



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF, MND, MNDC, MNR

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$1950.00, which represents return of double the \$950.00 security deposit plus recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$5,000.00 for damages and cleaning, and a request for recovery of the \$50.00 filing fee.

### Tenant's application

### Decision and reasons

This tenancy began on November 1, 2010 and at that time the tenant paid a deposit of \$950.00.

This tenancy ended on April 30, 2012, and the tenant served the landlord with a forwarding address in writing by registered mail that was mailed on May 22, 2012, and signed for on May 24, 2012.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get written permission from the tenants to keep the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit and did not apply for dispute resolution to keep any or all of tenant's security deposit within the time limit required. The tenant has not given the landlord any written permission to keep the security deposit.

This tenancy ended on April 30, 2012 and the landlord had a forwarding address in writing by May 24, 2012 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlords must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$950.00 and therefore the landlords must pay \$1900.00 to the tenant.

I also order recovery of the \$50.00 filing fee.

Therefore the total amount I have ordered in the tenants claim is \$1950.00

#### Landlord's application

#### Background and Evidence

The landlords testified that:

- Utilities were not included in the tenancy agreement, and the tenant has failed to pay utilities for the rental unit.
- The tenant also caused damage to the rental unit and left the rental unit in need of significant cleaning.
- Carpets in three bedrooms were badly stained and smelled of urine.

- All the trim in the house was stained yellow, they believe by the dogs.
- The tenant had painted some rooms and done a poor job and they had to be repainted.
- Many the baseboards were damaged, and some outside siding panels were damaged.
- There were broken light covers.
- Linoleum in the bathroom was scratched and there were broken tiles in the kitchen.
- The stove drawer was damaged, the dishwasher was filthy, and the basement tub was plugged from tenants cleaning painting supplies in the tub.
- They have provided a letter from their realtor in which the realtor states that the condition of the unit was in really good condition when the tenant moved in.

They are therefore requesting a monetary order as follows:

Utility bills outstanding	\$1251.00
Repaint the trim in the house	\$800.00
Paint for the interior of the house	\$258.79
Dispose of carpet, underlay, wood and garbage (dump fees)	\$116.00
Cleaning	\$336.00
Supplies and tools	\$547.13
Damaged baseboards and siding panels	\$348.88
Replace broken light covers	\$97.40
Repair bathroom floor and kitchen tiles	\$44.80
Repairs stove, dishwasher and basement tub	\$50.00
Filing fee	\$50.00
Total	\$5000.00

The tenant testified that:

- The tenancy agreement supplied by the landlord for today's hearing is not the original, and you will notice that the landlord has not supplied a signature page. In the original tenancy agreement all utilities were included.
- If utilities were not included why has the landlord not asked for any utilities for the whole two years of the tenancy, and now claims utilities are owed at the end of the tenancy.
- This rental unit was in very poor condition when she moved in, and she caused no damage to the rental unit except for breaking the thermostat.

- The carpets in the rental unit were in such poor condition when she moved in that they had to leave a window open because of the strong urine smell.
- They did do some painting in the rental unit, however the unit needed painting when they moved in as the paint was in very poor condition.
- The letter from the realtor does not state that the unit was in good condition when she moved in, it states that the unit was in good condition when the landlords purchased it, two years prior to her moving in. By the time she moved in the unit was in very poor condition.
- She is therefore requesting that the landlords full application be dismissed other than the cost of replacing the thermostat.

### Analysis

It is my finding that the landlords have not met the burden of proving that the tenant was required to pay utilities at this rental unit.

The landlords have not supplied a signed tenancy agreement, and therefore it is just the landlords word against the tenants as to whether or not utilities were included in the tenancy agreement. Since the burden of proving a claim lies with the applicant, in this case, the landlords have not met that burden.

It is also my finding that the landlords have not met the burden of proving that the tenant caused damages to this rental unit, other than to the thermostat. No move in inspection report was done for this rental unit and therefore again it is just the landlords word against the tenants as to the condition of the rental unit when the tenant moved in and therefore again they have not met the burden of proving that the tenant caused damages.

The landlords have argued that the realtor has sent a letter stating that the unit was in good condition; however that letter states that the unit was in good condition in 2008 when the landlords purchased the unit, and does not state the condition of the unit when the tenant moved in.

I also deny the claim for painting, because again since there is no move in inspection report, there is no evidence as to the condition of the paint at the beginning of the tenancy.

It is my finding that the landlord has shown that the tenant left the rental unit in need of cleaning, however the landlord has not supplied any receipt for cleaning of the rental

unit claiming that he paid cash. In the absence of a receipt I am not willing to issue any monetary order for cleaning.

I will allow a portion of the landlords claim for removal of garbage however, as the photo evidence clearly shows a significant amount of garbage was left behind.

I will not allow the full amount for garbage removal however because landlords have testified that a large portion was the removal of carpets, underlay, and wood, which would not be the responsibility of the tenant

I allow \$30.00 for garbage removal.

I allow \$22.38 for replacing the thermostat.

I order that the landlords bear the cost of the filing fee, as I have only allowed a very small portion of their claim.

### Conclusion

I have allowed the tenant's full claim of \$1950.00.

I have allowed \$52.38 of the landlord's claim, and the remainder of the landlord's claim is dismissed without leave to reapply.

I have therefore set off the \$52.38 against the tenant's claim of \$1950.00 and have issued an order for the landlords to pay \$1897.62 to the tenant.

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: August 20, 2012.

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Residential Tenancy Branch