing fee for this application - Section 72; and
4. Other.

The Landlord applied on August 18, 2011 for:

1. A Monetary Order for damage to the site, unit or property - Section 67;
2. An Order for unpaid utilities - Section 67;
3. An Order to recover the filing fee for this application - Section 72; and
4. Other.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on July 15, 2009 and ended on May 31, 2011. Rent in the amount of \$1,200.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$600.00. No mutual move-in or move-out inspection was completed. The Tenants provided their forwarding address in writing to the Landlords on May 31, 2011. There is no written tenancy agreement.

### TENANTS' CLAIMS

The Tenants state that rats were noticed in the storage room located beside the unit and garage and that although the Landlord's were informed of the problems they did nothing. The Tenants state that they moved the majority of their stored belongings out of the storage room as soon as the rats were discovered and that the remainder of their belongings were stored in Rubbermaid containers and left in the storage room. The Tenants state that they also placed poison in the room and tried to locate the entry point, later identified as coming from underneath the back patio. The Tenants claim that the Landlords were responsible for attending to the rat problems and that as a result of their negligence, suffered a loss of memorable, but difficult to value items and claim \$100.00 for this loss.

The Landlords state that they were never informed of any rat problem until the end of the tenancy and that the Tenants had been advised at the onset of the tenancy that the storage room was open to the elements and was used for storing lawn and garden tools. The Landlords state that the Tenants should not have stored books and blankets in this room and deny any responsibility for the Tenant's loss of items.

The Tenants state that in the spring of 2010, the Landlords made repairs to the roof of the unit and that following these repairs, tar dripped into the sunroom, damaging their curtains and the carpet. The Tenants state that they informed the Landlord on numerous occasions of the tar dripping but that the Landlords failed to attend to the problem. The Tenants provided specific dates that the Landlord was called in relation to

this problem. The Tenants claim \$30.00 for the cost of the curtains, \$20.00 to remove the tar from their pet's paws and \$50.00 for inconvenience.

The Landlords do not deny that tar dripped into the sun room and that the Tenants informed them of this but state that the Tenants never told them of any damages to their curtains or the pet.

The Tenants state that a lower tenant moved into the basement unit in April 2011 and that from then until the Tenants moved out, this tenant caused them problems by waking them up at night with noises of loud sex, using vulgar language and making constant complaints in relation to heat. The Tenants state that the problems escalated to the point where the Tenants had to stay at another location for the last week of their tenancy. The Tenants claim \$300.00 for the loss of quiet enjoyment as a result of the problems with the lower tenants.

The Landlords state that they only received one complaint from the Tenants in relation to the lower tenant when this tenant woke the Tenants up due to being locked out of the lower suite. The Landlord states that they called the Tenants several times about complaints from the lower tenant about heat. The Landlord states that they did not know about the other complaints of the Tenants until the Tenants gave notice to end the tenancy.

The Tenants state that the Landlords have failed to return their security deposit and claim return of double the deposit.

### LANDLORDS' CLAIMS

The Landlords state that the Tenants left the unit unclean and damaged. The Landlord provided pictures of the floor of one room that shows pet food and dust balls and state that the Tenants did not similarly clean the remainder of the unit. The Landlord provided an invoice from a cleaner in the amount of \$440.00 with itemized cleaning tasks, including the washing of all walls and doors.

The Tenants state that the unit was entirely cleaned at move-out with the exception of the one area shown by the photo which the Tenant states is a photo of one closet that the Tenants acknowledge they missed. The Tenants provided photos of the unit at move-out.

The Landlords state that the Tenants failed to cut the grass in the backyard and pick up dog feces at the end of the tenancy. The Landlord provided an invoice for this cleaning job and claims the amount of \$35.00. The Parties agreed that the Tenants were not responsible for lawn maintenance during the last few months of their tenancy as the lower tenants assumed responsibility for this job.

The Landlord states that the Tenants dog damaged the weed eater by chewing on it and claim the amount of \$78.39 for its comparable replacement. The Tenants state that at move-in the weed-eater was very old and did not work. The Tenants state that they were unable to locate any replacement of this tool due to its age and therefore bought another weed-eater themselves for the duration of the tenancy. The old weed eater was left in the hall closet of the unit.

The Landlord states that the Tenants failed to turn on the heat sufficiently for the lower tenant and that the Landlord purchased a space heater for the lower tenant. The Landlord claims this cost from the Tenant. The Tenants deny keeping the heat turned down and that it was often hot in the upper unit in order to heat the lower unit.

The Landlord states that the Tenants stained the deck vinyl covering and claim the amount of \$200.00 for cleaning the covering, which the Landlord states may not work on the vinyl. The Tenant states that the photo of the deck stain is actually a coffee spill and that although they did not wipe down the deck covering, they did offer to power wash the deck but the Landlord turned down this offer and said that the Landlords would take care of the deck.

The Landlord states that the Tenants damaged the walls of the living room and two bedrooms by placing large nails in the walls and provided a photo of the sun room. The Landlord also provided a photo of a bathroom wall that was puttied. The Landlord claims an amount between \$200.00 and \$300.00 for plastering and painting the walls, including the bathroom wall. The Tenants state that all the walls were repaired with the exception of the sunroom. The Tenant provided photos of these walls and state further that at move in the toilet paper holder in the bathroom was broken off the wall and that the Tenants puttied and sanded this area themselves at move-in.

The Landlord states that the Tenants damaged the glass stove top and provided a photo of the damaged area. The Landlord states that the stove top was new in 2008, that only one previous tenant was in the unit and that as these tenants were from the Philippines, they did not use the stove top because they did not know how to. The Landlord states that the Tenants therefore must be responsible for the damage.

The Tenants state that the photo is not an accurate portrayal of the stove top possibly due to the lighting used. The Tenants state during the tenancy the Tenants used only a proper stove top glass cleaner. The Tenants state that the stove top was not new and or in great condition at move-in.

The Landlords state that the Tenants or a guest of the Tenants left a cigarette burn on their boat cover. The Landlord states that this boat was parked in the driveway under the deck and that the Tenants likely dropped a cigarette on the cover as the Landlords found a Pall Mall cigarette butt nearby. The Tenants state that they did not drop any cigarette on the boat and that they only smoked occasionally in the back yard. The Tenants state that they do not recognize this particular brand of cigarette.

The Parties agree that the Tenant owes \$106.00 for unpaid utilities.

Analysis

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Further, the Party making a claim for damages to the unit has the burden of substantiating on a balance of probabilities that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that steps were taken by the claiming party to minimize or mitigate the costs claimed.

Given the photo and oral evidence of the Tenants in relation to the cleanliness of the unit at move-out, I find that the Landlords have not substantiated on a balance of probabilities that the Tenants failed to clean the near majority of the unit. As the Tenants did not dispute the unclean closet floor and did not have photo evidence to rebut the cleaning of the fireplace, I find that the Landlords have established a claim for this cleaning and that it would reasonably take no more than one hour for this cleaning. I therefore find that the Landlord is entitled to the amount of **\$25.00**.

Given the Parties agreement that the Tenants were not responsible for the lawn maintenance, I find that the Landlord has not substantiated a claim for the grass cutting. Given that the Tenants did not dispute that dog feces was left on the lawn and given that the Landlord incurred costs to clean this up, I find that the Landlords have substantiated this claim and are entitled to a nominal amount of **\$25.00** for this loss.

Given the lack of a condition report from move-in, and given the Tenants evidence that the weed-eater was not working at move-in, I find that the Landlord has not substantiated that the Tenants dog caused any loss to the weed eater and therefore dismiss this part of the Landlords' claim.

Although the Landlord claims reimbursement for the cost of a space heater to the lower tenant, given the lack of a written lease agreement and considering the competing evidence of the Parties on this point, I cannot find that the Landlord has proven on a

balance of probabilities that the Tenants were responsible for ensuring heat to the lower tenant or that the Tenants failed to provide heat to the lower tenant and I therefore dismiss this part of the Landlord's claim.

Considering the photo evidence of the deck, the lack of a move-in report, the evidence of the Tenants in relation to the stain on the deck, and taking into account the Tenants' undisputed evidence that they offered to power wash the deck but were refused by the Landlord, I find that damages claimed by the Landlord are related to normal wear and tear and not due to the actions or neglect of the Tenants and I therefore dismiss this part of the Landlords' claim.

Considering the lack of a move-in inspection report in relation to the bathroom, I cannot find that the Landlords have substantiated that the Tenants have caused any damage to the bathroom wall. Given the photo and oral evidence of both Parties in relation to the nails on the walls, I find that the Landlord has substantiated minor damage to the walls in the sun room and I find that the Landlord is therefore entitled to a nominal award of **\$100.00** for these damages.

Given the lack of a move-in report and the existence of a previous tenant after the stove top was purchased, taking into account the evidence of the Tenants in relation to the stove top care, and considering the limited evidence offered by the photo, I cannot find that the Landlord has substantiated the claim for damage to the stove-top and I dismiss this part of the Landlords' claim.

Although it does appear that the boat cover was damaged by a cigarette burn, given that the boat was parked outside the unit and that there was more than one tenant living in the house, I find that the Landlords have failed to substantiate that this burn was caused by the Tenant or their guests and I therefore dismiss this part of the Landlords' claim.

As the Parties agree that the Tenants owe the Landlords for unpaid utilities, I find that the Landlord is entitled to the amount of **\$106.00**. The total entitlement of the Landlord is **\$256.00**.

Accepting the Landlords' evidence that the Tenant's failed to inform the Landlord in a timely fashion of the rat infestation, and given the reasonable consideration that boxes of blankets and books stored in an area that is not sealed off from the outside can provide opportunities for such an infestation, I find that the Tenants have not substantiated that any loss they experienced was due to the Landlords' acts or negligence.

Given the undisputed evidence that tar did drip into the unit following the repairs to the unit by the Landlord and that the Landlords knew of this but did nothing to stop the drips, I find that the Tenants have substantiated a claim for the cost of damage to the curtains, the cleaning of the dog paws and inconvenience in the amount of **\$100.00**.

Given the evidence of both Parties in relation to the competing complaints of the Tenants and the lower tenant and accepting that the Tenants did not inform the Landlords of the ongoing nature of the problems until the end of the tenancy, I find that the Tenants have not substantiated that the Landlords were either responsible for any loss of quiet enjoyment or that the Landlords failed to act reasonably in attempting to reduce the conflict and I therefore dismiss this part of the Tenants' application.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Tenants are entitled to return of double the



security deposit plus interest in the amount of **\$1,200.00**. The total entitlement of the Tenants is **\$1,300.00**.

As both the Tenants and Landlords have been successful with their claims, I decline to make an award in relation to the recovery of the filing fee. The Landlord has been awarded \$256.00. The Tenant has been awarded \$1,300.00. Setting off the awards as against each other leaves a balance of \$1,044.00 payable by the Landlord to the Tenant and I grant the Tenant a monetary order under section 67 for that sum.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,044.00**. If necessary, this order may be 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*.

Dated: September 27, 2011.

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Residential Tenancy Branch