



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNR, MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent; 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 and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The original hearing was adjourned as the landlord had not received the tenants' evidence package. The hearing was reconvened on today's date and both parties confirmed that they have 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

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the tenants security and pet deposits'?

### Background and Evidence

Both parties agree that this tenancy originally started on December 2, 2008 for the upper portion of this home. A new tenancy agreement was entered into on December 01, 2009

when the landlord and tenants agreed that the tenants would rent the entire home including two separate basement suites for the monthly rent of \$3,400.00. Rent was due on the first day of each month. The tenants paid a security deposit of \$1,500.00 and a pet deposit of \$350.00 on November 01, 2008. A further security deposit of \$550.00 was paid when the new tenancy agreement was entered into on December 01, 2009.

The landlord testifies that the tenants rented the two separate basement suites to other tenants and in effect became landlord to their tenants'. The tenants gave notice to end their tenancy and moved from the upper unit on December 01, 2011. One of the basement tenants also moved out around this time however the other tenants did not move out until December 15, 2011 and the rent for that particular unit was not paid for the first half of December, 2011. The landlord seeks to recover the sum of \$350.00 from the tenants as they failed to pay this sum to the landlord and remained as the tenants for this unit until the basement tenants moved out. The landlord states that she did not assume the tenancy for the basement tenants for the first half of December, 2011.

The tenants do not dispute that they failed to pay this rent to the landlord but testify that their tenants were going to remain living in that basement suite after their tenancy ended in the house. Those tenants would then have been responsible to pay the landlord any rent due from December 01, 2011. The tenants testify that they had the utilities taken out of their name and the landlord contacted the remaining basement tenants' and informed them that they would have to have the utilities for the entire house put into their name. As the tenants did not agree to do this they then decided to vacate the rental unit on December 15, 2011.

The landlord testifies that a move out condition inspection was conducted by her agent and it was found that some additional work was required in the upper unit. The landlord states the tenants were given the opportunity to clean and make good any damage to the unit and a second inspection was conducted on December 04, 2011. The landlord testifies that after the second inspection was done she found the carpets were still stained despite the tenants having cleaned the carpets. The landlord states she had her own carpet cleaner come to clean the carpets on December 12, 2011 and these stains were removed. The landlord seeks to recover the cost incurred in having the carpets cleaned again at a sum of \$277.20.

The landlord has provided the invoice from the carpet cleaner and photographic evidence showing stains on carpets.

The tenants dispute the landlords claim for carpet cleaning. The tenants testify that they did clean the carpets as required after all their furniture had been removed from the unit and have provided a carpet cleaning receipt in evidence. This receipt shows the carpets were cleaned on November 29, 2011. The tenants testify that they walked through the unit with their carpet cleaner and there was no evidence of any stains as shown in the landlord's photographic evidence. The tenants question when the landlord took these photographs as they are not dated.

The landlord testifies that the photographs were taken at the time the first inspection was done with the tenants but before the tenants arrived for that inspection.

The landlord seeks to recover the sum of \$1,200.00 for repairs to the walls and painting of the walls. The landlord testifies that the tenants left lots of scratches, holes and nicks in the walls which had to be filled and painted. The landlord testifies she kept the costs down for this work by instructing her painter to only paint the walls that required re-painting. The landlord agrees that she purchased the property in 2005 and has not re-painted the unit prior to this tenancy commencing or during the tenancy.

The landlord has provided photographic evidence depicting the alleged damage to the walls and a ceiling. The landlord points out that the pictures show chips and scrapes on the walls along with crayon marks and peeling paint. The landlord states the damage to the walls goes beyond normal wear and tear. The landlord testifies that the only room that had to be fully repainted was the pink room. The landlord testifies that the new tenant wanted the landlord to paint this room another colour as the new tenant had sons and did not want a pink room but the room had already been repainted pink. The landlord agrees she did not provide any touch up paint for the tenants to use during or at the end of their tenancy.

The tenants dispute the landlord's claims. The tenants refer to the landlord's photographic evidence and the move in condition inspection report. The tenants testify that the inspection

report refers to chips and scratches on the walls in areas shown on the landlord's photographs numbers one, two, three and four. The tenants also refer to the landlords photograph number five showing the TV mounting and state this was already in place. The tenants testify that they do not recognise some of the other photographs provided in the landlord's evidence as they are not clear as to which areas of the upper unit they refer to as the wall colours are the same colour throughout the rest of the house. The tenants refer to photograph number 12 which shows some crayon marks and the tenant's testify that these marks were removed by them after the first inspection and before the second inspection took place. The tenants state that seven people lived in this unit and the landlord must expect some normal wear and tear.

The tenants' testify that the new tenant who moved into the unit has stated that she requested to the landlord that the pink room be repainted another colour but the pink room was not repainted. The tenants testify that they did ask the landlord for touch up paint before they moved out but the landlord failed to provide any.

The tenants' call there witness who is the new tenant that moved into the unit when these tenants' vacated. This witness testifies that she met with the landlord's agent and asked if the pink room could be changed. The witness testifies that she told the landlord her son's father was a painter and could do the work for the landlord. The witness testifies her sons father sent the landlord a quote to paint the pink bedroom and the downstairs but the landlord went with another contractor who the landlord said was cheaper. The witness testifies that her son's father's quote was cheaper as he quoted to paint the entire upstairs and the two bedroom suite offering his labour for free with the exception of the pink room which would have required more work to cover the pink paint.

The witness testifies that she spoke to the landlord's painter who informed the witness that the landlord had decided to only do minimal painting and the touch up paint she wanted the painter to use was flat paint not suitable for interior work as it shows up the nicks and chips. The witness testifies that it did not look as if the pink room had been painted.

The witness testifies that she walked through the unit with the landlord's agent on December 10, 2011 and states the landlords agent told the witness that the carpets would be replaced. The witness testifies that she did not notice any staining on the carpets during this walkthrough. The witness testifies at that time she did notice some minor nicks in the walls but nothing out of the ordinary. The witness testifies that when she moved into the unit she did try to clean some marks from the walls but the paint the landlord had used just came off.

The landlord declines to cross exam this witness.

The landlord seeks to keep all or part of the tenants' security and pet deposit in satisfaction off the landlord's monetary claim and seeks to recover the \$50.00 filing fee.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regards to the landlords claim for unpaid rent of \$350.00; I find the tenants entered into a tenancy agreement to rent the entire house including the two separate basement suite. The sites were rented to other tenants and these tenants became the landlords to the basement tenants. As the tenancy agreement is in these tenants name then these tenants are responsible for the rent. The Residential Tenancy Policy Guidelines #13 states:

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

However, the basement tenants did not pay rent to this landlord and did not therefore enter into a tenancy agreement with this landlord. Consequently I find the tenants are responsible for the unpaid rent for December, 2011 to the sum of **\$350.00**.

With regard to the landlord's claim for carpet cleaning; the tenants' argue that the landlords photographs showing stains on the carpet are not dated so there is no way to determine when these pictures were taken and they could have been taken before the tenants had the carpets cleaned. The landlord argues that the pictures were taken after the tenants had the carpets cleaned and the staining was not removed by the tenants' carpet cleaner. The witness has testified that she saw no evidence of staining on the carpets when she did a walkthrough of the house with the landlord's agent before the landlord had had the carpets cleaned again. When one party's evidence is contradicted by the other party the burden of proof falls to the party making the claim. In this case the landlord has that burden of proof and must provide additional corroborating evidence to show that the carpets were stained at the end of the tenancy. I have considered the arguments put forth and have also reviewed the move out condition inspection report. This report does document staining on the carpets in the stairwell and hall and all three bedrooms. This report has also been signed by one of the tenant JW who agreed the report fairly represents the condition of the rental unit. Consequently, it is my decision that the landlord has met the burden of proof in this matter and is entitled to recover the sum of **\$277.20** for carpet cleaning.

With regard to the landlords claim for repairs and painting of the walls; I have considered both parties evidence and testimony and find the move in condition inspection report, although not completed on an approved form still contains relevant details necessary to show the condition of the unit at the start of the tenancy. This report documents damage to the walls at the start of the tenancy and details picture screws in the small living room wall; loose taping on one corner in the hallway; black gash on a wall in the master bedroom; peeled paint, a gouge and picture screws in the girls bedroom; door frame chipping in the bathroom; nicks, scratches and a white patch on the walls in the boys bedroom; scratches on walls in the office bedroom; chips on walls in the upstairs hallway; and a couple of nicks in the entrance way.

In light of this evidence I find any other wall damage would be reasonable wear and tear for a tenancy of this length. I further find the walls were not freshly painted at the start of the tenancy or during the tenancy and find the landlord did not provide any touch up paint for the tenants after being asked to in order for the tenants to make good any minor damage done during their tenancy. Consequently, I find the landlord has not met the burden of proof to show that all this damage was caused by the tenants that went beyond reasonable wear and tear and this section of the landlords claim is dismissed.

As the landlord has been partially successful with her claim find the landlord may recover half the filing fee to the sum of **\$25.00** from the tenants pursuant to s. 72(1) of the *Act*.

With regard to the landlords claim to keep all or part of the tenants' security and pet deposits as the landlord has been partially successful with her claim I find the landlord is entitled to retain the sum of \$652.20 from the tenants' security deposit. The balance of the security and pet deposit of **\$1,747.80** plus accrued interest on the original deposits of **\$4.62** must be returned to the tenants and a Monetary Order has been issued to the tenants for this amount.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is ordered to retain the sums of:

\$350.00 for unpaid rent

\$277.20 for carpet cleaning

\$25.00 of the filing fee.

The landlord may retain the total sum of **\$652.20** from the security deposit pursuant to s. 38(4)(b) of the *Act*.

A Monetary Order has been issued to the tenants for the balance of the security and pet deposit plus accrued interest on the original deposits to the sum of **\$1,752.42**. 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: April 12, 2012.

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Residential Tenancy Branch