



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenants – MNDC, MNSD

For the landlords – MND, MNR, MNSD, MNDC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and the return of the security deposit. The landlords seek a Monetary Order for damage to the unit, site or property, for unpaid rent and for money owed or compensation for damage or loss under the *Act*. The landlords also seek an Order to keep the tenants security deposit and to recover their filing fee.

The tenants served the landlords in person on May 30, 2011 with a copy of the application and a Notice of the Hearing. The landlords served the tenant by registered mail on June 07, 2011 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The male tenant and the female landlord appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

- Are the tenants entitled to recover his security deposit?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to a Monetary Order to recover any unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the security deposit?

### Background and Evidence

Both parties agree that this month to month tenancy started on May 25, 2004. Rent for this unit was \$1,245.00 by the end of the tenancy. The tenants paid a security deposit of \$600.00 on May 25, 2004. No move in or move out inspection reports were conducted at the beginning or end of the tenancy. The tenant testifies they moved from the rental unit on January 31, 2011 and the landlord testifies the tenant did not move out until February 05, 2011.

The tenant testifies he was diagnosed with a medical condition which resulted in him having to take expensive medication. He states he found he could not afford to pay his rent so asked the male landlord if there was any work he could do in the house. The tenant testifies that the male landlord gave him the go ahead to fix up a bathroom in the basement. The tenant testifies that at that time there was just a toilet in the laundry room so he built a room as a bathroom in this area, he also dry walled the hallway and finished up some work on other areas of the basement. He states the deal he had was for the landlord to pay for the materials for this work and his labour costs would be deducted from his rent. He states the landlord agreed that his labour costs would be \$20.00 per hour and he worked for over 2,000.00 hours. The tenant testifies this work took place over a three month period due to his health condition. The tenant testifies that he did not give the landlord the receipts for the materials.

The tenant testifies all his dealings and agreements were with the male landlord and he did not have any discussions about this with the female landlord. The tenants seek to recover

the sum of \$459.10 for materials used to build the bathroom and other work. The tenant states he has limited his claim for the hours worked to 40 hours and seeks to recover the sum of \$800.00 for his labour costs for these hours.

The tenant testifies that the relationship between him and the landlord was good until he told the landlord they would have to move out and asked him to pay for the materials used for the work and his labour could be deducted from any rent owed. He states that after they moved out on January 31, 2011 the male landlord agreed to give him back his security deposit. The tenant states he met the landlord at the house on either January 31, or February 01, 2011. He states the male landlords' attitude was very different towards him. He states he did not return his security deposit and then three or four days later the landlords tried to put his rent cheque for February into their bank. This cheque was returned NSF and the tenant was charged \$42.50 from his bank which he also seeks to recover from the landlord.

The tenant testifies that he gave the landlord written notice to end tenancy on or about December 20, 2010 and he told the landlord they would be moving out on February 01, 2011. He states another letter was sent to the landlord on April 27, 2011 as an attempt to settle this claim and this letter also contained their forwarding address.

The female landlord attending testifies that she did not know if her husband had received a letter from the tenant containing his forwarding address but states she finds it unlikely as they did not know his new address in order to file their own application for dispute resolution. She states they did not know the address until they received the tenants' application on June 02, 2011.

The landlord testifies the tenants did not give written notice to end the tenancy and they did not receive a letter from them in December, 2010 as he has stated. The landlord states the tenant telephoned them on February 05 and told them they had left the rental unit. The landlord states the tenants failed to pay rent for February, 2011 and their cheque was returned to them NSF. The landlords seek to recover this rent of \$1,245.00 from the

tenants. The landlord states as the tenants did not give proper notice to end the tenancy they also seek to recover a loss of rental income for March, 2011 of \$1,245.00.

The landlord testifies that after the tenant informed them he had ended his tenancy they went to the unit and found the tenant had altered the structure of the unit in the basement. The landlord testifies that they had not given the tenants permission to do this work and they were not informed of this work so they could obtain any permits required. The landlord testifies the tenants also did some electrical work in the basement without approval or permits. The landlord testifies that the tenants also built stairs from the deck and a wooden structure on the deck without their permission. The landlord testifies neither her husband or herself ever gave the tenants permission to carry out any work in lieu of rent.

The tenant disputes this and questions why would he spend his own money on these renovations for the landlord when he could not even afford his rent, if he did not have an arrangement with the landlord for this work to take place. The tenant states no building permits would be required as he did not alter the structure of the basement and only minor electrical work was carried out by a certified electrician.

The landlord testifies that on inspection of the house they found it to be tidy but there was a thick yellow substance on the walls. They state they had to pay a company to clean the walls and remove this substance before they could repaint the unit. (Receipt provided). The landlord testifies the tenant smoked in the unit even though he was aware no smoking was allowed. The landlord testifies the tenant had also left a great deal of garbage in and around the unit including garden waste. The landlords seek to recover the sum of \$425.00 for cleaning the walls and removing the garbage to the transfer station. Nine trips were made in total and the landlord was charged the sum of \$167.00 in transfer station fees (receipts provided in evidence).

The landlord testifies that the walls of the unit had to be repainted to restore the nicotine stained walls to a condition that made the unit re-rentable. This cost the sum of \$2,464.00 and included labour and materials. The landlord testifies the unit was last painted before this tenancy in 2004.

The landlord testifies that the carpets were left in a dirty condition with stains and a strong smell of urine on some of the carpets. The landlord agrees the carpets were 20 years old and states the carpets and underlay had to be disposed of and the wooden floors treated for urine in two bedrooms, the front room and the dining room. The carpets were replaced with wooden flooring and the landlord seeks to recover the labour costs for removing the old carpet, treating the floor and laying the wooden flooring to a sum of \$1,788.29. The landlord also seeks to recover costs for the wooden flooring of \$1,825.00.

The landlord testifies the tenants left one of the toilet tanks cracked. She states it was in good condition at the start of the tenancy but agrees it was 30 years old. The landlord seeks to recover the sum of \$108.64 to replace this toilet tank.

The landlord testifies the thermostat cover from the hallway had been ripped off and was missing she seeks to recover the sum of \$24.44 to replace this. The landlord states the hood fan no longer works and this was purchased new in 2004. The landlords seek to recover the sum of \$88.65 to replace this. The landlord testifies the counter tops in the kitchen and bathroom had cigarette burns on them and there were also some burns on the flooring. These tops were replaced at a cost of \$600.00 and the linoleum was replaced at a cost of \$630.10.

The landlord testifies that the total amount of their loss comes to \$10,661.12 however they have reduced their claim to \$5,000.00 to allow for age depreciation and normal wear and tear.

The landlords seek an order to keep the tenants security deposit of \$600.00 and recover their \$50.00 filing fee.

The tenant disputes the landlord's claims. He testifies that he spoke to the male landlord on January 28, 2011 and arranged to look over the house with him. He states he met with the landlord on February 01, 2011 and gave him the set of keys for the house. He states he discussed with the landlord that they had cleaned the house but states the landlord told him he was very disappointed and asked him for his rent. The tenant states he told the landlord

they had moved out but states the landlords still put his rent cheque through on February 03, 2011.

The tenant testifies that when they moved into the house it did look as if the landlords had painted the house with the exception of the bedrooms. He states he did smoke in the house but does not have an agreement with the landlord that states "No Smoking". The tenant states the discolouration on the walls came from the fire place which they had to use when the furnace kept shutting down.

The tenant states the carpets were already in bad shape at the start of their tenancy and no pre-inspection was done of the house. The tenant testifies that they did not leave garbage in the house or garden which would warrant nine trips to the transfer station. The tenant estimates only one trip would have been required.

The tenant testifies he maintained the garden even through it was not in his tenancy agreement and eventually after each year of branches braking off the trees he just left them in the yard as he felt it was not his reasonability to take them to the dump.

The tenant testifies that the landlords did not maintain the house. He states he did what he could to maintain and improve the property and states he cleaned the carpets regularly with his own cleaner and states his dogs have never urinated on the carpets. The tenant states they did not crack the toilet tank. This was an ongoing problem where it always leaked and he had to keep a cup under it to catch the leaking water. The tenant agrees the thermostat did get broken about three years ago but he taped it up and the cover was in place when he moved out. The tenant states the hood fan always worked and they never had any issues with it during their tenancy. The tenant states the countertops were made out of particle board and were rotten. He states they were also about 40 years old. The tenant testifies the house was left in a clean condition and states his photographs support this.

The tenant states they lived in the property for over six years and the previous tenants lived there for five years. The landlord has done little work on the property in all that time and now expects the tenants to pay for their renovations.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for money owed or compensation for damage or loss; I have considered both arguments in this matter and find the burden of proof in this matter falls to the person making the claim. As the tenant claims he did get permission from the male landlord to do this work he must provide corroborating evidence to satisfy the burden of proof. The landlord contradicts the tenants' testimony and states neither her husband nor herself gave the tenants permission to do this work in the basement. Consequently, as the tenants have failed to provide corroborating evidence that they did have permission from the male landlord it is my decision that they have not met the burden of proof in this matter and their claim to recover money owed of \$459.10 for materials and \$800.00 for labour is dismissed.

With regard to the tenants claim for the sum of \$42.50 for an NSF charge made against them by their bank; the tenant claims they gave the landlord written notice to end the tenancy on December 20, 2010 effective for February, 01, 2011. The landlord has testified that they never received any correspondence from the tenants regarding Notice to end the tenancy. The burden of proof again falls to the tenants in this matter and it is my decision that the tenants have not provided any corroborating evidence to show that this letter was written or sent to the landlords in December, 2010. Consequently, the landlords were entitled to deposit the tenants rent cheque for February, 2011 and if the cheque was returned NSF the tenants must bear the bank charges themselves and this section of their claim is dismissed.

With regards to the tenants claim for the return of the security deposit; Sections 23(4), 35(3) of the Act require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenants even if the tenants refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the Act. Consequently, s. 24(2)(a) and s. 36(2)(a) of

the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

The landlord testifies that they did not get the tenants forwarding address in writing until they received his application for Dispute Resolution on June 02, 2011 and states they filed their application to keep the security deposit on June 04, 2011. However as the landlords breached sections 23(4) and 35(3) of the Act they were not entitled to file a claim to keep the security deposit and consequently the tenants are entitled to recover double the security deposit to the sum of **\$1,200.00** plus accrued interest on the original amount of **\$21.23** pursuant to s. 38 (6)(a) and (b) of the *Act*.

With regard to the landlords claim for unpaid rent; as the tenants have not shown that he gave the landlord proper notice to end the tenancy, which in the case would be one clear months notice in writing, I find the landlord is entitled to recover unpaid rent for February, 2011 to the sum of \$1,245.00. The landlord also seeks to recover a loss of income for March, 2011 but has not shown how they have mitigated their loss by attempting to re-rent the unit for March as soon as they were aware the tenants had moved out. I cannot determine from either parties evidence the actual date the tenants did move out as the parties testimony contradicts each other's and neither party has provided any corroborating evidence to show the date the tenants did actually move from the rental unit. Consequently, it is my decision that the landlord is entitled to recover unpaid rent for February, 2011 to the sum of **\$1,245.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damages to the rental unit; I have considered the information contained within the tenancy agreement provided by the tenants. This agreement does not contain a clause that states the tenants must not smoke in the rental unit. However if the tenants do smoke they are required to make good any damage caused by nicotine stains. The landlord has stated the walls were covered in a thick yellow substance and the tenant states this was caused by them having to use the fireplace because the furnace did not work. Having considered these arguments it is my decision that the yellow substance would have been caused by smoking and not from the fireplace which if not working correctly would have caused soot stains on walls and not yellow stains.



Therefore, I uphold the landlords claim for cleaning the walls. The landlord's receipt for this work also contains a costing for the removal of garbage and the cost of cleaning materials. From the landlords evidence it also shows that the tenants did not remove all the garbage from the property therefore I also uphold this part of the landlords claim. The landlord is therefore entitled to a monetary award to the sum of **\$425.00** pursuant to s. 67 of the *Act*.

The landlord also seeks to recover the sum of \$2,464.00 for the labour and materials involved in repainting the walls after they were cleaned. I refer both parties to the Residential Tenancy Policy Guidelines #1 which discusses painting of the rental unit and states: The landlord is responsible for painting the interior of the rental unit at reasonable intervals. As the landlord agrees the unit was last repainted in 2004 it would be reasonable to expect the landlords to have to repaint the unit after a tenancy lasting six years. Consequently, this section of the landlords claim is dismissed.

The landlord seeks to recover the sum of \$167.00 for nine trips to the transfer station to remove garbage and garden waste from the property. The tenant argues that they were not responsible for the garden and eventually decided not to remove anymore garden waste at their own expense for the landlord. The tenant agrees that there was a small amount of garbage left at the property which would warrant at least one trip to the transfer station. I have considered the terms of the tenancy agreement and it does not state that the tenants are responsible for the yard work at the property. The Residential Policy Guidelines #1 does state that generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control. As the tenant argues that the garden waste was from tree prunings and broken branches and the landlord has not shown that an agreement was in place for the tenant to do this work I must limit the amount of the landlords claim for garbage removal. From the evidence provided I do find the tenants did not remove a number of window frames and other garbage from the yard that was garbage not associated with tree pruning's or fallen branches. Consequently, I will

allow a reduced amount for this section of the landlords claim to the sum of **\$130.00** pursuant to s. 67 of the *Act*.

With regards to the landlords claim for staining to the carpet which resulted in the removal of the carpets and underlay, the cleaning of the floors and the installation of new flooring; I have taken into consideration the fact that the carpets were 20 years old and as a carpet has a normal life span of 10 years it is my decision that the landlords claim for new flooring and labour costs will not be upheld as the life of the carpets was beyond its normal life expectancy and the landlord has provided insufficient evidence to show the tenants dogs urinated on the carpets. Therefore this section of the landlords claim is dismissed.

With regard to the landlords claim for a new toilet tank; the landlords argue this was damaged by the tenants, the tenant argue that this was an ongoing problem throughout their tenancy and the toilet would have been at least 30 years old. Again a normal life span of a toilet is deemed to be 15 years and it is my decision that the landlord has provided no evidence to show the toilet tank was cracked due to the actions or neglect of the tenants and the toilet was past its normal life expectancy. Consequently, the landlords claim in this matter is dismissed.

With regard to the landlords claim for a thermostat; the tenant agrees this was broken during the tenancy, consequently I find the landlord is entitled to recover the replacement costs for a new thermostat to the sum of **\$24.44** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for a hood fan; the landlord argues this was no longer worked at the end of the tenancy. The tenant argues the hood always worked and still worked at the end of the tenancy. As the landlord did not complete a move in or move out condition inspection in this matter it is the landlord's word against that of the tenants. In instances such as this the burden of proof falls to the landlords as the person making the claim and when it is a case of one person's word against that of the other that burden of proof has not been met. Therefore, this section of the landlords claim is also dismissed.

With regard to the landlords claim that the tenants also caused cigarette burns in the countertops in the kitchen and bathroom and the vinyl flooring was left ripped and burnt. The burden of proof would also fall to the landlord in these matters and I find that the landlords have provided insufficient evidence to support their claim in these matters and the claim is therefore dismissed.

As the landlord has only been partially successful with their claim I find they are entitled to recover **\$25.00** of their filing fee from the tenants. A Monetary Order has been issued to the landlord. The tenant's monetary award has been offset against the monetary award due to the landlords

Unpaid rent	\$1,245.00
Cleaning the walls, garbage removal and cleaning materials	\$425.00
Transfer station fees	\$130.00
New thermostat	\$24.35
Half of the filing fee	\$25.00
<b>Subtotal for the landlords</b>	<b>\$1,849.35</b>
Less double the security deposit plus accrued interest owed to the tenant	(-\$1,221.23)
<b>Total amount due to the landlord</b>	<b>\$628.12</b>

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim to recover his security deposit. The tenants are entitled to the sum of \$1,221.23 and this amount has been offset against the landlord's monetary claim.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$628.12**. The order must be served on the tenants and is enforceable through the Provincial Court 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 12, 2011.

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Residential Tenancy Branch