



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications. The tenants applied for return of double the security deposit. The landlords applied for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Are the landlords entitled to compensation for damage to the rental unit or damage or loss under the Act, regulations or tenancy agreement?
2. Are the landlords authorized to retain the security deposit or are the tenants entitled to return of double the security deposit?

### Background and Evidence

The parties entered into a tenancy agreement set to commence September 1, 2009 and the tenants paid a \$725.00 security deposit. The parties participated in a move-in inspection and a condition inspection report was prepared.

The parties entered into a second tenancy agreement set to commence April 1, 2012 and continue on a fixed term basis until April 30, 2013. The security deposit paid under the first tenancy agreement was transferred to the second tenancy agreement. Under the second tenancy agreement the tenants were required to pay rent of \$1,400.00 on the first day of every month. The tenants vacated the rental unit July 31, 2012.

The landlord and tenant attended the property to perform the move-out inspection. During the inspection the parties did not agree upon condition of the rental unit and the tenant walked away from the inspection before it was complete. The landlord had made notations on the move-out inspection report but stopped when the tenant left the

inspection. Therefore, I was provided with a partially complete move-out inspection report.

### ***Tenants' Application***

The tenants applied for double the security deposit by filing this application on August 15, 2012. The tenants mailed their forwarding address to the landlords on August 15, 2012.

### ***Landlords' Application***

In filing their application the landlords requested compensation for \$2,340.31 and provided the details of the claim on the Application. In a subsequent written submission the landlords indicate they are seeking an increased amount of \$3,730.00. As the landlords did not amend their Application to seek a greater amount in accordance with the Rules of Procedure I did not consider the additional claims.

I have summarized the landlords' claims against the tenants, as filed, and the tenants' responses below.

Item	Amount claimed	Landlords' reasons	Tenants' responses
Labour – trips to the dump, yard cleanup, and painting bedrooms	526.64	Piles of grass left loose & bagged by tenants. Tenants responsible for removal. Tenants agreed to re-paint at end of tenancy. Landlords last painted in 2008 or 2009. Paid property manager \$40/hr plus mileage.	Yard debris included limbs landlord had removed from trees. Bags of grass left for yard maintenance staff landlord hired and then fired. Landlords to assist with yard maintenance per tenancy agreement. Painted bedrooms at beginning of 1 <sup>st</sup> tenancy there was no requirement to re-paint in the 1 <sup>st</sup> agreement.
Sump pump motor	135.00	Sump pump motor seized. Suspect poured concrete cause of seized motor. Only two years	Landlords had hired tenants' son to work on RV parking pad under separate contract for

		old. Motors usually last 2 to 6 years. Landlords acknowledge there was a separate agreement with tenants' son for concrete work on RV pad but the tenants' son did other work on his own volition.	services. Not tenants' responsibility.
Missing closet door	323.00	Custom closet door missing. Had to replace with matching pair.	Closet door did not go missing during tenancy.
Cleaning	160.00	Hired cleaner to clean kitchen, tile grout and basement floors and shower stall.	Tile grout was sprayed with Raid and shower stall left dirty.
Total Claim	\$2,340.31		

Both parties provided written submissions. Evidence provided for my consideration included copies of: the tenancy agreements and Addendums; photographs; condition inspection reports; and, various quotes, receipts and invoices.

### Analysis

Upon consideration of everything presented to me I provide the following findings and reasons with respect to each of the Applications before me.

### ***Tenants' Application***

I deny the tenants' claim for return of double the security deposit. I find the tenants extinguished their right to return of the security deposit as provided by the Act.

The Act provides that if a tenant fails to participate in a condition inspection at the beginning or end of the tenancy, despite being given the opportunity to do so by the landlord, the tenant extinguishes the right to the return of the security deposit. While it is not uncommon for parties to disagree on the condition of the unit, the condition inspection report provides space for parties to reflect their respective positions.

In this case, the parties had scheduled the move-out inspection and it commenced as scheduled; however, the tenant left while the inspection was taking place rather than

stay to complete the inspection report and note her disagreement with the landlord's assessment on the report. Accordingly, I find the tenants failed to participate in the inspection.

### ***Landlords' Application***

The Act requires that a tenant leave the rental unit reasonably clean and undamaged at the end of the tenancy. The Act provides that reasonable wear and tear does not constitute damage for which the tenant is responsible.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 41.

I provide the following findings and awards with respect to each of the items claimed by the landlords on their Application:

#### **Carpeting on stairs –**

Upon review of the photographs and condition inspection reports I accept that the carpeting were so heavily soiled that it had to be replaced. As carpeting has a useful life of 10 years and the carpeting was approximately 6 1/3 years old at the end of the tenancy I find the tenants responsible for the premature deterioration of the carpeting of 3 2/3 years. According, I award the landlords \$183.35 calculated as: [\$500.00 / 10 years x 3 2/3 years]

#### **Labour for yard cleanup and painting –**

Although I had heard testimony concerning removal of a wooden structure, upon further review of the invoice provided by the property manager I note that the labour charge is for painting, yard clean up and removal of cardboard. I accept that the tenants were responsible for the removal of the wooden structure; however, the invoice does not appear to include a charge for such.

The invoice includes a labour charge of \$160.00 for four hours of painting. Landlords are expected to repaint at reasonable intervals as part of routine maintenance. The policy guideline indicates that the useful life of interior paint is approximately four years.

The last time the landlords painted was in 2008, approximately, or four years prior. Therefore, I find the paint was at or nearly fully depreciated and I make no award for re-painting.

The invoice includes a charge of \$366.64 for yard clean-up and mileage. With respect to yard maintenance Residential Tenancy Policy Guideline 1 provides that tenants of single family dwellings are generally responsible for yard maintenance. However, I note that the Addendum to the tenancy agreement indicates the landlords would provide assistance with yard work in the months of July and August. As the tenancy ended July 31, 2012 I find the landlords shall bear a portion of the yard maintenance. Therefore, I award the landlords one-half of their claim or \$183.32.

Sump pump –

I find insufficient evidence the tenants are responsible for the worn out sump pump when I consider:

- Concrete work was done on the property under a separate contract for services; and,
- The sump pump was at or nearing the end of its useful life expectancy.

Closet door –

The landlords did not indicate the closet door was missing on the move-out inspection report and the tenants denied that a door was missing. Nor, did the landlords factor in depreciation in claiming the replacement cost of the doors. I also noted that the replacement closet doors were invoiced to an unknown third party and not the landlords. In light of these considerations, I find I am not satisfied that the closet door was missing as a result of the tenants' actions or that, as a result, the landlords' suffered a loss equivalent to the full replacement claimed. Therefore, I deny this portion of the landlords' claims.

Cleaning –

The photographs and the move-out inspection indicate that further cleaning was required and the tenants acknowledged some cleaning was required. I find the landlords' claim for \$160.00 to be reasonable and I award that amount to the landlords.

Filing fee –

I award the landlord's one-half of the filing fee given their relative success with their application.

In summary, the landlords have established an entitlement to recover the following amounts from the tenants:

Carpeting on stairs	\$ 183.35
Labour – yard cleanup	183.32
Cleaning	160.00
Filing fee	<u>25.00</u>
Total award	\$ 551.67

Although the landlords' total award is less than the security deposit in their possession I make no order for the landlords to return the balance as I have found that the tenants extinguished their right to its return. Accordingly, the landlords are at liberty to retain the security deposit and I do not provide either party with a Monetary Order.

### Conclusion

The tenant's application has been dismissed. The landlords are entitled to retain the security deposit which satisfies the damages or loss they are entitled to recover. Therefore, I do not provide a Monetary Order to either party.

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 28, 2012.

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Residential Tenancy Branch