



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that on March 23, 2011 the tenants provided a written notice to end this tenancy by April 30, 2011. The parties agreed that this tenancy ended on April 30, 2011. The male tenant (the tenant) confirmed that the tenants received the landlords' dispute resolution hearing package sent by registered mail on August 5, 2011. I am satisfied that the parties served the above documents and their written evidence to one another in accordance with the *Act*.

At the hearing, I noted that I was unable to play a CD audio recording sent by the tenants as written evidence. Since the tenants had not provided equipment to hear this recording, I have not considered the contents of that recording in reaching my decision. Based on the tenant's description of the content of that recording, I find that the recording would be of little relevance to the issues in dispute in this application.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' pet damage and security deposits in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

This tenancy commenced as a one-year fixed term tenancy on April 1, 2010 with a scheduled end date of March 31, 2011. The tenancy continued on a month-to-month basis for the last month of the tenancy until the tenants vacated on April 30, 2011. Monthly rent was set at \$1,900.00, payable in advance on the first of each month. The tenants were responsible for heat and hydro, but the landlords rebated a small portion of the utility charges for a workshop that was not available to the tenants.

The tenants paid a \$950.00 security deposit and a \$150.00 pet damage deposit on February 23, 2010. The parties agreed that the landlords returned \$197.20 of the tenants' pet damage and security deposits on May 21, 2011. The tenants disagreed with the amount retained by the landlords and returned the landlords' \$197.20 cheque to the landlords. The parties agreed that the landlords sent the tenants another cheque for \$667.20 on August 3, 2011 as partial repayment of the tenants' pet damage and security deposits.

The parties agreed that they conducted joint move-in and move-out condition inspections on March 28, 2010 and April 30, 2011, respectively. The tenant agreed that the landlords sent them a copy of condition inspection reports, the contents of which are not at issue in this dispute.

The landlords applied for a monetary award of \$1,005.82, an amount comprised of the following:

<b>Item</b>	<b>Amount</b>
Cleaning	\$180.00
Mirror Replacement	95.80
Landlords' Labour for Mirror Replacement	60.00
Drape Cleaning	163.52
Landlords' Labour for Drape Cleaning	60.00
Landlords' Labour for Identifying Rust Removal Product	45.00
Rust Removal Product	5.89
Broken Lamp	60.61
Front Yard Cleanup	30.00
Wall/Door Repairs	60.00

Landlords' Labour for Pickup and Installation of Broken Lamp	30.00
Landlords' Labour to Repair Shelves	30.00
Landlords' Labour to Assist Cleaner	30.00
Landlords' Labour to clean storage shed	30.00
Landlords' Labour to Pressure Wash Floor Mat	15.00
Landlords' Labour to Repair Shelves	60.00
Replacement of Keys	50.00
<b>Total Monetary Award Requested</b>	<b>\$1,005.82</b>

In their worksheet, the landlords credited the tenants with the following "Total monies, on account towards damage":

<b>Item</b>	<b>Amount</b>
Damage (Security) Deposit	\$950.00
Pet Damage Deposit	150.00
Electrical Meter Reading Credit	103.02
<b>Total Monetary Credits from Tenants</b>	<b>\$1,203.02</b>

The landlords' initial cheque for \$197.20 to the tenants represented the difference between the Total Monetary Award Requested and the Total Monetary Credits from Tenants according to the above calculations. The tenant testified that he was satisfied with the \$667.20 payment made by the landlords to the tenants on August 3, 2011.

At the hearing, the landlords' agent testified that the landlords were seeking a revised monetary award of the \$470.00 difference between their first and second cheques to the tenants plus the return of their \$50.00 filing fee from the tenants.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the evidence presented by both parties, I am satisfied that the contents of the move-in and move-out condition inspection reports are not at issue for the most part.

While the tenant expressed a willingness to compensate the landlords for their “hard costs” (i.e., out-of pocket expenses incurred at the end of this tenancy), the tenant was unwilling to compensate the landlords for the time the male landlord spent repairing and restoring this rental unit to its previous condition.

The tenant also denied the landlords’ claim that the parties had an oral agreement to overlook the requirement that the landlords return the tenants’ security deposit within 15 days of the end of this tenancy or the tenants’ provision of their forwarding address in writing. As such, the tenant asserted that the landlords acted in contravention of section 38 of the Act, which would require the landlords to make a \$1,100.00 payment pursuant to section 38(6) of the Act to the tenants. The legislation would only permit the landlords an extension of time beyond the 15 day period for either returning the tenants’ deposits in full or applying for dispute resolution if there were a written agreement between the parties that would enable the landlords to return only a portion of the tenants’ deposits. Both parties agreed that no such written agreement exists in this case. Since the tenants have not lodged their own application for dispute resolution to obtain a payment from the landlords pursuant to section 38(6) of the Act, I am in no position to consider the tenant’s assertion that any monetary award issued to the landlords should be offset by an amount owed to the tenants for the landlords’ failure to comply with section 38 of the Act. The tenants would need to make their own application for dispute resolution if they are seeking a monetary award for this item.

Based on a balance of probabilities, a careful comparison of the joint move-in and move-out condition inspection reports, the photographic evidence submitted and the testimony of the parties, I find that the landlords have substantiated their entitlement to most of their application for a monetary award for damage and loss arising out of this tenancy. I do so with the following exceptions:

- I reduce the landlords’ eligibility for the costs of cleaning the drapes in this rental unit by 50%. I do so because the only references in the joint move-out condition report that would seem applicable would be two references to curtains that needed cleaning in the kitchen and the utility room. I also reduce the landlords’ eligibility for a monetary award for labour for drape cleaning by 50% for the same reason.
- I reduce the landlord’s hourly rate of pay in this application from \$30.00 per hour to \$20.00 per hour.
- I dismiss the landlords’ application for 1.5 hours of labour associated with sourcing out a rust removing product.
- I dismiss the landlords’ application for ½ hour of labour to pressure wash a mat at the side entrance.

- I dismiss the landlords' application for 1 hour of labour to pick up and install the broken lamp.
- I dismiss the landlords' application for reimbursement for lost keys. I do so as landlords are expected to rekey rental premises at the end of a tenancy.

I make the above-noted adjustments to the landlords' claim for a monetary award as I do not find the landlords have submitted sufficient evidence to demonstrate their entitlement to the amount of time or the hourly wage charged for their work to repair or clean the rental premises.

I find that the landlords are entitled to retain a portion of the tenants' pet damage and security deposits plus applicable interest in partial satisfaction of the monetary award issued in the landlords' favour. No interest is payable over this period. As set out below, I have included the landlords' return of \$667.20 of the tenants' pet damage and security deposits on August 3, 2011 into the calculation of the landlords' monetary award.

As the landlords have been partially successful in this application, I allow them to recover \$25.00 of their filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlords' favour in the following terms which allows the landlords to recover damages and losses arising out of this tenancy:

Item	Amount
Cleaning	\$180.00
Mirror Replacement	95.80
Landlords' Labour for Mirror Replacement	40.00
Drape Cleaning (50% x 163.52 = \$81.76)	81.76
Landlords' Labour for Drape Cleaning	20.00
Rust Removal Product	5.89
Broken Lamp	60.61
Front Yard Cleanup	20.00
Wall/Door Repairs	40.00
Landlords' Labour to Repair Shelves	20.00
Landlords' Labour to Assist Cleaner	20.00
Landlords' Labour to clean storage shed	20.00
Landlords' Labour to Repair Shelves	40.00
Landlords' Return of Portion of Security	667.20

and Pet Damage Deposits	
Damage (Security) Deposit	-950.00
Pet Damage Deposit	-150.00
Electrical Meter Reading Credit	-103.02
Filing Fee	25.00
<b>Total Monetary Order</b>	<b>\$133.24</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 08, 2011

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Residential Tenancy Branch