



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MND, MNR, MNSD, FF  
Tenants: MNSD, OLC, FF

### **Introduction**

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord 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 the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and all three tenants attended the conference call hearing and all parties gave affirmed testimony.

The landlord's application only named one of the three tenants and the tenants' application names all three tenants. The landlord applied to amend the landlord's application, which was not opposed by the tenants, and the landlord's application was amended accordingly. The style of cause in this Decision has been set out to comply with the tenants' and the landlord's amended applications for dispute resolution.

The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service were raised during the 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 unpaid rent or utilities?

- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Are the tenants entitled to a monetary order for return of all or part of the pet damage deposit or security deposit?
- Have the tenants established that the landlord has failed to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The parties agree that this tenancy began as a fixed term tenancy on June 1, 2011 to expire on May 31, 2012. The tenancy then reverted to a month-to-month tenancy which ended on June 30, 2012. Rent in the amount of \$1,600.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On May 20, 2011 the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement was provided for this hearing.

The rental building is a duplex and the landlord owns one side. The landlord's side contains a rental unit in the lower level, and this rental unit which consists of 2 levels. The tenants share a laundry room.

The parties also agree that a move-in condition inspection report was completed with the landlord and all three tenants present at the commencement of the tenancy and a move-out condition inspection report was completed with the landlord and two of the tenants present at the end of the tenancy. A copy of the inspection report was provided for this hearing, and one form has been used to record the in-going and out-going condition.

The parties agree that the landlord received the tenants' forwarding address in writing on June 30, 2012.

The landlord testified that the water bill was shared between these tenants and a tenant residing in the lower unit, and the tenancy agreement states, "utilities are shared with lower tenants." The tenants would normally receive a portion of the bills from that tenant directly, however payments fell behind during the last month of that other tenant's tenancy. The landlord reimbursed the tenants for that shortfall by way of a rent reduction of \$400.00 in June, 2012. The landlord knew that the tenants were having difficulty collecting from the tenant in the lower level and the landlord sent the tenant a text message asking for prompt payment to the tenants. The landlord had the water bill put in the tenants' names in June but did not specify which year.

The tenants departed without paying the final bill in the amount of \$906.20. A copy of the bill was provided for this hearing and the landlord pointed out that \$501.10 is an overdue amount. The bill is dated July 6, 2012 and the landlord testified to receiving it a few days prior to July 17, 2012 and paid the bill. The landlord claims \$906.20 from the tenants.

The landlord also testified that the tenants only returned 2 of the 4 keys to the rental unit when departing. New tenants were moving in on June 30, 2012, and the landlord had to change 2 dead bolts and 2 passage locks. The landlord claims \$70.25 for that cost and provided a receipt to substantiate the amount.

The tenants left several light bulbs burned out and the battery to the smoke detector was dead at the end of the tenancy. The landlord claims \$42.64 for the replacement costs as against the tenants and provided a receipt to substantiate the amount.

The landlord also claims \$150.00 for cleaning the rental unit and referred to the landlord's evidentiary material, being a copy of a Home Depot receipt with a handwritten note on it as a receipt for cleaning. The note contains a brief description of cleaning and the first names of 2 female persons the landlord testified were the cleaners.

The landlord also testified that the blinds in the rental unit were broken at the end of the tenancy and the landlord claims \$28.81 for replacement. A copy of the receipt has been provided and the landlord testified to purchasing identical blinds as were in the rental unit at the commencement of the tenancy.

The landlord further testified that the new tenants found bed-bugs in the rental unit, which was confirmed by an exterminator retained by the landlord. The exterminator sprayed twice and advised that the bugs had been there for about 2 months as evidenced by dead adults. The landlord left a message for the owner of the other side of the duplex stating that the exterminator wanted to inspect that unit, and if there were any problems to let the landlord know. The owners are known to each other, and the landlord did not receive any calls back so assumed no bugs had been found. There was no evidence of bugs in the middle floor or the lower floor of the landlord's side of the duplex, only on the upper floor, which is where the bedrooms of the rental unit were located. A copy of a letter from the pest control company was provided for the hearing and it states that inspections on July 23 and August 9, 2012 revealed that the bugs were found in all three bedrooms upstairs and estimates infestation to have been there for at least 2 months, and that the number of bugs found indicate that the infestation was not brought in by the new tenants. The landlord claims \$408.80 for extermination as against the tenants.

The first tenant testified that the hydro was in his name and he was owed money for that for the last 6 months of the tenancy. The tenant was owed \$425.00 and the landlord did not offer to reduce the rent, the tenants reduced the rent.

The tenant is not disputing that the water bill is owed, but is disputing the amount.

The second tenant testified that \$618.20 of the water bill is owed to the landlord by the tenants, and \$306.99 is owed by the tenant in the lower level. For 6 months there were 5 people residing on that side of the duplex, 3 in the upper level and 2 in the lower level. The parties divided the bills accordingly. The tenant does not dispute owing a portion to the landlord, but does dispute owing the entire bill. The landlord knew that the tenants had difficulties collecting from the tenant in the lower level. The tenants remained reasonable, but communication with the landlord became impossible, and the landlord refused to return the tenant's calls.

The tenant further testified that not all lights worked in the rental unit when the tenants moved in. The landlord added things to the move-out inspection report after it was completed by the parties. Some boxes in the form were left blank, and the landlord added "D" for dirty after the inspection, and the landlord didn't provide the tenants with a copy of the report until 3 weeks after the inspection. The entire inspection took about 8 minutes. During the inspection the tenants agreed to the landlord keeping \$150.00 of the security deposit for cleaning.

The tenant also agrees to the landlord's claim for the lock replacement.

The tenant disputes the landlord's claim for blinds. The blinds were very old and the cords were worn at the commencement of the tenancy, and the tenant stated that the condition at the end of the tenancy is normal wear and tear.

The third tenant testified that the landlord's lack of attention to assisting to collect the portion of the utilities from the tenant in the lower level was frustrating. It was an on-going issue and the landlord's conduct was poor and unprofessional.

### Analysis

With respect to the tenants' assertion that the landlord did not provide a copy of the report to the tenants until 3 weeks after the inspection took place, the landlord has not disputed that testimony, and the *Residential Tenancy Act* states that:

**36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The regulations state that:

- 18 (1) The landlord must give the tenant a copy of the signed condition inspection report
  - (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
  - (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
    - (i) the date the condition inspection is completed, and
    - (ii) the date the landlord receives the tenant's forwarding address in writing.
- (2) The landlord must use a service method described in section 88 of the Act [*service of documents*].

In the circumstances, I find that the landlord did not comply with the *Act*, and the landlord's right to claim against the security deposit for damages is extinguished. The landlord's right to claim against the security deposit for unpaid rent or utilities is not extinguished. The amount of the landlord's claim for utilities exceeds the amount of the security deposit held in trust.

Further, the consequence for failing to comply with Section 38 of the *Act*, by failing to return the security deposit or apply to keep it within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, is that the landlord must reimburse the tenant double the amount of the security deposit. The parties agree that the landlord received the tenants' forwarding address in writing on June 30, 2012 and the landlord's application was filed with the Branch on July 13, 2012. Therefore, I find that the landlord is not required to reimburse the tenants double the amount of the security deposit as provided in Section 38 of the *Act*.

With respect to the utility bill, I accept that the landlord paid the amount of \$906.20. I also accept that the tenants had difficulty in collecting a share from the tenant in the lower level of the rental building, which was a condition of the tenancy agreement. The

landlord knew of that difficulty, and I accept the testimony of the parties that the landlord did little about it other than sending a text message to the tenant in the lower level asking him to cooperate. One of the tenants testified that \$618.20 of the bill is owed by them, and the balance of \$306.99 is owed by the tenant in the lower level. The tenant also provided an explanation of the calculation used to determine the amount, which was not disputed by the landlord. I refer to *Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises*, which states that where such sharing of utilities exists, if a tenant does not pay the appropriate share, the landlord will be responsible for paying that tenant's share. Although I am not entirely bound by the Policy Guideline, I find it reasonable in the circumstances. I therefore find that the landlord is entitled to recovery of \$618.20.

Although the landlord's right to claim against the security deposit for damages is extinguished, the landlord's right to make a claim for damages is not extinguished. However, in order to be successful in a claim for damages, the onus is on the claiming party 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 other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

The *Act* also states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear.

The tenants do not dispute that some of the keys to the rental unit were not returned to the landlord, and I find that the tenants are indebted to the landlord the sum of \$70.25 for lock replacement.

The tenants have not disputed burned out light bulbs or that the battery to the smoke detector was dead at the end of the tenancy, although one tenant stated that some bulbs were burned out at the commencement of the tenancy. The condition inspection report does not mention burned out bulbs at the commencement of the tenancy, and the regulations to the *Residential Tenancy Act* states that the report is evidence of the condition of the rental unit. If the parties did not check all the lights during the move-in condition inspection, the parties must assume the responsibility of the consequences. I therefore find that the landlord has established a claim in the amount of \$42.64.

I have reviewed the move-in and move-out condition inspection report, and with respect to the tenants' assertion and that the landlord changed the report after it had been signed by the parties, I find that the only consequence if that were true would be with respect to cleaning the rental unit, and the tenants do not dispute that they consented to the landlord keeping \$150.00 of the security deposit for cleaning in any event. Therefore, I find that the landlord has established a claim in that amount for cleaning.

I find that the landlord's claim for blind replacement is a minimal cost, and the landlord testified that identical blinds as in the rental unit at the commencement of the tenancy were purchased after the tenancy ended. The landlord did not provide any testimony or evidence of the age of the blinds at the commencement of the tenancy, and I find that the tenant's testimony that the damage is normal wear and tear to be reasonable. Therefore, I find that the landlord has failed to establish element 2 in the test for damages or that the tenants failed to comply with the *Residential Tenancy Act* by leaving a rental unit undamaged except for normal wear and tear. The landlord's application for the cost of blind replacement is hereby dismissed.

With respect to the landlord's claim in the amount of \$408.80 for extermination, I have read the letter of the pest control company and I accept that an infestation of bed-bugs was evident and the rental unit was treated accordingly. I also accept that the bugs were not brought in by the new tenants. However, bed-bugs infest populated areas, not areas that may be unclean or contain pets. Regardless of when the pests arrived, I find that the landlord has failed to prove that they were caused by any negligence of the tenants or that the evidence proves that the tenants failed to comply with the *Act* or the tenancy agreement. The landlord has not, in my opinion satisfied element 2 in the test for damages.

In summary, I find that the landlord has established the following claims as against the tenants:

- \$618.20 for the utility bill;
- \$70.25 for lock replacement;
- \$42.64 for bulbs and smoke detector battery;
- \$150.00 for cleaning;

for a total of \$881.09.

The landlord's claims for blind replacement and bed-bug extermination are hereby dismissed without leave to reapply.

The tenants are entitled to recovery of the \$800.00 security deposit, which I find should be set off from the monetary amount awarded to the landlord.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees for the cost of these applications.

The landlord currently holds \$800.00 in trust, and I order the landlord to keep that amount in partial satisfaction of the claim, and I grant the landlord a monetary order for the balance of \$81.09.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$800.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$81.09 as against the tenants, jointly and severally.

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: September 21, 2012.

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Residential Tenancy Branch