



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord 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 *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 tenant for the cost of the application.

An agent for the landlord company and the tenant attended the conference call hearing. The tenant was also accompanied by the tenant's spouse who was also a tenant but not named on the tenancy agreement or the landlord's application. The landlord's agent, the tenant, and the tenant's spouse gave affirmed testimony. The parties provided evidentiary material prior to the commencement of the hearing to each other and to the Residential Tenancy Branch, and 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 or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant 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?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 1, 2010 and was renewed from time to time, but ultimately expired on August 31, 2012. The tenants were permitted to reside in the rental unit until September 15, 2012, and the parties signed a Mutual Agreement to End Tenancy effective 1:00 p.m. on September 15, 2012. Rent in the amount of \$1,300.00 per month was payable in advance on the 1<sup>st</sup> day of each month. On August 20, 2010 the landlord collected a security deposit from the tenants in the amount of \$650.00 as well as a pet damage deposit in the amount of \$650.00.

The landlord's agent further testified that the tenant had agreed in writing that the landlord keep \$650.00 from the security deposit to cover the rent for the last 2 weeks of the tenancy. The landlord also claims damages from the tenant, and provided invoices for painting and cleaning the rental unit in the amount of \$800.00 and \$224.00 respectively. The invoices were received after the landlord had applied for dispute resolution, and the landlord's claim, even though the invoice for painting was more than anticipated, is for the remaining \$650.00 pet damage deposit held in trust by the landlord company.

Copies of the move-in and move-out condition inspection reports were provided for this hearing, and they show initials by a landlord and by a tenant beside each room described in the reports. The landlord's agent testified that the tenant initialled each area in agreement to the comments made by the landlord on the form.

The landlord also provided 2 photographs of the rental unit's bathroom and testified that they were taken during the move-in condition inspection at the commencement of the tenancy and show a clean and newly painted room. Also provided are 2 photographs of the toilet and a wall at the end of the tenancy, and the landlord's agent testified that the toilet was not clean and there were marks and scratches left on the walls. The landlord has also provided photographs of inside the kitchen cabinets, inside the oven, inside the dishwasher, the kitchen walls and some blinds. The landlord's agent testified that the tenant did not leave the rental unit reasonably clean, and it was necessary to hire a cleaning company to clean the rental unit. The blinds were left dusty, and the rental unit had been painted just prior to the commencement of the tenancy. The tenant did not clean the kitchen cabinets, grease on walls, the inside of the oven or the inside of the dishwasher.

During cross examination, the landlord's agent was asked if the agent had agreed during the move-out condition inspection to remove the notation about marks on the kitchen cabinet because the agent witnessed the tenant clean it. The landlord's agent replied that the notation was not removed as agreed because there were other cabinets that the tenant had not cleaned. The landlord's agent also acknowledged that the

dishwasher didn't work but that didn't justify not cleaning the inside of the appliance at the end of the tenancy.

The tenant testified that the landlord was given written permission by way of email to keep the security deposit for the last 2 weeks of rent.

The tenant's spouse testified that the rental unit was in very poor condition throughout the tenancy, despite attempts to have the landlord correct situations. The dishwasher did not drain, and consequently, the debris from soiled dishes remained in the dishwasher. The landlord was aware of it and the tenants were not able to use the appliance since very early in the tenancy.

The tenant also provided photographs of the rental unit showing that the ceiling fell in in the bedroom leaving wires dangling. The tenant's spouse testified that the landlord was told about a leak in the rental unit and a contractor attended who did nothing to rectify the situation. The contractor returned and completed a patching, but it didn't stop the leak. A tarp was eventually placed on the roof, and it's still there.

Also during the tenancy, a pipe at the front door cracked during the winter. The landlord was notified several times, but the landlord didn't have it repaired until 8 months after the first notification.

The ongoing leak problems caused the rental unit to become mouldy, and the tenant provided photographs showing mould in the corners of rooms, on baseboards, windows, ceilings and cracked or broken gypsum. Also provided are photographs of bowls containing dark brown water and a ceiling light globe which appears to have dark brown water or mould inside. The tenant's spouse testified that the liquid caught in the bowls are from the leaking ceiling and the light globe was full of mould.

During closing submissions, the landlord's agent was asked why I would order the tenant to pay for damages resulting from this tenancy when the ceiling had caved in and the walls and ceilings were full of mould. The agent replied that the ceiling caved in at the bedroom, not at the living room or kitchen.

### Analysis

I have reviewed the evidence provided by the parties, including the move-in and move-out condition inspection reports and photographs.

In order to be successful in a claim for damages, the claiming party must be able 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 such damage or loss.

Also, any award for damages must not place the landlord in a better financial situation than the landlord would be in if the damage did not exist.

In the circumstances, I find that the landlord has failed to establish that the walls in the rental unit wouldn't have needed to be painted if the tenants had not scratched them. The rental unit clearly requires painting, but not as a result of the tenant's failure to comply with the *Act* or the tenancy agreement. Any award that I might make with respect to painting the rental unit would place the landlord in a better financial situation than the landlord would be had the damage not existed. I also accept the testimony of the tenant's spouse that the landlord was made aware of structural difficulties but the landlord failed to rectify the issues. I find that the landlord has failed to establish elements 2 and 4 of the test for damages.

With respect to cleaning the rental unit, the rooms are full of mould as a result of the landlord's failure to correct leaks and other problems, and I find that the landlord has failed to establish elements 2 and 4 in the test for damages.

The tenant and the landlord agreed prior to this hearing that the landlord would keep the security deposit for rent for the last 2 weeks of the tenancy, and I make no further orders with respect to that. The landlord currently holds a pet damage deposit in trust, and the landlord's application to keep it is hereby dismissed.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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: December 19, 2012.

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Residential Tenancy Branch