



# 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 was convened by way of conference call in repose to the landlords application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to keep the tenants security deposit?
- Are the landlords entitled to money owed or compensation for damage or loss under the *Act*?

### Background and Evidence

Both parties agree that this tenancy started on May 01, 2011. This was a fixed term tenancy which was due to expire on May 01, 2012. The tenant moved from the rental unit on July 15, 2011. Rent for this unit was \$1,800.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$900.00 on March 18, 2011.

The landlords testify that at the start of the tenancy there was a visual inspection conducted with the tenant of the unit. At the end of the tenancy another visual inspection was completed with the tenant's mother and friend. During that inspection a number of discrepancies were found in the unit. The landlords testifies that the tenant left extensive nail holes in the walls where she had hung pictures; there were two broken tiles; there was a broken cupboard handle in the bathroom which the tenant informed the landlord her son had accidentally broken; there was a broken door jamb so the lock would not fit; the front of a kitchen cupboard door was broken off, there were chips out of the bottom of the bath tub and a dime sized chip out of the stove top; and a large box of garbage had been left outside. The landlord state the tenant also left a substance like baby powder all over the front door and there was writing left on a wall.

The landlords testifies that the stove and bathtub were put into the unit brand new at the start of the tenancy and they have provided photographic evidence of the condition of the unit at the start of the tenancy and of the alleged damage caused during the tenancy. The landlords have provided an invoice from their repair man for the itemised items on the list excluding the stove and bathtub repair. The more minor repairs on this invoice come to a total of \$350.00. The landlords have also provided an estimate from Sears for the cost of repair to the stove top at \$269.99 plus labour and associated repair costs of \$211.59 and a receipt for the bathtub of \$499.00.

The landlords' testify that the tenant had her utilities in her own name but failed to pay the sum of \$254.33. This bill is dated July, 2011. The landlords' testify that they called

the City and were informed that this bill would be attached to the landlords' taxes in 2012. The landlords also seek to recover the sum of \$15.09 for the registered mail sent to the tenant and their \$50.00 filing fee.

The landlords' testify that at the start of the tenancy they told the tenant to treat the house as if it was her own. The landlords' state they would have hoped by saying this, the tenant would have shown respect for the home. The landlords testify that they received an e-mail from the tenant on September 01, 2011 with her forwarding address and request for the return of her security deposit and they filed their application to keep the security deposit on September 06, 2011 once they were aware of the tenant's new address. The landlord's testify that they had to mitigate their loss and get new tenants in the property after the tenant moved out.

The tenant testifies that she sent the landlord her forwarding address by e-mail on July 28, 2011 and again on September 01 and September 04 with a request for the return of her security deposit. The tenant states she was unable to send her address by mail as the landlords had not provided an address for them on the tenancy agreement.

The tenant testifies that she did inform the landlord of the broken handle in the bathroom and the kitchen drawer and asked the landlords advice concerning how to repair the drawer. The tenant also agrees she did leave a box of garbage at the unit but states she had made arrangements to remove it however the landlord told her to worry about the small details. The tenant states as she had paid rent up to the end of the month and moved out due to a job relocation on July 15, 2011 she could have come back to make the minor repairs. The tenant also states the landlord told her not to worry about painting.

The tenant testifies that her mother and a friend walked around the house at the end of the tenancy with the landlord. The tenant states that the male landlord told her mother that everything was fine and clean. The tenant states her mother told her that the

female landlord was intimidating and was taking photographs of everything. The tenant states she called the male landlord and he told her that everything was fine.

The tenant testifies that she has no idea what happened to the bottom of the bathtub or the stove and this damage was not caused by the tenant during her tenancy as she would have seen the damage when she cleaned the bathtub.

The tenant testifies that she does have an intention to pay her utility bill but accepts that it has not been paid since July, 2011.

The tenant testifies she did treat the rental unit as if it was her own and states she was a good tenant who did her best to leave the rental unit in a good condition at the end of her tenancy.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages; 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 of 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.

It is my decision that the landlords have meet the burden of proof in this matter and despite the tenants arguments that the landlord told her not to worry about the minor damage the tenant has provided no evidence to substantiate her argument. Consequently, I find the landlord is entitled to recover the sum of **\$350.00** for the repairs, **\$481.58** for the damage to the stove plus associated labour costs and the sum of **\$499.00** for the damage to the bathtub.

I further find that the tenant has failed to pay her utility bill since July, 2011 and that the landlords will be held responsible for this bill on their taxes. Therefore I find the landlords are entitled to recover the sum of **\$254.33** from the tenant to settle this bill with the City.

The landlords also claim the cost of the registered mail package sent to the tenant, However there is no provision under the *Act* for a monetary award of this nature and it is deemed to be a cost of doing business as a landlord. This section of the landlords claim is therefore dismissed.

As the landlords have been largely successful with their monetary claim I find they are also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

With regards to the landlords claim to keep the tenants security deposit of \$900.00; The tenant argues that she gave the landlords her forwarding address by e-mail on July 28, September 01 and September 04, 2011 as she did not have an address for the

landlords. The landlords dispute that they received the tenants forwarding address until September 01, 2011. The tenant has provided no cooperating evidence to support her claim that she sent her address to the landlord prior to September 01, 2011 and the landlords filed their application to keep the security deposit on September 06, 2011.

The landlords have applied to keep the security deposit and part of this claim is to offset an unpaid utility bill. As a utility bill falls outside the provision of damages to the unit site or property the landlord is therefore entitled to make a claim in accordance with s. 38(1) of the *Act*. In light of this s. 38(6)(b) of the *Act* does not apply and the tenant is not entitled to double her security deposit.

It is my decision therefore, that sections 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep the tenants' security deposit to offset against the landlords monetary award as follows.

Damages and garbage removal	\$350.00
Damage to stove plus labour costs	\$481.58
Damage to bath tub	\$499.00
Unpaid utilities	\$254.33
<b>Subtotal</b>	<b>\$1584.91</b>
Less security deposit	(-900.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$734.91</b>

### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$734.91**. The order

must be served on the respondent 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: January 09, 2012.

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Residential Tenancy Branch