



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlords: OPR MND MNR MNSD FF

For the tenants: CNR FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent, for a monetary order for damage to the unit, site or property, for unpaid rent, authorization to keep all or part of the security deposit, and to recover the filing fee.

The tenants applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, and to recover the filing fee.

The landlords attended the hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing, the tenants’ application was **dismissed without leave to reapply** after the 10 minute waiting period had elapsed. The hearing continued with the landlords’ application.

The hearing process was explained to the landlords and an opportunity was given to ask questions about the hearing process. Thereafter the landlords gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlords were advised that their most recent evidence package submitted containing six pages and sixteen photos was excluded from the hearing as it was submitted late. Evidence must be served in accordance with the rules of procedure which the parties are advised of in their hearing packages when they apply for dispute resolution, and to which instructions are also included in the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”). The landlord testified that their application and Notice of Hearing package mailed via registered mail on November 13, 2012 was returned as “unclaimed”. They stated the registered mail package was addressed to the

tenants at the rental unit address and that the tenants were still residing at the rental unit as of the date the initial registered mail package was mailed to the tenants. I find the tenants were served in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The landlords withdrew their request for an order of possession as the tenants have vacated the rental unit. As a result, the landlords have obtained possession of the rental unit.

### Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the security deposit under the *Act*?

### Background and Evidence

A fixed term tenancy began on July 1, 2011 and reverted to a month to month tenancy as of July 1, 2012. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. The landlords requested and accepted a security deposit of \$1,200.00 from the tenants at the start of the tenancy, the amount of which is not permitted under the *Act*, and will be addressed later in this decision.

The tenants vacated the rental unit on November 29, 2012. The landlords testified that a move-in condition inspection and move-out condition inspection were completed. The landlords stated they misplaced the condition inspection report and therefore, were unable to submit the report in evidence. The landlords testified that the tenants have not provided their new forwarding address.

The landlords submitted a monetary claim of \$4,500.00, however, the amounts provided in their breakdown total \$4,207.00 comprised of the following:

Item 1	November 2012 rent	\$1,200.00
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Item 2	December 2012 rent	\$1,200.00
Item 3	Damage repairs to walls	\$868.00
Item 4	General cleaning	\$200.00
Item 5	Pet related cleaning	\$450.00
Item 6	Registration (filing fee)	\$25.00
Item 7	Registered letter	\$10.00
Item 8	Registered letter 2	\$12.00
Item 9	Strata violation	\$200.00
Item 10	Photocopies	\$3.00
Item 11	Sets of photos	\$39.00
	<b>TOTAL</b>	<b>\$4,207.00</b>

### Items 1 and 2

The landlords testified that that the tenants failed to provide written notice before vacating the rental unit. The landlords testified that the tenants vacated the rental unit on November 29, 2012. The landlords submit in their evidence that the tenants have yet to provide proper notice in accordance with the *Act*.

The landlords testified that the tenant failed to pay \$1,200.00 for November 2012 rent, and suffered a loss of \$1,200.00 rent for December 2012 due to the tenants failing to provide proper notice in accordance with the *Act*.

### Item 3

The landlords are claiming \$868.00 for the cost to repair damage to several walls and to repaint the rental unit afterwards. An invoice was submitted in evidence by the landlords from a drywall company indicating an amount of \$775.00 plus 12% tax for a total of \$868.00. The contractor writes in the invoice:

“Fix damage caused by cats and various holes through-out the suite patch holes, skim walls and make ready for paint prime and paint walls, to original pre-tenant condition HST (BC) on sales”

[reproduced as written]

The landlords submitted 35 colour photos in which they claim show the condition of the rental unit after the tenant vacated. The landlords referred to several photos which they

state show damage to the walls and scratches consistent with cat scratches, resulting in damages to the walls.

Items 4 and 5

The landlords are claiming \$200.00 for general suite cleaning and \$450.00 for pet related cleaning. The landlords did not submit an invoice or other supporting evidence to prove the value of this portion of their claim. The landlords testified that the general suite cleaning and pet related cleaning costs have not yet been completed and the amounts of \$200.00 and \$450.00 were based on a telephone quotes from two different cleaning companies.

Item 6

During the hearing, the landlords clarified that Item 6, “registration” was actually the filing fee, which in fact was \$50.00 and not \$25.00, paid by the tenants as they made an error in their monetary breakdown. I will address the filing fee later in this decision.

Items 7, 8, 10 and 11

These items submitted by the landlords are for costs related to filing for dispute resolution. Item 7 and 8 are comprised of \$22.00 for registered mailing costs. Item 10 is for \$3.00 for photocopying costs. Item 11 is for \$39.00 for the sets of photos submitted in evidence.

Item 9

This item relates to a strata violation fine in the amount of \$200.00. During the hearing, the landlords testified that the \$200.00 fine has yet to be issued by the strata corporation.

Analysis

Based on the landlords’ undisputed oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

The landlords have submitted the following monetary claim:

Item 1	November 2012 rent	\$1,200.00
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Item 2	December 2012 rent	\$1,200.00
Item 3	Damage repairs to walls	\$868.00
Item 4	General cleaning	\$200.00
Item 5	Pet related cleaning	\$450.00
Item 6	Registration (filing fee)	\$25.00
Item 7	Registered letter	\$10.00
Item 8	Registered letter 2	\$12.00
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Item 10	Photocopies	\$3.00
Item 11	Sets of photos	\$39.00
	<b>TOTAL</b>	<b>\$4,207.00</b>

For ease of reference, I will respond to each of the item being claimed by their corresponding item number.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did everything possible to minimize the damage or losses that were incurred.

**Items 1 and 2** – The landlords testified that the tenants failed to pay \$1,200.00 for November 2012 rent, and suffered a loss of \$1,200.00 rent for December 2012 due to the tenants failing to provide proper notice in accordance with the *Act*. Section 26 of the *Act* requires that a tenant pay rent when it due in accordance with the tenancy

agreement, whether or not the landlords comply with the *Act*. Therefore, I find the tenants breached section 26 of the *Act* by failing to pay November 2012 rent in the amount of \$1,200.00.

Section 45 of the *Act* states:

**45** (2) A tenant may end a **fixed term tenancy** by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice,**

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

[emphasis added]

Section 52 of the *Act* states:

#### **Form and content of notice to end tenancy**

**52** In order to be **effective**, a notice to end a tenancy **must be in writing and must**

(a) **be signed and dated by the landlord or tenant giving the notice,**

(b) **give the address of the rental unit,**

(c) **state the effective date of the notice,**

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

[emphasis added]

Based on the above, **I find** the tenants breached sections 45 and 52 of the *Act*, resulting in the landlords suffering a loss of rent for December 2012 in the amount of \$1,200.00.

**Item 3** - The landlords are claiming \$868.00 for the cost to repair damage to several walls and to repaint the rental unit. An invoice was submitted in evidence by the

landlords from a drywall company indicating an amount of \$775.00 plus 12% tax for a total of \$868.00 supporting the value of this portion of their claim.

**I find** the photo evidence submitted by the landlords does not show reasonable wear and tear, and supports the landlords' claim that the tenants damaged the walls of the rental unit which included damage consistent with cat scratch marks which required repair. Based on the undisputed testimony of the landlords and the invoice supporting the cost of the repairs, **I find** the landlords have met the burden of proof and are entitled to \$868.00 for the repairs and painting of the walls of the rental unit that were damaged by the tenant.

**Items 4 and 5** - The landlords are claiming \$200.00 for general suite cleaning and \$450.00 for pet related cleaning. The landlords failed to submit an invoice or other supporting evidence to prove the value of this portion of their claim. The landlords testified that the general suite cleaning and pet related cleaning costs have not yet been completed and the amounts of \$200.00 and \$450.00 were based on a telephone quotes from two different cleaning companies.

**I do not** find that the landlords have met the burden of proof for these portions of their claim. For the landlords to have been successful, I would have expected invoices or other supporting documentation in support of their claim. Therefore, **I dismiss** these portions of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 6** – This item refers to the filing fee which the landlords paid \$50.00, however, have only claimed \$25.00. Section 19 of the *Act* states:

**19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.**

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[emphasis added]

In the matter before me, the landlords requested and accepted a security deposit of \$1,200.00 from the tenants. Given the above, **I find** the landlords breached section 19 of the *Act*. The maximum security deposit that the landlords could have required and accepted from the tenants was \$600.00.

As a result of the landlords' breach of section 19 of the *Act*, I **do not** grant the landlords the recovery of the filing fee in the amount of \$50.00, which I would have otherwise granted as the landlords' application had merit. Therefore, I **dismiss** this portion of the landlords' claim, without leave to reapply.

**Items 7, 8, 10 and 11** – The landlord has claimed \$22.00 for registered letters, \$3.00 for photocopying, and \$39.00 for sets of photos relating to their dispute resolution application. The *Act* does not provide for a remedy for the costs relating to preparing for dispute resolution under the *Act*, other than the recovery of the filing fee which has already been addressed above. Given the above, I **dismiss** these portions of the landlord's claim, without leave to reapply.

**Item 9** – The landlord has claimed \$200.00 as compensation for a strata rule violation fine allegedly incurred by the tenants. During the hearing, the landlord testified that a fine has not been imposed as of the date of the hearing. As a result, I **find** the landlord has not suffered a loss and has failed to meet the burden of proof to prove this portion of their claim as a result. Therefore, I **dismiss** this portion of the landlords' claim due to insufficient evidence, without leave to reapply.

The security deposit of \$1,200.00 has accrued zero interest since the start of the tenancy, which the landlords continue to hold.

I **find** that the landlords have established a total monetary claim of **\$3,268.00** as follows:

Item 1	November 2012 rent	\$1,200.00
Item 2	December 2012 rent	\$1,200.00
Item 3	Damage repairs to walls	\$868.00
	<b>TOTAL</b>	<b>\$3,268.00</b>

I **authorize** the landlords to retain the tenant's security deposit of \$1,200.00 in partial satisfaction of the claim.

I **grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing in the total amount of **\$2,068.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion



I find the landlords have established a total monetary claim of \$3,268.00. I authorize the landlords to retain the full security deposit of the tenants. I grant the landlords a monetary order in the amount of \$2,068.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 24, 2012

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Residential Tenancy Branch