



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application 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 *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and the tenants agent, the landlord, Council for the landlord and a witness for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine 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

This hearing was originally held on March 22, 2012. A Decision and Monetary Order were rendered on April 05, 2012. The tenant applied for a review of the Decision and Order on the grounds that the landlord had not served the tenant with the original hearing documents and the tenant did not attend that hearing. The tenant's application for a review was successful and this hearing has been reconvened to deal with the landlord's application on review.

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

The parties agree that this month to month tenancy started on October 01, 2009 and ended on January 31, 2010. Rent for this unit was previously established at \$700.00 per month and was due on the first day of each month in advance.

Council for the landlord states that the tenant was late with their rent and a 10 Day Notice to End Tenancy was served on December 02, 2009. The tenant advised the landlord that they would vacate on January 31, 2010. The landlord testifies that the tenants did not attend the move out inspection although the landlord and his wife waited in all day in their neighbouring unit. Council for the landlord states the landlord called the tenant but the tenant did not return the calls so the landlord completed the move out inspection in the tenant's absence.

Council for the landlord states that during the inspection the landlord found damage to the rental unit. Council for the landlord states that there are two units which are separated by a door with a deadbolt. The tenant lived in the lower unit and her brother lived in the upper unit. Council for the landlord states that the tenants did not ask the landlord for the key to the deadbolt but removed the lock and cracked the door. The landlord seeks to recover the sum of \$256.82 which includes the costs for the deadbolt and the unit keys as the tenant also failed to return these to the landlord at the end of the tenancy. Council for the landlord states that the door left cracked could not be repaired as it was not a solid door and the landlord seeks to recover the sum of \$101.07

to replace the door and the landlords labour for one hour at \$35.00 to paint the door. Filed in evidence is the copy of the invoice for the keys and door and a photograph of the door.

Council for the landlord states the tenant left the carpet dirty and stained in two bedrooms and the living room. The landlord seeks to recover the sum of \$156.45 and has filed in evidence a copy of the invoice for carpet cleaning on which the carpet cleaner has stated the carpets required deep cleaning and photographic evidence of the carpets.

Council for the landlord states the tenant did not clean the rental unit at the end of the tenancy and the landlord hired a cleaning company to clean all areas of the unit which took them three hours. The landlord seeks to recover the sum of \$105.00 for this work. Filed in evidence are the invoice for this work and photographs of the rental unit.

Council for the landlord states the landlord found the tenant had broken the screen clips for the window. The landlord seeks to recover the sum of \$3.36 to replace these and has provided in evidence a copy of the receipt for replacement clips.

Council for the landlord states the landlord found that the drain plug was missing for the bathtub. This is identified on the move out inspection report. Council for the landlord states that in order to get a replacement drain plug the landlord had to purchase a drain plug kit at a cost of \$43.66. The landlord has provided a copy of this invoice in evidence.

Council for the landlord states the landlord had to replace a smoke detector as the tenants had removed it and the landlord found it broken. The landlord seeks to recover the sum of \$17.72 and has provided a copy of the invoice in evidence.

Council for the landlord states the tenant damaged a plastic slide guide for the by-fold closet doors. The slide guide was missing and has been mentioned in the move out

inspection report. The landlord seeks to recover the sum of \$9.67 to replace this and has provided a copy of the invoice in evidence.

Council for the landlord states the landlord had to repair holes left in the walls by the tenant. The tenancy agreement states that the tenant is not to use any nails to hang pictures. The landlord seeks to recover the sum of \$29.89 to repair the holes and paint the walls. Filed in evidence is a copy of the tenancy agreement showing this clause under term five on page four.

Council for the landlord states that the tenant has caused damage to the side of the front lawn. The tenancy agreement notifies the tenant that they are not to park on the driveway and the tenant did so in contravention of the agreement. The tenants were given a Notice to stop parking on the driveway on December 31, 2009 but the tenant continued to park there. The landlord seeks to recover the sum of \$93.89 for grass seed and top soil of \$23.89 and \$70.00 for the landlord's labour of two hours to remedy this damage to the lawn. The landlord has provided an invoice for the seed and top soil and photographic evidence of the tenants car parked on the drive way and lawn and the damage to the lawn.

Council for the landlord states that due to the amount of work required in the rental unit the landlord was unable to re-rent the unit for February and March, 2010. Council for the landlord states the work took longer to rectify because the landlord has a disability to his right hand which it took the landlord longer to complete the repair work. The invoices provided show the work was carried out in February and March, 2010. The landlord seeks to recover a loss of rental income for February and March to the sum of \$1,400.00.

The tenant's agent disputes the landlords claim. The tenant's agent testifies that the landlord did not provide any notice to the tenant about attending a move out inspection and the tenant has not signed an inspection report. The tenant's agent testifies that no inspection report was completed at the start of the tenancy with the tenant and again

the tenant has not signed a move in inspection report. A copy of the tenancy agreement and a move in inspection report were given to the tenant in the middle of November, 2009 after the tenant moved into the unit on October 01, 2009.

The tenant's agent testifies that the tenant moved out a few days before the end of January, 2010 and when the tenant returned to the rental unit with her brother who rented the upper unit on January 31, 2010 they found the door to her brother's unit had been locked with a chain. They went to the landlord's home to again access but received no answer so they were able to enter through another door to the tenant's unit. The tenant's agent testifies that they had concerns about the landlord so they took a video of this unit and the tenant's brother's unit and used a daily newspaper throughout the video showing the date the video was taken.

The tenant's agent testifies that the unit was cleaned on January 26, 2010 and they kept trying to get hold of the landlord to carry out a move out inspection. The tenant's agent testifies that their video shows the door between the units to be in perfect condition and there had not been a deadbolt fitted when they moved into the unit as they had rented the two units as a whole house for the tenant and her brother.

The tenant's agent refers to the video taken and testifies that there are no stains or mess shown on the carpets. The carpets had been vacuumed and left clean and they have no idea when the landlord took his photographs. The tenant's agent testifies that the landlord used these same photographs in his evidence against the tenant's brother when he filed a claim for damages against him.

The tenant's agent testifies that the unit was left in a clean condition at the end of the tenancy as shown by the tenant's video evidence. The tenant's agent also disputes the landlord's claim for screen clips and states these were not damaged during the tenancy. The tenant's agent disputes the landlord's claim for a drain plug and testifies that the drain plug had been left in the bathroom however they did not video this. The tenant's

agent also disputes the landlords claim for a smoke detector and claim that it was left in the unit in working order although their video does not show this.

The tenant's agent testifies that their video does show that the closet doors are all in good condition and they dispute the landlords claim that they damaged the slide guide on a closet door. The tenant's agent also disputes the landlords claim for nail holes in the walls. The tenant's agent testifies that the tenant was only living in the unit for four months as the tenant had sold her house and was having a house built. The tenant did not hang any pictures on the walls and if the landlord found nail holes they were not caused by the tenant.

The tenant's agent agrees that the landlord's evidence shows the tenants car parked on the driveway and lawn. The tenant's agent does however dispute the landlords claim for damage as the tenant was not given sufficient time to rectify the damage before the landlord carried out the repair. The tenant's agent also disputes that this work would have taken the landlord two hours to put down a little top soil and some grass seed.

The tenant's agent disputes the landlords claim for a loss of rental income for two months.

Council for the landlord states that the landlord submits that the tenant was given a copy of the move in condition inspection report when the tenant moved in and was asked to go through it and amend it if necessary and then sign it. Council for the landlord agrees that the tenancy agreement has been signed but not dated. Council for the landlord submits that the tenant's video may have been taken after the property had been cleaned and repaired when it was put up for sale in April, 2010. Council for the landlord submits that there had been a number of open houses from April to September, 2010 in which the tenants could have gone to the unit and taken the video when only a realtor was present and the newspaper could have been obtained a few months later to use when the tenant took the video.

The landlord accepts that the tenants did return the keys but the landlord did not find them until February 08, 2010 after the landlord had changed the locks because the tenants put them in a mail slot used for junk mail. The landlord testifies that he did not think to look there until a neighbour told the landlord that they had seen the tenants at the front door. The landlord testifies that he did put a chain on the front door on January 31, 2010.

Council for the landlord states that the invoice from the carpet cleaning company clearly shows that the carpet required shampooing due to staining and the tenant's video is dark in places and does not show the staining.

The landlord calls his witness. The witness is the landlord's wife and testifies that she was home all day on January 31, 2010 and her home is side by side with the rental unit. The witness testifies that no one came to her home on January 31, 2010 and the landlord had gone out to buy a lock but was home for the rest of the day.

The tenant declines to cross examine this witness and states that their position is that they knocked on the landlords door and no one answered so that is why they took a video of the rental unit.

### Analysis

With regard to the landlords claim for damage to the unit the landlord has the burden of proof in this matter that the tenant caused damage to the door, the screen clips, the smoke alarm, the closet doors slide guide, the walls and the lawn. The landlord also has the burden of proof that the tenant failed to return the keys at the end of the tenancy and failed to clean the rental unit. The landlord also has the burden of proof that the tenant left the carpets in the rental unit in a stained condition and removed the drain plug in the bathtub.

I have carefully considered all the evidence before me I find on a balance of probability that the tenants did attend the rental unit on January 31, 2012 and took the video of the rental unit on that day. I find it highly unlikely the tenant would have returned to the rental unit sometime between April and September, 2010 to video the rental unit in the presence of the landlord's realtor without being detected, as suggested by Council for the landlord or that the tenants would have had the foresight to bringing a daily newspaper dated January 31, 2010. The tenant's video also shows the door chained up which the landlord testified he put on the door on January 31, 2010 and shows the tenants putting the keys through the landlord's door. If the landlord later found the keys on February 08, 2010 the tenants must have been at the property to deposit the keys as shown in their video before the landlord suggests the tenants were there between April and September, 2010. Consequently, I have considered both parties documentary evidence showing the rental unit. In the landlords evidence package containing photographic evidence some of the photographs are timed and dated and some are not. The tenant's video shows the tenant with a daily newspaper showing the video was taken on January 31, 2012.

The landlords photographs show areas in the rental unit that are unclean, they show a slight crack in a door and a missing dead bolt, stains on a carpet, marks on a wall, the tenants car and damage to the lawn(undated photographs) and other issues of which the landlord has not claimed. However the tenant's video shows the rental unit in a clean manner, no damage to a door or dead bolt, no staining on the carpets, no marks on the wall, a front door chained up and it show the tenant putting the keys through the landlord's mail slot.

As the landlord has the burden of proof in this matter and when one persons testimony and evidence contradicts the others then the landlord is required to provide additional corroborating evidence to support his claim. The landlord has provided a copy of the condition inspection report but as this is unsigned by the tenant and the tenant contradicts the landlords submissions that the tenant was given a copy of this report to go over and sign at the start of the tenancy and the landlord has provided no evidence



to show that the landlord gave the tenant at least two opportunities to attend a move out condition inspection as stipulated under s.35(2) of the *Act*; I can place very little weight on the landlords documentary evidence concerning these reports that they are factual and accurate as the tenant was not given the opportunity to attend and did not sign the reports agreeing to the condition of the rental unit at the start and end of the tenancy.

The landlords witness testified that she was at home all day on January 31, 2012; however the landlords witness is the landlord's wife and an interested party in this matter. It is irrelevant if the landlord or his wife were at home all day as they were not at the rental unit to see the tenants there on that date and the fact remains that the landlord did not give the tenants at least two opportunities to attend an inspection at the start or end of the tenancy.

The tenant does agree that her car was parked on the driveway and lawn and although the tenant disputes the time it took for the landlord to repair this damage or that the tenant was given the opportunity to repair the lawn. I find the landlord is entitled to compensation for this damage particularly as the landlord did send the tenant a breach letter about parking on the driveway in December 2009 and the tenancy agreement notifies the tenant that parking on the drive way is not permitted. Consequently, I find the landlord is entitled to monetary compensation for this damage. I find however that the area of lawn damaged is small in comparison with the time the landlord has claimed to rectify the damage. Therefore, I limit the landlords claim to **\$23.89** for the grass seed and top soil and **\$35.00** for the landlord's labour.

The reminder of the landlords claim for damages, cleaning, carpet cleaning, and replacement locks and keys has not been proven as I find the tenants video evidence to be convincing and consistent with the tenants agents testimony that the rental unit was left in a reasonably clean and undamaged condition as required under s. 32 of the *Act*.

In the matter of the landlords claim for loss of rental income for two months; as the landlords evidence does not support the landlords claim that the tenant left the rental

unit in such a condition that it would have taken the landlord two months to clean and affect repairs I find the landlord is not entitled to monetary compensation for a loss of rental income and I deny the landlord claim for the sum of \$1,400.00.

As the landlord has been only marginally successful with his claim I find the landlord must bear the cost of filing his own application.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$58.89. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

**NOTE: THIS DECISION REPLACES THE DECISION ISSUED ON APRIL 05, 2012. THE PREVIOUS DECISION IS SET ASIDE IN ACCORDANCE WITH S. 82(3) OF THE ACT.**

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: October 22, 2012.

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Residential Tenancy Branch