



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, MND, MNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on December 28, 2011 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for unpaid rent and utilities - Section 67;
3. An Order to retain all or part of the security deposit – Section 38;
4. A Monetary Order for compensation for loss – Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on February 7, 2012 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of double the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Are the Parties entitled to recover their filing fees?

### Background and Evidence

The tenancy began on August 1, 2009 and ended on April 10, 2011. Rent in the amount of \$1,300.00 was payable in advance on the first day of each month and was increased to \$1,329.90 as of March 1, 2011. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$650.00. The Landlord states that the Tenant failed to pay rent for the month of April 2012 and following the service of a notice to end tenancy for non-payment of rent, the Tenants moved out. The Tenants state that prior to the service of the Notice, as a result of a dispute, the Parties had verbally agreed that rent for April 2012 would be reduced to half and that the Tenants would move out of the unit by April 15, 2012. The Landlord claims unpaid rent for April 2012 and lost rental income for May 2012.

No move-in inspection was offered or report completed by the Landlord at the onset of the tenancy. The Landlord supplied photo evidence of the unit at move-out and claims costs to clean and repair the unit.

In relation to the claims for cleaning and repairs, the Tenants state the following:

- Tenants did not clean the carpets at move out or less than 6 months prior to move-out;
- Tenants left the unit somewhat unclean and agree to the costs of the maid service cleaning in the amount of \$235.20;
- Tenants failed to pay the utilities as claimed in the amounts of \$80.05, 93.32 and 48.75;
- Tenants are responsible for cleaning supplies as claimed in the amounts of \$13.36 and 3.36; and
- Tenants left a hole in a closet wall and other small holes on the walls of the unit.

The Tenants state that the additional cleaning costs of \$620.00 claimed by the Landlord as the Landlord's costs for cleaning done by the Landlord is over and above the

reasonably clean state required by the Tenants. The Landlord states that the maid service did not complete sufficient cleaning.

The Landlord states that the carpet cleaning cost claimed requires a reduction to \$165.00 as the Landlord in error included a room not in the Tenant's unit.

The Parties agree that the Landlord provided the Tenants with a new dryer during the tenancy. The Landlord states that the Tenants damaged the dryer door such that its replacement was required and the Landlord supplied a quote for the costs of the replacement. The Tenants state that the dryer door did not work from the onset and that it required slight twisting to open. The Tenants state that the Landlord was informed of this problem on several occasions but failed to repair the door. The Landlord denies that the Tenants informed him of the problem. The Tenants state that the photo evidence of the dryer does not show the damage claimed.

The Parties agree that the dishwasher had continuous operational problems. The Tenants state that the dishwasher failed to drain in the spring of 2010 causing an overflow into the Landlord's lower unit. The Landlord does not deny this incident but states that no damage was left from this overflow. The Tenants state that a few days later the water overflowed from the kitchen sink causing an overflow into the Landlord's lower unit but that the overflow was not as significant as the prior overflow. The Landlord claims \$392.00 for damage to the lower unit from the sink overflow.

The Tenants state that the Landlord harassed the Tenants and severely breached the Tenants' right to quiet enjoyment. The Tenants each supplied statements and oral evidence as well as witness statements and oral evidence in relation to the Landlord's actions. The Tenant supplied a letter from a psychiatrist in relation to the Tenant's experience with the Landlord and resulting depression and anxiety. The Tenants claim aggravated damages of \$5,000.00.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that steps were taken by the claiming party to minimize or mitigate the costs claimed. Given the agreement of the Parties, I find that the Landlord has established a claim for carpet cleaning costs of **\$165.00**, maid service costs of **\$235.20**, utility costs of **\$222.12** and cleaning supplies of **\$16.72**.

Given the lack of a service or repair report for the dryer, considering the Tenant's evidence of working condition with the exception of problems opening the door and noting that damages to the door cannot be determined by the photo of the dryer door, I find that the Landlord has failed to substantiate that the dryer door was damaged by the Tenants to the extent claimed. I dismiss this part of the Landlord's claim.

Given the undisputed evidence of the Parties that the dishwasher had ongoing operational problems, considering that the Landlord did not deny an overflow from the dishwasher prior to the sink overflow, I find that the Landlord has failed to establish that the sink overflow caused damage to the unit to the extent claimed. Accepting that some damage did occur and noting that the estimate provided by the Landlord does not indicate hourly rates, hours required or cost of supplies for the work, I find that the Landlord has established a nominal entitlement to **\$100.00**.

Given the evidence of the Tenant that the Tenant left some damage to the walls and considering the photo evidence of limited damage, I find that the Landlord has substantiated a portion of the estimated costs claimed in the amount of **\$100.00**.

Given the undisputed evidence that rent for April 2012 was unpaid, I find that the Landlord has substantiated a claim for unpaid rent of **\$1,329.90**. As the Landlord ended the tenancy and the Tenants moved out earlier than the Notice required and considering that the Landlord did not supply evidence to support a loss of rental income or evidence

to mitigate such loss, I find that the Landlord has not substantiated a loss of rental income. I dismiss this part of the Landlord's claim. The total monetary entitlement of the Landlord is **\$2,168.94**.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to conduct a move-in inspection or complete a report at move-in, I find that the Landlord's right to claim against the security deposit is extinguished. As the Landlord's claim was extinguished at move-in, I find that the Landlord could not reasonably expect to be successful on an application to retain the security deposit and that the only option for the Landlord was to repay the security deposit and continue with the application for damages and compensation. As the Landlord had obtained the Tenant's address by the date of the application, I find that by not returning the deposit within 15 days of that date, the Landlord is required to pay the Tenants double the security deposit in the amount of **\$1,300.00**.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance. Aggravated damages are awarded where compensation is necessary to take into account distress and humiliation or other serious injury and not to penalize the offending party.

Given the evidence of the Tenants and considering their Witness evidence, I find that the Tenants have substantiated on a balance of probabilities that the Landlord breached the Tenants right to quiet enjoyment. I note however that no dates were provided in the Tenants' or Witnesses' evidence on when the incidents started and how often they occurred. I also note the Tenants' evidence that after December 2010, the Landlord was asked to provide 24 hours notice to attend the unit. Considering this evidence, I find that the Tenant has failed to establish that the Landlord's harassment occurred significantly, frequently or for an extended period of time. As the Tenants claim has merit however and given the letter from the psychiatrist, I find that the Tenant has substantiated that she suffered depression and anxiety as a result of the Landlord's actions and that the Tenants are entitled to compensation in the reasonable amount of **\$500.00**.

Note that the letter from the psychiatrist indicates that the one Tenant came under the care of the psychiatrist sometime in March 2011 and improved following the move-out on April 10, 2011 and considering the above evidence of time frame and frequency, I find that the Tenants have failed to establish serious or long term injury or an entitlement to aggravated damages.

As both Parties have been partially successful with their claims, I dismiss the Parties claims to recovery of the filing fees. As the Landlord has been awarded **\$2,168.94** and the Tenant has been awarded **\$1,800.00**, setting the amounts off each other leaves **\$368.94** owing by the Tenants to the Landlord.

### Conclusion

I grant the Landlord an order under Section 67 of the Act for the amount of **\$368.94**. If necessary, this order may be filed in the Small Claims Court and enforced 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: March 16, 2012.

---

Residential Tenancy Branch