



# 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 response to an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application.

Both landlords and both tenants attended the conference call hearing and all parties gave affirmed testimony and provided evidence in advance of the hearing, all of which has been reviewed and is 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

This month-to-month tenancy began on March 1, 2011 and ended on March 1, 2012. Rent in the amount of \$1,000.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit in the amount of \$500.00 and a pet damage deposit in the amount of \$450.00 from the tenants, all of which is still held in trust by the landlords.

The first landlord testified that the spouse of the landlord told the landlord that a walk-around the rental unit was conducted with the tenants after the tenants had finished moving out. The tenants had returned to clean the carpet and the walk-around took

place at that time, although no move-in or move-out condition inspection reports were completed. The tenants refused to clean the stove and told the landlord that they did not have time to pull out the fridge and stove and clean behind and under the appliances. The tenants were offered that opportunity 2 or 3 times but refused, and the landlord hired a cleaning person and paid \$140.00 for that service. A copy of the invoice has been provided as evidence.

The landlord further testified that the bathroom window mechanism was broken during the tenancy so it wouldn't stay open. The repair person also fixed the light switch in the bathroom which was faulty and rendered it only operable from the breaker. The landlords claim \$134.00 for that repair.

The landlord also testified that the tenants had installed an air conditioner in the bathroom window without informing the landlord, as well as a surveillance camera under the gutter. The landlord told the tenant that the camera could not be on the outside of the house, but the tenant replied that it was there to keep an eye on the tenant's vehicle and that no damage had been caused to the building. The landlord stated that a hole remained on the outside of the house from the installation of the camera about ½ inch in diameter. The landlord bought tube calking for \$7.95, although no receipt has been provided, and the landlord claims \$10.00.

The other landlord testified that when the walk-around was conducted with the tenants, the tenants hadn't wiped the counter. The fridge was pulled out to unplug it and the tenants were told to clean under it, but the tenants stated they didn't have time. The stove was pulled out after the tenants left, and was dirty inside and out. Photographs were taken 2 days later to illustrate the landlord's claim.

The first tenant testified that about 14 hours of cleaning was done on the last day of February. The tenant had to use spray bottles of water to clean because the landlord had the water turned off. The tenant returned on March 1, 2012 and cleaned the carpets.

The tenant also testified that the landlord did not pull out any appliances nor did the landlord ask the tenant to clean anything or mention any damages. The next day, the tenant returned to the landlords' house to get the security deposit as the landlord had instructed the tenant to do, but the landlord then told the tenant that the landlord had 15 days to return it. The tenant went back 15 days later and the landlord stated that \$400.00 was being deducted from the security deposit for cleaning and damage to the bathroom fan and the window.

The tenant further testified that the bathroom window was broken when the tenancy began, and the tenant asked the landlord to fix it because it would come off the tracks when opened. That request was made about a week after moving into the rental unit.

The tenant admitted that a security camera was installed on the outside of the house, but it was cordless and had a hanger. Cable was included in the rent and about 2 months after moving in the cable was changed by the landlord and the cable company put the hold in the wall.

The bathroom fan was actually a humid control sensor. During the tenancy the battery died and the tenant replaced the battery but didn't know how to reconnect it so it was left disconnected.

The other tenant testified that Shaw Cable was installed when the tenants moved in. Two months later, the landlord informed the tenants that Bell Express View would be installed and the company drilled a hole in the wall of the house. The camera was a wireless security camera and the hanger was screwed into the soffit. No damage was done because existing holes were used. The house and vehicle belonging to the tenants were both broken into during the tenancy, which prompted the tenants to get the security camera.

The thermostat control had no instructions and the fan stayed on for the last month of the tenancy. At the end of the tenancy the tenant told the landlord that the tenants didn't know how to re-set it. The tenants looked it up on Google, but there were too many pages.

The parties agree that the tenants provided the landlords with a forwarding address in writing on March 13, 2012.

### Analysis

The *Residential Tenancy Act* states that a tenant must leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. The *Act* also states that a landlord is required to complete a move-in and a move-out condition inspection report in writing and in the manner set out in the regulations, and those reports are evidence of damages. If the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. The testimony of the landlords and the tenants is that neither report was completed. Therefore, I have no discretion but to find that the landlords' right to claim against the security deposit or the pet damage deposit for damages is extinguished.

Although the landlords' right to claim against the security deposit for damages is extinguished, the landlords' right to claim for damages is not extinguished. In order to be successful, however, the onus is on the landlords to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlords made to mitigate, or reduce such damage or loss.

In this case, I do not have the benefit of the move-in or move-out condition inspection reports. In the absence of such evidence, where a tenant disputes damages claimed by a landlord, the test for damages is difficult to prove. The landlords claim that they paid \$140.00 for cleaning the rental unit, \$134.00 for repair to the bathroom window, and \$10.00 for repairing a half-inch hole in the stucco, although tube caulking cost the landlord \$7.95 and no receipt has been provided. The tenants testified that the hole was caused by the cable company, and I find that the landlords have failed to establish elements 2 and 3 in the test for damages. With respect to the bathroom window, the tenants testified that the window mechanism was broken prior to the commencement of the tenancy and the landlords were told about it approximately one week after the tenancy began. That testimony is not disputed by the landlords, and therefore, I find that the landlords have failed to establish element 2 of the test for damages. With respect to the landlords' claim for cleaning the rental unit, the tenant testified that about 14 hours was spent cleaning on the last day of February. The water was turned off by the landlord and the tenant had to use spray bottles for water to complete the cleaning. The tenant also testified that the fridge and stove were not pulled out for inspection and the landlords have not disputed that testimony. Therefore, I find that the landlords have failed to satisfy elements 2 and 4 in the test for damages. I further find that the landlords have failed to establish that the rental unit was left in a state that was beyond normal wear and tear, and the landlords' application for a monetary order for damages must be dismissed.

Having found that the landlords' right to claim against the security deposit or pet damage deposit for damages was extinguished by the landlords' failure to complete a move-in condition inspection report, the landlords ought to have returned both deposits to the tenants. The *Act* states that the landlords had 15 days to return the deposits in full to the tenants from the date the tenancy ended or the date the tenants provided a forwarding address in writing. If the landlords fail to do so, the landlords are required under the *Act* to pay the tenants double the amount of such deposits. The tenants

provided a forwarding address in writing on March 13, 2012. The landlords made a claim against the security deposit on March 15, 2012, but the right to do so had already been extinguished. Therefore, I must order the landlords to return double the amount of the deposits to the tenants. The landlords currently hold a security deposit in the amount of \$500.00 and a pet damage deposit in the amount of \$450.00. Therefore, I must order the landlords to pay to the tenants \$1,900.00.

### Conclusion

For the reasons set out above, the landlords' application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,900.00.

This order is final and binding on the parties and may be enforced.

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: May 31, 2012.

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Residential Tenancy Branch