



# 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 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 landlord and tenant 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.

### Preliminary Issues

From the evidence provided I find a previous hearing took place on March 12, 2012 for the tenant's application for the return of double the security deposit and a monetary order was issued in favour of the tenant. The landlord has now applied to keep the security deposit.

*Section 77* of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the Dispute Resolution Officer that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. The

landlord's application in this matter concerns the landlords request for an order to retain the security deposit is therefore dismissed as this matter has already been determined in the previous hearing.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on August 14, 2009. This started as a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. The tenancy ended on November 30, 2011. Rent for this unit was \$1,300.00 which was lowered to \$1,250.00. Rent was due on the 1<sup>st</sup> day of each month.

The landlord testifies that the tenants failed to leave the rental unit in a condition that was suitable to re-rent the unit. The landlord's agent testifies that the unit was left so dirty that it took the landlords agent and the landlord's son 60 hours to clean the unit and to carry out repairs and painting of the unit. The landlord seeks to recover the sum of \$1,200.00 for 60 hours work at \$20.00 per hour.

The landlord's agent testifies that the unit had been painted prior to this tenancy commencing and the tenants left many holes, scratches and gouges in the walls. The tenants had filled some holes with an unknown substance that could not be sanded and there were patches of discoloured paint. The landlord seeks to recover the sum of \$200.00 for the paint.

The landlord's agent testifies that the toilet had also been damaged. This toilet had been new at the start of the tenancy. The toilet tank had been left with a crack inside which could not be repaired and there were yellow stains around the toilet. The landlord

testifies that the laminate in the bathroom was also damaged by the tenants and was peeling around the edges. The landlord seeks to recover the sum of \$200.00 to replace the toilet and flooring.

The landlord's agent testifies that the tenants had damaged the counter top in the kitchen. The landlord's agent testifies that it appeared as if the tenants had used the counter top for cutting things as it was full of knife marks. The landlord seeks to recover the sum of \$75.00 for a replacement countertop.

The landlord testifies that the tenants damaged the microwave oven. The oven was left black inside and kept sparking. The landlord suggests that the tenants put a metal object in the microwave which has caused it to spark. The landlord testifies that this microwave was new at the start of the tenancy.

The landlord seeks to recover the sum of \$5,400.00 in loss rental income as the unit could not be re-rented until April 15, 2012. The landlord's agent testifies that due to the condition the rental unit was left in and the amount of work required making the unit re-rentable the unit could not be advertised for rental for two months and then due to the time of year it took another two months to rent.

The landlord testifies that he could not afford to have the work done by a third party so his son and daughter had to do the work for the landlord.

The landlord calls their witness who is the landlord's son in law. The witness testifies that at the end of the tenancy the landlord asked the witness to go and have a look at the rental unit and take photographs. The witness testifies that the unit was left in an appalling condition. There was visible dirt on the walls, there was rotten food left in the kitchen, the counter tops had been hacked up, the laundry room was a mess, there were scratches and gouges in most of the walls, the light switches were dirty, the baseboards were gouged and cut and the paint was chipped, the bathroom was disgusting, filthy dirty with urine stains on the floor and a broken mounting on the toilet,

there was also a burn mark on the bathroom counter top, the bedrooms had damage on the walls and the window sills were extremely dirty, The floors were sticky and dirty and the carpets had not been vacuumed. In the den there were gouges in the walls, the carpet was left filthy and the sliding door tracks were so dirty it was hard to close the doors. The witness also testifies that the tenants had used a substance like toothpaste to fill the holes in the walls and they had taken the shower curtain and rail.

The witness testifies that at the start of the tenancy the unit was fresh and clean.

The tenants decline to cross examine this witness.

The tenants' testify that the landlord failed to do a move in or a move out condition inspection report of the unit at the start and end of the tenancy. The tenants testify that they cleaned the unit at the end of the tenancy and had always kept the unit clean as they have a young child. The tenant testifies that the landlord did a walk through inspection with the tenants at the end of the tenancy and did not raise any concerns about the unit.

The tenants question when the landlord's photographs were taken as they are undated and state the landlord had told them that he had had a previous tenant in the unit who had caused damage to the unit. The tenants testify that the unit was not in a good condition at the start of their tenancy and the walls were patchy. The tenants' testify that the photographs provided only show normal wear and tear in the unit and also show that the unit had not been freshly painted at the start of their tenancy.

The tenants' testify that they did not damage the toilet and the toilet was not new at the start of their tenancy. The tenants state that the landlord's photographs so not show any damage to the toilet and the landlord has provided no receipts for a new toilet either at the start or end of their tenancy. The tenants also dispute the landlord's claims that the bathroom floor was damaged as the landlord photographs do not show any damage to the floor.

The tenants' testify that in January, 2012 they called the landlord about the return of their security deposit. The tenants' testify that the landlord told them that he had no money to pay them their security deposit. The tenants then filed an application to recover double their security deposit. This application was successful and the landlord was ordered to pay the tenants double their deposit. The landlord was given a copy of the Order but then the landlord filed his application for damages. The tenants suggest that this is in retaliation for the tenants receiving a monetary order.

The tenants dispute all aspects of the landlords claim; the tenants testify that there was no damage to the counter, the walls, the bathroom or the microwave oven. The unit was old when the tenants rented it and as they needed to move into the unit a hurry they accepted it as it was.

The tenants also dispute the landlords claim for a loss of rent. The tenants' question why the landlord waited five months to make a claim and state they are not responsible for the landlord's inability to re-rent the unit.

The landlords agent cross examines the tenants and asks them why the landlord left the tenants some touch up paint if the unit had not been painted prior to their tenancy. The tenants reply that the landlord did leave some touch up paint but state they did not know when the landlord had last painted their unit as it was not fresh paint.

The tenants testify that the landlords e-mail provided in evidence from a person giving a quote for painting the unit states that this person quoted \$700.00 to clean the walls and repair holes and paint. The tenants question how the landlord or his agents took 60 hours to do this same work.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness.

With regard to the landlords claim for damages and for money owed or compensation for damage or loss; 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 or 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.

With regard to the landlords claim of \$1,200.00 to clean the unit, to repair and paint the walls and to replace the toilet; the landlord has provided some undated photographs showing some minor cleaning required in the unit and some minor damage to the walls. These photographs do not provide a date when they were taken nether do they show the level of cleaning that the landlord has claimed there was in the unit or the damage to the toilet, the flooring in the bathroom, the counter top or the microwave. I further find the landlord has provided no evidence to show the actual cost of replacing the flooring, toilet, microwave or countertop or receipts showing that the toilet and microwave were new at the start of the tenancy.

Without a move in and a move out condition inspection report signed by the parties I am unable to determine what damage, if any, was caused by the tenants during the tenancy and when it is one persons word against that of the other than the burden of proof is not met.

Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. The landlords have also not shown that the tenants have damaged the rental unit or property beyond normal wear and tear.

Consequently the landlord has not meet the burden of proof as required under the test for damage and loss claims and the landlords claim for damages and cleaning is dismissed.

As the landlord has failed to meet the burden of proof for damages I find there is insufficient evidence to show that any loss of rent incurred by the landlord is the tenants' responsibility. Consequently this portion of the landlords claim is also dismissed.

As the landlord has been unsuccessful with this claim I find the landlord must bear the cost of filing his own application.

### Conclusion

The landlord's application is dismissed in its entirety 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: June 18, 2012.

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Residential Tenancy Branch