



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, to keep the security and pet damage deposits and to recover the filing fee for this application.

The hearing was original scheduled to take place on September 08, 2011. The hearing was adjourned and reconvened on today's date to give the landlord opportunity to add a schedule of parties for all tenants and to ensure all tenants were served with the hearing documents. Service of the hearing documents was done in accordance with section 89 of the *Act* and was sent by registered mail to the tenants. The tenants confirmed receipt of these documents.

Both parties 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

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security and pet deposits?

### Background and Evidence

Both Parties agree that this month to month tenancy started on June 01, 2010. Rent for this unit was \$1,295.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$650.00 on May 12, 2010 and a pet deposit of \$650.00 in October, 2010. The tenancy ended on June 01, 2011 and the tenants provided a forwarding address in writing on April 29, 2011 and again on August 08, 2011.

The landlord testifies she had served the tenants with a Notice to End Tenancy on April 29, 2011 with an effective date of June 01, 2011. A move out inspection was scheduled for May 30, 2011 and two of the tenants took part in this with the landlord. The landlord states the tenants did not agree with the comments on the inspection report and refused to sign it. The landlord states the female tenant also carried out an inspection of her own.

The landlord testifies that on the report it documents damage to the bathtub. This was caused by a chair being used in the bathtub when one of the tenants had broken her leg. The tub was left with scratch marks and had to be re-glazed at a cost of \$408.80. The landlord states she looked at other options but re-glazing the tub was the most feasible option. This also involved the removal of the shower screen which had also been damaged by the tenants due to improper use. The landlord replaced this screen at a cost of \$224.00.

The landlord testifies the bath tub drain was also damaged and had to be replaced at a cost of \$120.47 including parts and labour. The landlord states the red curtains also had to be replaced due to pinhole damage and the white curtains were let with stains. The curtains were replaced at a cost of \$311.94. The landlord also seeks the replacement costs of a toilet roll holder which was new at the start of the tenancy the toilet roll holder had been damaged through misuse and was replaced at a cost of \$88.49 including parts and labour.

The landlord testifies the tenants caused some damage to the walls in the living room and a bedroom. There were nail holes and dents and a chunk of drywall was missing. The landlord states the tenants asked for some paint to patch the walls but they then said they would not do it as it was normal wear and tear. They tenants did paint a wall with

mismatched paint. The landlord states she had to re-paint the walls and seeks to recover \$3.99 for painters tape, \$6.99 for a magic eraser \$5.48 for painting accessories and the landlords labour costs at \$30.00 per hour for 4.30 hours, to a total sum of \$151.46.

The landlord also seeks to recover her gas costs of \$10.00 for multiple trips to the hardware store and her time in making these trips and in having appointments with the bath fitter, Mr Tubman, to meet the plumber, to drive to the store to purchase the shower door and to discuss the job with sales staff. The landlord claims \$30.00 per hour for 8.5 hours to a total amount of \$255.00.

The tenants testify that the move in inspection details the fact that the bathtub stopper did not screw in correctly and this is what caused the damage to the tub drain and was not the fault of the tenants. The tenant agree they did use a chair in the bathtub out of necessity when one of them had broken a leg but they did put felt pads on the feet to avoid any scratches. The tenants testify there were no visible scratches in the bathtub and the landlords' photographs do not show any damage to the bathtub.

The landlord disputes this and states her photographs did not turn out very well. She states she has also included in evidence an e-mail she sent to one of the tenants DR on November 24, 2010 in which she stated she was not happy about the scratches in the bathtub. The landlord also states the new tenants' move in inspection (copy provided) details scratches in the bathtub. The landlord testifies she would not have paid to have the tub re-glazed if it was not scratched and the tenants only put the felt pads on the chair legs after she complained about scratches.

The tenant's testfsiy that they did not damage the shower door by using it incorrectly; They states the landlord did remove this door previously to re-caulk the bathtub and then managed to put it back on at that time.

The landlord disputes this and states an e-mail was sent to the tenants on November 24, 2011 telling them that only one side of the door was supposed to be opened. The landlord

states the shower door frame was not removed when she re-caulked the tub but had to be removed when the bath was re-glazed and could not then be refitted.

The tenants testify the curtains had two small pin prick holes in them. They state they did nothing to cause this and the move in inspection report states the curtains were faded on one side. The tenants testify they do not recall seeing any stains on the white curtain as they were never used during the tenancy.

The landlord agrees the red curtains were faded but states they were only two years old.

The tenants testify the toilet roll holder was broken when they moved into the unit. They state they informed the landlord that it was broken when they informed her that the smoke alarm was not working. This was mentioned on the move in condition inspection. At the time of the move in inspection the tenant's state they did not notice the toilet roll holder was broken so it has not been documented.

The landlord testifies that it is possible that the toilet roll holder was broken but the tenants did not notify her within a week in writing. She states if she is not notified and it is not documented on the move in report then she has to assume the damage was caused by the tenants. The landlord states this is also mentioned in her e-mail sent on November 24, 2010.

The tenants dispute the landlords claim for paint supplies and labour costs for the walls. They testify that the landlord gave them permission to hang pictures and they only used picture nails. They states with regard to the mismatched paint that this is the paint given to them by the landlord and they are not responsible for the colour match. The tenants testify that in the move in condition inspection it does highlight dents and damage to the walls. They tenants state any scruff marks on the walls are deemed to be normal wear and tear.

The landlord states she has no other monetary claim for Money owed or compensation for damage and loss. The landlord does however seek to keep the tenants security and pet

damage despoils in partial satisfaction of her claim and seeks to recover her \$50.00 filing fee from the tenants.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In the matter of the bathtub I have considered the testimony of the parties and the documentary evidence provided. Although the landlords photographs have not come out very clearly I have also taken into consideration her testimony and the e-mail sent to the tenant on November 24, 2010 where the landlord does document that the bathtub is scratched. The move in condition inspection report for the new tenants also documents the tub is scratched. The landlord has also provided invoices for the cost of this work and did notify the tenants that she was unhappy about these scratches in November 2010.

Consequently I am satisfied that the landlord has met the burden of proof in this matter and find she is entitled to a monetary award of **\$408.80**.

With regard to the shower screen the landlord also identified this in the same e-mail to the tenants that they must only use one side and I conclude that the screen would have to be removed including the frame in order to re-glaze the bathtub. Consequently, I find the landlord has established her claim for a monetary award to recover this cost of **\$224.00**.

With regard to the landlords claim that the tenants caused damage to the bathtub drain. The move in condition inspection report does state that this drain was not screwed in correctly therefore I am unable to determine that any further damage was caused by the tenants. Consequently this section of the landlords claim for \$120.47 is dismissed without leave to reapply.

With regard to the landlords claim for two new sets of curtains. The landlord has not provided any corroborating evidence to show that the tenants caused holes in the curtains or staining on the white curtains. The landlord has also not shown that the stains on the white curtains could not be cleaned off in order to mitigate any loss. Consequently, I dismiss the landlords' application for the cost of replacement curtains to the sum of \$311.94.

With regard to the landlords claim for the replace costs of the toilet roll holder. The landlord argues this was caused by the tenants. The tenants argue this was already damaged at the start of their tenancy. The landlord agrees she could have missed this damage when the move in condition inspection report was completed. As the landlord has the burden of proof in this matter to show that the toilet roll holder was damaged due to the actions of neglect on the part of the tenants I find she has not met this burden of proof and an assumption that the tenants caused this damage is insufficient evidence. Consequently, this section of the landlords claim for \$88.49 is dismissed without leave to reapply.

With regard to the landlords claim for damage to the walls; a tenant is entitled to hang pictures in a unit. If the landlord wants the tenant to use a certain type of nail or hook she must put this in writing to the tenants to inform them of her preference. I further find the

move in condition inspection reports does indicate there was already some damage to the walls and stains on a ceiling at the start of the tenancy. A landlord is not entitled to charge the tenants for any damage that is deemed to be normal wear and tear. From the evidence presented I find the alleged damage to the walls would be deemed to be normal wear and tear and some damage was already in place at the start of their tenancy. I further find if the tenants used paint provided by the landlord or a colour swatch provided by the landlord to match the paint colour then they cannot be held responsible if the colour of paint did not match. Consequently, the landlords claim for paint accessories and her labour costs of \$151.46 are dismissed without leave to reapply.

With regard to the landlords claim for the cost for her gas of \$10.00 and her time in going to and from stores and dealing with trades people of \$255.00. The nature of this part of the landlords claim is considered to be the cost of doing business as a landlord and as such she is not entitled to recover these sums from the tenants. This section of the landlords claim is therefore dismissed without leave to reapply.

I further find as the landlord has been partially successful she is entitled to recover half her \$50.00 filing fee to the sum of \$25.00 pursuant to s. 72(1) of the Act.

As the landlord has been partially successful with her claim I find she may also keep **\$657.00** of the tenants security and pet deposits pursuant to s. 38 (4)(b) of the Act and this sum will be offset against her claim.

The remainder of the tenants' security and pet deposits must be returned to the tenants and the tenants have been issued with a Monetary Order for the sum of **\$643.00**.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to retain the sum of **\$657.00** from the tenant's security and pet deposits.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$643.00**. The order must be served on the landlord 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: October 14, 2011.

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Residential Tenancy Branch