



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: MND, MNR, MNSD, MNDC, FF  
Tenants: MNDC, FF

### **Introduction**

This hearing was convened by way of conference call in response to applications made by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; 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 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

During the first day of the hearing, the tenant stated that the landlord's evidence package had been provided to the tenant the day prior to the hearing. The tenant applied to adjourn the hearing, and the landlord was not able to provide any evidence that the tenant was provided with the evidence prior to the day before the hearing. The hearing was consequently adjourned to provide the tenant with an opportunity to review the landlord's evidence.

The named landlord, hereafter referred to as, "the landlord," attended on behalf of the landlord company on both days of the hearing, and gave affirmed testimony. The landlord called one witness who also gave affirmed testimony. One of the tenants attended on both days as well and also gave affirmed testimony. The parties provided evidence in advance of the hearing, and were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of the applications or notices of hearing in this matter were raised.

Issue(s) to be Decided

- Have the landlords established a claim as against the tenants for a monetary order for damage to the unit, site or property?
- Have the landlords established a claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- 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?
- Have the tenants established a claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2011 and was to expire after one year, however the tenancy ended during the 1<sup>st</sup> week of June, 2012. Rent in the amount of \$2,100.00 per month was payable in advance on the 1<sup>st</sup> day of each month. On September 27, 2011 the landlords collected a security deposit from the tenants in the amount of \$1,050.00 as well as a pet damage deposit in the amount of \$1,050.00. A copy of the tenancy agreement was provided for this hearing.

The landlord further testified that the tenants were served with a notice to end tenancy for repeated late rent and the landlord was successful in obtaining an Order of Possession. The tenants applied for a review of that decision but moved out of the rental unit sometime between June 1 and June 13, 2012. The tenants were not successful with the review Application and didn't pay rent for the month of June, 2012. The landlord claims \$2,100.00 for unpaid rent. Further, the application for a review hearing resulted in the landlords not being able to show the rental unit and due to the owner's financial situation, the rental unit was taken off the rental market and the owner decided to sell. The rental unit is a house and yard which also includes an in-ground pool.

The landlord further testified that the tenants left without paying utilities in the amount of \$615.97. To substantiate that testimony, the landlord has provided a copy of an email from the owner to the landlord property manager stating what utility bills are outstanding. The email states that the first is a quarterly invoice covering the period of Oct 1, 2011 to Dec 31, 2011 in the amount of \$237.60. The next item in the email

shows another quarterly invoice covering the period of January 1, 2012 to March 31, 2012 in the amount of \$224.37. The next item is an estimate of utility usage for two months ending on May 31, 2012 in the amount of \$154.00. Copies of the bills were not provided. During cross examination, the landlord was asked if the first invoice for utilities was over-billed, to which the landlord responded that he does not recall.

The landlord also testified that the tenants had a dog and the flooring in the master bedroom by the patio door is scratched and stained. The landlord has provided an invoice in the amount of \$618.45 for lifting and dumping of the carpet and pad, and installing new carpet. Also provided is an invoice for the purchase of new carpet in the amount of \$2,357.54. The landlord does not know the measurement of the bedroom, however, the landlord is claiming \$1,800.00 as a rough estimate.

The landlord further testified that about 3 weeks prior to eviction, an inspection of the rental premises was conducted and it was noticed that the lawns required cutting and the yard was not maintained. The tenants said they weren't going to maintain the yard until the eviction dispute was dealt with. The landlord provided a receipt in the amount of \$187.00 which is dated June 21, 2012 and states, "weed & prune, remove debris from overgrown property." Also provided are two handwritten notes dated July 1, 2012 and July 3, 2012 which the landlord stated are notes that the owner wrote to keep track of expenses. The first states, "\$180.00 cash paid to J for weeding & cleaning up garden & dump trip – removal of debris." The other states, "\$100.00 cash paid to D (Painter) for weeding & cleaning up garden; dump trip; removal of garden debris." The landlord testified that the quote received for landscaping was in the amount of \$1,050.00 but the only documents are the owner's notes and the receipt for \$187.00.

The landlord also testified that there was minor damage to the property, such as a dented or scratched baseboard, a broken yard solar light, a scratched pole in the pool shed, and a door was missing. Also, a vacuum outlet for the central vacuum cleaning system was broken as well as a light switch. The landlord referred to two more handwritten notes. The first states, "July/2012 Irrigation control panel – burnt out! \$120.00 approx; purchased from Home Depot – receipt lost." The other states, "June 13 – 30 2012; J & J worked at least 50 hours weeding, mowing to clean up yard @ \$20/hr; \$1,000.00." The landlord provided a photograph and receipt in the amount of \$275.59 for replacing the crown moulding and testified that it appears that the tenants' dog chewed or scratched it.

The landlord further testified that the rental unit was last painted in 2006, and the tenants left the rental unit requiring repair to wall damage and painting and provided an invoice dated July 16, 2012 in the amount of \$5,150.88. The invoice also shows \$3,879.00 for painting, \$525.00 for painting baseboards; \$195.00 for painting windows

and \$551.88 for HST, for a total of \$5,150.88, which the landlords claim as against the tenants.

The tenants also left holes in the pool cover, however the only receipt provided by the landlord to substantiate the cost is in the amount of \$14.55. That receipt is from a pool and spa service and indicates the purchase was for a pool part but the landlord did not know what the part was.

The landlord also testified that the broiler rack for the oven, the broiler pan and oven warmer rack were missing, as well as the microwave rack. Another handwritten note from the owners was provided which states, "June 2012 Andersen Appliances quoted \$85 Broiler pan, rack & insert assembly; \$49 oven warmer rack; \$49 microwave rack; \$183 + HST (all missing from appliances)." The landlords claim those amounts from the tenants.

The landlord also testified that the tenants did not return the keys to the rental unit or to the mailbox, and the owner felt safer re-keying the locks. An invoice in the amount of \$200.92 has been provided which includes 5 keys for \$8.40, a callout charge of \$55.00 and 8 locks rekeyed at \$14.00 each and lubrication of the front lever for \$4.00. The landlord also testified that the move-out condition inspection report confirms that the keys were not returned and the landlords claim \$200.92 from the tenants.

The landlord also provided several photographs of the rental unit and testified that one shows the rubbish left at the side of the house and the full garbage bins. The landlord testified that the photographs were taken on June 13, 2012 but they show a date of July 22 because that is the date they were printed. The invoice provided includes another property not related to this tenancy, and the landlord stated that the claim is \$145.00 for clean-up and waste removal, plus \$10.57 for dump fees and HST, for a total of \$176.48.

The landlord's witness is a property manager employed by the same property management company as the landlord. The witness testified to being present on June 13, 2012 when the move-out condition inspection was completed. The witness arrived first and the parties all went into the rental unit together. The tenant participated in the move-out condition inspection.

The witness further testified that the tenant who attended this hearing is difficult and the witness has told the staff of the property management company not to deal with the tenant, but to refer the tenant to the witness.

The witness also stated that the water bill had a sewer charge on it that wasn't the responsibility of the tenant. The witness does not know if a bill was ever sent to the tenants because the witness is not the property manager for this particular rental unit. The witness testified that it is common practice for tenants to sign a waiver with the utility company so that utilities can be placed in the name of the tenant, but these tenants did not sign the waiver.

The tenant testified that 3 or 4 rentals were inspected with the landlord, who is a property manager. The tenant filled out an application for rental of this rental unit and gave the landlord cheques. The parties talked at that time about the fireplace and a socket outside by the kitchen bay window. The landlord called a maintenance person who said the fireplace was unsafe and had to be turned off. The landlord was notified who responded that the owner couldn't afford to fix it.

The tenant further testified that the notice to end tenancy issued by the landlord was disputed. The landlord left a voice mail for the tenants stating that the tenants had kids and it wouldn't be good if the police arrived, so the tenants vacated the rental unit on June 1, 2012.

The tenant further testified that a maid service was hired and the whole house was cleaned and photographs were taken on June 2, 2012.

The tenants have parted ways and the tenant stated that the other tenant slammed a picture into the light switch in a fit of rage.

The tenant also testified that the lawn was cut at the end of May, 2012 and the house was move-in ready at the end of the tenancy. The tenant was present for the move-in condition inspection report, and when he arrived for the move-out condition inspection, the landlord and owners were already in the house. No one did an actual walk-through of the rental unit.

During the tenancy, the landlord wouldn't open the pool and the tenants had it done. The tenants had contacted the landlord in mid-May, 2012. Further, it took the landlord 2 or 3 weeks to send a company to turn on the underground sprinklers and the tenants watered by hand until then.

The tenant further testified that a utility bill was never received from the landlord, only and email.

The tenant also testified that the owners had the tenants evicted so they could move back into the rental unit without the requirement of serving the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant claims \$5,000.00 for loss of quiet enjoyment by the landlord's constant harassment; yelling and threatening evictions about not paying utilities and the tenants had told the landlord that the bill was wrong.

### Analysis

Firstly, with respect to the landlord's claim for unpaid rent, I accept the testimony of the landlord that the landlords were successful in obtaining an Order of Possession, and the tenants applied for a review of the decision resulting from that hearing. The tenants did not pay rent for the month of June, 2012 and moved from the rental unit on June 13, 2012. This was a fixed term tenancy, and if the landlord intended to claim more than the month during which the tenants resided in the rental unit the landlord would be required to prove mitigation. However, I find that the landlords had a contract with the tenants, and the landlords are entitled to receive rent for the entire month during which the tenants resided in the rental unit.

With respect to the landlord's claim for unpaid utilities, I note that the notice to end tenancy issued by the landlord does not include a request for the payment of utilities. The tenant testified that the landlords never provided a copy of the bills, but an email request for payment. The tenant and the landlord's witness also referred to the first utility bill being incorrect, and the landlord has not provided a copy of any of the bills, but only a copy of an email from the owner to the landlord property manager. In order to be successful in a claim that is disputed by the other party, the onus is on the claiming party to prove such a claim. I cannot accept that the landlords paid \$615.97 for utilities that the tenants were responsible for based on an email request for that amount of money, and therefore, the landlord's application for a monetary order for payment of utilities must be dismissed.

With respect to damaged carpet in the master bedroom, I have reviewed the move-in/move-out condition inspection reports, and am satisfied that the evidence they provide include damage. The landlord has provided an invoice which is for replacement of more than the bedroom carpet, and the landlord has claimed \$1,800.00 as what was described by the landlord as a rough estimate. I am not satisfied that the landlord has established the cost to replace the bedroom carpet, nor that the landlord has established the age of the existing carpet at the beginning of the tenancy. In order to be successful in such a claim, the onus is on the landlord to establish the value of the damage caused by the tenant, and any such award must not put the landlord in a better

financial position than if the damage had not occurred. The landlord's claim for carpet replacement is dismissed.

With respect to landscaping and yard repair costs, the landlord has provided 2 documents to prove the amount of the claim, one being a handwritten note in the amount of \$100.00 for weeding and cleaning up the garden, another for \$180.00 for weeding and cleaning up the garden as well as a dump trip for removal of debris. The landlord testified that the notes were written by the owner but no receipts were given by the workers. A handwritten note does not stand as evidence of an amount paid and the claims must be dismissed. Another receipt in the amount of \$187.00 has been provided for weeding, pruning and removing debris from the property. A tenant is not expected to prune trees, but is required to leave a rental unit reasonably clean except for normal wear and tear. I have reviewed the move-in/out condition inspection reports and the photographs provided by the landlord and accept that the tenants have not left the yards reasonably clean, and I find that the landlords have established a claim in the amount of \$187.00. The landlord also testified that the quote received for landscaping was in the amount of \$1,050.00 but the only documents are the owner's notes and the receipt for \$187.00.

I accept the landlords' claim for crown moulding replacement based on the move-in/move-out condition inspection reports and the photographs provided. I find that the landlords have established a claim in the amount of \$275.59.

With respect to the minor damage noted by the landlord, a broken yard solar light, a scratched pole in the pool shed, and a missing door, a broken vacuum outlet for the central vacuum cleaning system, and broken light switch, I find that the handwritten notes are not evidence of the value of any of the items. The landlord's claims for the Irrigation control panel for \$120.00 and for weeding, mowing to clean up yard @ \$20/hr; \$1,000.00 are also dismissed.

With respect to wall damage and painting, I find that the landlord has failed to establish that the tenants ought to pay for painting the rental unit. The landlord testified that it had last been painted in 2006 but provided no evidence of that. Further, I refer to Residential Tenancy Policy Guideline 40 which contains a table for depreciation of elements commonly found in a rental unit. The guideline states that the useful life of interior paint is 4 years.

With respect to the pool cover, the only receipt the landlord has provided is from a pool and spa company in the amount of \$14.55 and states that it is for a pool part. The landlord was not able to establish what that pool part was and I am not satisfied that the landlord has shown any other parts the tenants may have damaged. I am not satisfied

that a new pool cover cost is \$14.55, and the landlord has submitted whatever receipts the landlord and owner could locate but in this case was not able to explain.

With respect to the missing racks in the appliances, I find that the landlord has failed to establish that the tenants took them or their value. The application is dismissed.

With respect to re-keying locks to the rental unit, I accept the undisputed testimony of the landlord that the tenants did not return the keys to the rental unit at the end of the tenancy, as evidenced by the move-in/out condition inspection report. The landlords have established the amount of that claim, being \$200.92.

With respect to dumping fees and rubbish removal, I have reviewed the photographs provided by the landlord and I find that the tenants are responsible for removal. The tenants did not do so before vacating the rental unit, and I find that the landlord has established a claim in the amount of \$176.48.

With respect to the tenant's claim for damages for loss of quiet enjoyment, the tenant testified that the owners had the tenants evicted so the owners could move back into the rental unit without the requirement of serving the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant provided no evidence to substantiate that testimony. The tenant also testified to other issues, such as the fireplace not working and slow or no responses from the landlord respecting sprinklers and the pool, and the tenant claims \$5,000.00 for loss of quiet enjoyment by the landlord's constant harassment; yelling and threatening evictions about not paying utilities and the tenants had told the landlord that the bill was wrong. In the circumstances, I find that the tenants have failed to establish any claim as against the landlords. There is no evidence to support the testimony other than a disagreement over a utility bill. The tenants' application is dismissed.

In summary, I find that the landlords have established a claim in the amount of \$2,100.00 for unpaid rent, \$200.92 for keys/locks, \$187.00 for weeding and yard care, \$275.59 for crown mouldings, and \$176.48 for rubbish removal. The tenant's claim in the amount of \$5,000.00 is hereby dismissed without leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of the application.

The landlord currently holds \$2,100.00 in trust which I order the landlord to keep to be set off from the amount awarded to the landlord, and I grant a monetary order in favour of the landlord for the difference in the amount of \$939.99.



Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit and pet damage deposit in the amount of \$2,100.00 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$939.99.

The tenant's application is hereby dismissed without leave to reapply.

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: November 1, 2012.

---

Residential Tenancy Branch