



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

On December 22, 2011, a Dispute Resolution Officer (DRO) issued a decision on a November 29, 2011 application for review from the tenants regarding an October 27, 2011 decision and Order issued by DRO BD. After considering the tenants' application, the DRO suspended the October 27, 2011 decision and Order pending the outcome of a new hearing ordered by DRO BD.

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent, 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' security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the 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, to make submissions and to cross-examine one another. The male tenant (the tenant) confirmed that the landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door on September 8, 2011. The landlords' representative who attended the hearing (the landlord) confirmed that the landlord received notice of this hearing sent by the tenant by registered mail on January 4, 2012. I am satisfied that the parties received these documents and written evidence from one another in accordance with the *Act* and were prepared to proceed with this hearing.

At the commencement of the hearing, the parties confirmed that this tenancy ended on September 16, 2011 by which time the tenants vacated the rental premises. As such, the landlord withdrew the application for an Order of Possession.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security and pet damage 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

This tenancy commenced initially as a one-year fixed term tenancy on December 1, 2008. At the expiration of the initial term of this tenancy, the tenancy converted to a periodic tenancy. Monthly rent by the end of the tenancy was set at \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$412.50 security deposit and \$412.50 pet damage deposit, both paid on November 17, 2008.

The parties agreed that the landlord and the female tenant participated in a joint move-in condition inspection on November 28, 2008 which led to the landlord's provision of a December 1, 2008 move-in condition inspection report to the tenants. The landlord entered undisputed testimony that he conducted a move-out condition inspection of the premises on September 18, 2011. The landlord entered into written evidence copies of both of these inspection reports. The landlord also entered undisputed oral and written evidence that he handed the tenant a written request to arrange a time for a joint move-out condition inspection on September 14, 2011. He also entered undisputed oral and written evidence that he posted a final notice of inspection request on the tenants' door on September 18, 2011. As some of the tenants' belongings remained in the rental premises at that time and the tenants had not provided a forwarding address, the landlord was uncertain if the tenants intended to return to remove the remainder of their belongings.

The landlords applied for a monetary award of \$2,043.43 for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid September 2011 Rent	\$850.00
Lights and a Ceiling Fan	60.97
Rekeying of locks for both doors	81.76
Dump Fees	15.50
Carpet and Blind cleaning	235.00
Cleaning and Maintenance	800.00

The landlords provided receipts and invoices regarding each of the items requested, other than for the unpaid September 2011 rent.

At the hearing, the tenant testified that his principal disputes regarding the landlords' application involved the landlords' application for reimbursement for light fixtures and the ceiling fan, the rekeying of locks, carpet and blind cleaning, and the cleaning and maintenance charge. The tenant said that he did not dispute the landlords' claim for the dump fees as he agreed that some of the tenants' belongings remained after they vacated the rental unit and the landlords likely did need to take a load to the dump. The tenant initially testified that he believed that the landlords would only be able to claim unpaid rent for 16 of the days in September when the tenants were still in possession of the rental unit. He did not contest the landlords' claim for unpaid rent once he understood that the tenants were responsible for paying rent for all of September 2011. He confirmed that the tenants made no rent payment for that month.

### 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Since the tenants did not pay their rent for September 2011, and only vacated the rental unit after the landlord issued the 10 Day Notice, I find that the landlords are entitled to a monetary award of \$850.00 for unpaid rent for September 2011. By the time the landlords obtained possession of the rental unit, considerable cleanup and repair were necessary, and the premises could not be rented for any portion of September 2011 in order to mitigate the tenants' losses.

I also allow the landlords a monetary award in the amount of \$15.50 for dumping fees, an amount not disputed by the tenant.

With respect to the landlords' claim for rekeying costs for the tenants' front and back doors, the landlord testified that these costs were necessary because the tenants had rekeyed the locks themselves without first advising the landlords. I dismiss this portion of the landlords' claim without leave to reapply as section 25(1) of the *Act* assigns the cost of rekeying locks at the start of a new tenancy to the landlords.

At the hearing, the landlord gave undisputed oral testimony that the only areas of the rental unit that had lighting in the ceiling at the end of this tenancy were in the bathroom and in the entrance way. The landlord applied for a monetary award of \$25.98 to replace lighting and \$34.99 to replace a ceiling fan in the kitchen. At the hearing, the landlord explained those portions of a receipt from Home Depot that applied to the landlords' application for reimbursement of these costs. In doing so, he noted that a bill for \$69.98 was actually for two identical ceiling fans he purchased at that time. He was claiming one-half of this bill.

The tenant did not dispute the landlord's assertion that the lighting and the ceiling fan did need replacement. However, he said that the ceiling fan in the kitchen was at least 10 years old and smoked when they first tried to use it. He said that the tenants tried three times to get the landlord's representative for this property to repair or replace it and never did obtain a resolution of this issue. He also questioned the authenticity of the landlord's receipt and maintained that the ceiling fan was likely ready for replacement by the landlord as a result of normal wear and tear.

The landlord testified that he was uncertain as to the exact age of the ceiling fan in the kitchen that was replaced at the end of this tenancy. He said that the building itself is 60 years old but there was a major renovation inside and out conducted in 1997. Although he could not say with certainty, he suspected that the ceiling fan in question might have been installed in 1997 when the major renovations were undertaken to this building.

When the useful life of a feature within a tenancy is questioned, Dispute Resolution Officers often refer to Residential Tenancy Branch Policy Guideline No. 37. Although there is no specific reference to ceiling fans in that Guideline, the useful life for a light fixture is established at 15 years. As the closest comparison in Policy Guideline 37 to a ceiling fan would seem to be a light fixture, I find that the ceiling fan in the kitchen replaced by the landlord at the end of this tenancy was virtually at the end of its useful life by the end of this tenancy. Consequently, I dismiss the landlord's application for a monetary award for replacement of the ceiling fan without leave to reapply.

As tenants are typically responsible for the replacement of light bulbs in fixtures and this did not apparently occur in this tenancy, I allow the landlords' application for recovery of the losses incurred to replace missing lighting in this rental unit at the end of this tenancy. I find that the landlord is entitled to a monetary award of \$25.98 plus 12% for GST/HST for the replacement of lighting in this rental unit for a total monetary award of \$29.10 for this item.

The tenant did not dispute the landlord's assertion that the carpets and the blinds needed cleaning at the end of this tenancy. The landlord also cited section 23 of the residential tenancy agreement which noted that tenants are responsible for professional cleaning of the carpets and window coverings if they were professionally cleaned prior to the commencement of the tenancy. The inspection report signed by the female tenant at the commencement of the tenancy provided no mention that the carpets or blinds needed cleaning when the tenants first occupied the rental unit. The tenant's principal question at the hearing with respect to this item was his observation that the invoice provided by the landlord was not on the carpet cleaning company's official letterhead. The landlord testified that the carpet cleaning company usually bills his company's head office directly as they do frequent work for his company. He said that it is unusual that he has to request a specific invoice for this work and as a result the carpet cleaning company provided him with the invoice submitted into written evidence by the landlord. I find the landlord's explanation of the lack of a company letterhead on the invoice a reasonable one. I find nothing unusual in either the amounts claimed in this invoice or the tenants' responsibility for this cleaning as set out in the tenancy agreement. For these reasons, I allow the landlord a monetary award of \$235.20, the amount of the invoice submitted by the landlord into written evidence.

The landlord provided a breakdown of the \$800.00 charged by an individual retained by the landlord to clean, repair and paint the rental unit. This individual charged the landlord \$160.00 to clean the rental unit, \$160.00 to remove garbage and items left behind by the tenants, and \$480.00 to repair and paint the rental unit. The tenant once more questioned the authenticity of the invoice provided by the landlord, noting that he could find no record of the trade name of the business that appears at the top of this invoice. The landlord testified that this individual operates a sole proprietorship and, as such, there may very well be no listing of this business as a company.

Based on the joint move-in condition inspection report, the move-out condition inspection report prepared by the landlord, the landlord's photographs, the invoice submitted by the cleaner, and the testimony of the parties, I am satisfied that considerable cleaning and removal of garbage and debris remained at the end of this tenancy. For this reason, I find that the landlord is entitled to a monetary award in the amount of \$320.00 for cleaning and removal of garbage and items left behind at the end of this tenancy.

The parties presented different evidence regarding the circumstances surrounding the tenants' painting of the rental unit in what the landlord described as "non-standard colours." The landlord testified that tenants are informed that if they are given permission to re-paint portions of their rental unit, they must commit to returning the

rental unit to one of three approved colours when they vacate the rental unit or reimburse the landlord to repaint the premises. The landlord entered written and photographic evidence that the tenants had also damaged one of the doors to install a pet door which needed to be replaced. The tenant testified that the landlords' representative did approve their request to paint the rental unit to a pastel colour and they were unaware of any obligation to return the paint to its original colour at the end of this tenancy.

Based on the undisputed evidence regarding repairs necessary at the end of this tenancy, I issue the landlord a monetary award in the amount of \$150.00 to reimburse the landlord for repairs arising out of this tenancy.

In considering the landlords' claim for reimbursement for repainting, I note that the landlord could not identify any specific part of the residential tenancy agreement, any addendum or anything in writing entered into evidence that required the tenants to return any painted rooms to one of the landlord's three standard colours. Although the landlord said that this is well-known to tenants in this building, the absence of anything in writing regarding this "practice" in this building raises questions as to whether there was an actual agreement between the parties regarding the repainting of the rooms painted in non-standard colours by the tenants. While I accept that the tenants may be partially responsible for the cost of repainting, I do not find them totally responsible for this repainting cost.

The landlord also testified that the rental unit was painted shortly before this tenancy began. Residential Tenancy Branch Policy Guideline No. 37 establishes that interior painting has a useful life of 4 years (i.e., 48 months). As this tenancy commenced in December 2008, the landlord would have been expected to have to repaint the rental unit by the end of November 2012. As the landlord had to repaint this rental unit before the start of October 2011, this repainting occurred approximately 14 months earlier than would have been expected under normal circumstances. For this reason, I allow the landlord a monetary award for a pro-rated amount of the repainting costs to reflect that the tenants are responsible for 14/48 of the \$330.00 repainting costs (\$480.00 repainting and repairs - \$150.00 for repairs = \$330.00). This results in a monetary award in the landlord's favour in the amount of \$96.25 (i.e.,  $14/48 \times \$330.00 = \$96.25$ ).

I allow the landlords to retain the tenants' pet damage and security deposits plus applicable interest in partial satisfaction of the monetary award issued in the landlords' favour. As the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee for this application.

Conclusion

I issue a monetary Order in the landlords' favour in the following terms which allows the landlords to recover unpaid rent and damage arising out of this tenancy, to recover their filing fee, and to retain the tenants' pet damage and security deposits:

Item	Amount
Unpaid September 2011 Rent	\$850.00
Replacement of Lighting	29.10
Dump Fees	15.50
Carpet and Blind cleaning	235.20
Cleaning and Maintenance (\$150.00 Repairs + \$96.25 = \$246.25)	246.25
Less Pet Damage & Security Deposits (\$412.50 + \$412.50 + \$1.86 = \$826.86)	-826.86
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$599.19</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.

I dismiss all other portions of the landlords' application for a monetary award without leave to reapply.

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: January 17, 2012

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Residential Tenancy Branch