



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The landlord applied for compensation for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet deposit. The tenants applied for return of double their security deposit and pet deposit, as well as compensation for oil left in the oil tank. 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.

### Preliminary and Procedural Matters

I was satisfied the landlord had amended her application to increase the monetary claim to \$2,265.00 in accordance with the Rules of Procedure and provided a Monetary Order to support that amount. Accordingly to the landlord, some of the amounts were based upon estimates. Subsequently, the landlord served late evidence to the Branch and the tenants to show actual costs. The tenants indicated they did not have time to digest the late evidence prior to the scheduled hearing date and the impact of the late submission upon the landlord's claim was not clearly indicated. I excluded the late evidence but permitted the landlord to provide oral testimony as to the content of the late submission.

The originally scheduled hearing date was adjourned and reconvened at a later date to provide sufficient time to hear all relevant submissions from both parties. All parties appeared at both dates of hearing.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit or damage or loss under the Act, regulations or tenancy agreement in the amount claimed?
2. Are the tenants entitled to compensation for oil left in the oil tank?

3. Are the tenants entitled to doubling of the security deposit and/or pet deposit?
4. Disposition of the security deposit and pet deposit.

### Background and Evidence

The tenancy commenced August 1, 2006 and the tenants paid a security deposit of \$725.00 and a pet deposit of \$725.00. The tenancy ended September 30, 2012.

The landlord prepared a document at the beginning of the tenancy noting 15 items of pre-existing damage; however, the landlord but did not prepare a condition inspection report that meets the requirements of the Residential Tenancy Regulations. The landlord did not prepare a move-out inspection report although the tenants did participate in an inspection with the landlord on September 30, 2012.

### ***Landlord's Application***

The landlord requested recovery of the following amounts against the tenants:

Item	Amounts claimed per Application and Monetary Order worksheet	Actual amounts per verbal submission
Fridge, stove and dryer	\$1,500.00 x 30% = \$ 500.00	\$1,347.00 x 30% = \$ 404.10
Baseboard heaters (2)	\$ 70.00	\$ 199.00
Kitchen flooring	\$1,200.00 x 30% = \$ 400.00	\$1,063.00 x 30% = \$ 318.90
Basement hall carpet	\$ 70.00	\$ 70.00
Office carpet	\$ 140.00	\$ 140.00
Wood stove damage	\$ 100.00	\$ 100.00
Carpets: living, dining, hall	\$ 450.00	\$ 450.00
Labour: cleaning	\$ 405.00	\$ 405.00
Labour: yard work	\$ 30.00	\$ 30.00
Cupboard knobs	\$ 0.00	\$ 93.00
Claim	\$2,165.00	\$2,210.00

Below I have summarized the landlord's reasons for the above claims and the tenants' responses.

### ***Fridge, stove, dryer***

The landlord submitted that the tenants did not supply adequate heat to the rental unit causing the appliances to rust. Landlord was notified by tenants in July 2012 of rusting

on the fridge. The landlord did not attend the property to inspect the rental unit but advised the tenants to use the central heat more often. The landlord was of the position the tenants are frugal and heated the house with the wood stove primarily and the male tenant frequently made bagels, which involves boiling. The landlord did not consider replacing the front panel of the fridge due to its age. The stove was rusted at the bottom side panel. The dryer had deep scratches and rust on the top. The landlord also replaced the stove and dryer. The landlord estimates the appliances were 8 – 10 years old.

The tenants submitted that they informed the landlord of the rust formation in September 2011 and the landlord responded by advising them to use the forced air more often, which the tenants did. The male tenant submitted that he worked from home so the house was kept sufficiently warm. The landlord is only speculating about the lack of heat as the landlord rarely entered the rental unit and there were mould and mildew issues because of the climate. The tenants suggested that the rust likely formed due to the close proximity to the ocean and the salty ocean based upon their research. The tenants denied putting deep scratches in the dryer. The tenants submit that all of the appliances were in working order and believe the appliances to be older than that put forth by the landlord.

The landlord responded that the tenants' theory of salty ocean air is unlikely as other metal appliances or fixtures were not rusty, she is unaware of any other homes in the area having issues with rusty appliances, and she requested the tenants provide copies of their utility bills to demonstrate the amount of heat they used but they would not provide such documentation.

#### *Baseboard heaters*

The landlord submitted that the heaters in the kitchen and bathroom were 7 or 8 years old and were replaced due to rust. Rust was not evident on other heaters in the house and the landlord attributes this to the tenants not sufficiently heating the kitchen and bathroom and hanging wet clothes to dry.

The tenants submitted that the heaters rusted due to their age and the salt air climate. The tenants noted the landlord initially requested \$70.00 to repaint the heaters and then replaced them in December 2012 at a cost of \$199.00.

#### *Kitchen flooring*

The landlord submitted that the tenants caused a large burn mark in the floor and multiple cut marks appeared in another area by the sink. The flooring was

approximately 7 – 8 years old. The landlord did not consider patching to be an option due to its age and brittleness.

The tenants acknowledged causing the burn mark approximately ½” in size on a 6” square. The cracks in the floor were due to aging. The tenants believe the flooring was older than that put forth by the landlord. The tenants are of the position the landlord is updating the rental unit.

*Basement carpet*

The landlord withdrew this portion of her claim during the hearing.

*Office carpet*

The landlord submitted that the carpet was left with lumps at the end of the tenancy and it was not cleaned. The carpeting was 15 years old and replaced by the landlord. The landlord is claiming for what she would have paid to have the carpeting cleaned.

This claim was dismissed during the hearing and a response was not required from the tenants.

*Carpet cleaning*

The landlord submitted that the tenants were required to cover the carpets with area rugs and the tenants were to pay for carpet cleaning at the end of the tenancy. The landlord replaced the carpets as they were 15 years old and the landlord acknowledged she did not clean them. The landlord is seeking an amount that the tenants would have paid if the carpets were cleaned.

This claim was dismissed during the hearing and a response was not required from the tenants.

*Wood stove*

The landlord submitted that the top of the wood stove became stained and/or discoloured during the tenancy. The landlord has tried cleaning it to no avail. The landlord is claiming for approximate devaluation of the wood stove. Replacement of a wood stove is \$2,300.00.

The tenants submit the discolouration may be natural deterioration as they did not cook on the stove. The landlord did not mention this to the tenants during the move-out inspection or in subsequent emails to them. The amount claimed by the landlord is unsupported.

*Labour: cleaning*

The landlord submitted that she spent over 27 hours cleaning the living room and dining room ceiling and walls of soot, light fixtures, blinds, window frames, exterior stairs, deck and driveway. The landlord is seeking \$15.00 per hour for her time.

The tenants claim they did not see soot on the ceilings and walls and this was not mentioned during the move out inspection. Rather, the tenant returned to the property after the landlord complained of this issue and observed a black smear on the ceiling through the window. The tenant observed workmen at the property with large fans. The wood stove was in the living room but the dining room was around the corner. The tenants noted that their tenancy was over six years in duration and the walls had not been painted in that time.

The tenants claimed to have cleaned the blinds, window frames and swept the stairs. The tenants did not feel obligated to sweep the driveway and noted that it appeared unswept when the tenant returned to the property.

*Labour: yard work*

The landlord submitted that the tenants left knee high weeds in the front of the house which had to be weed-wacked and pulled. The tenants left a bare patch in the grass where they had a vegetable garden that had to be reseeded. The landlord is claiming two hours for this work.

The tenants submitted that they mowed the grass and acknowledged that there was a small patch along the side of the house that required weed eating. The tenants pointed out that this yard was not manicured but left mostly wild. The tenants submit that weed eating this small patch would take about 15 minutes. The tenants acknowledged the bare patch from the vegetable garden but claimed to have re-seeded it.

*Cupboard knobs*

The landlord submitted that three knobs went missing during this tenancy. The knobs were 7 or 8 years old and have since been discontinued. The landlord purchased all new knobs, of lesser quality, and is seeking the tenants pay for the replacement.

The tenants submitted that two knobs were missing when their tenancy began and that they gave a knob to the landlord at the end of their tenancy.

The landlord acknowledged that one knob was missing at the beginning of this tenancy and that she had taken another knob off six years ago in attempt to replace it. The

landlord acknowledged that the tenants returned one knob to her at the end of their tenancy.

### **Tenants' Application**

The tenants are seeking return of double their deposits on the basis the landlord's right to claim against the deposits was extinguished by failure to complete condition inspection reports that comply with the requirements of the Act. Further, there is no damage attributable to their pet.

The landlord submitted that she filed against the deposits with 15 days of the tenancy ending and met her obligations under the Act.

The tenants are also seeking \$345.04 for the value of the oil left in the oil tank, as determined by the oil company. The tenants submitted that money for the oil in the tank at the beginning of the tenancy was given to the landlord

The landlord explained that incoming tenants pay for the oil in the tank at that time and then the landlord passes that money on to the outgoing tenants. In this case, the tenant that was supposed to move-in after this tenancy ended backed out and the landlord has not collected money from any incoming tenant yet. The landlord was agreeable to compensating the tenants for the oil they left in the tank and collecting the value of any remaining from the next occupant.

### Analysis

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 section 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.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same 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 40: *Useful Life of Building Elements*.

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

### **Landlord's Application**

A tenant is required to leave a rental unit reasonably clean at the end of the tenancy. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

A tenant is required to leave the rental unit undamaged at the end of the tenancy. The Act provides that reasonable wear and tear is not damage. The tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for paying for reasonable wear and tear to the rental unit or site.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

#### *Fridge, stove, dryer, baseboard heaters*

The landlord submitted that the tenants provided insufficient heat and this caused the appliances in the kitchen, bathroom and laundry room to rust. The tenants denied that a lack of heat was the reason for these rusting but pointed to the proximity to the salty ocean air as the reason for the rusting.

The tenants submitted evidence indicating rust on appliances is usually attributable to high humidity or close proximity to salt air. I find the tenants' submission that salt air is the cause of the rusting unlikely considering not all of the metal appliances and fixtures in the rental unit were marred by rust. As the rusting appliances were located in high humidity rooms, I find it likely the rust was the result of excessive moisture or humidity. Excessive moisture is usually caused by the lack of heat or lack of ventilation or both. I find that providing sufficient heat and venting a humid room is within a tenant's control even if that means opening a window or door.

I accept the age of the appliances submitted by the landlord based upon my review of the photographs. I also accept that the appliances were in working order and that there was a possibility the surface of the appliances could have been repaired. I also accept that the landlord rarely attended the rental unit and when the tenants notified the landlord of the rusting fridge she did not attend the unit to investigate further.

Where a tenant notifies a landlord of a repair issue I find it reasonable that the landlord would investigate the problem. I also find it reasonable that a landlord would inspect a rental unit at reasonable intervals to assess the condition of the unit especially when a tenancy is long term as this one was. In this case, had the landlord attended the unit when the tenants complained of the rusting appliances or inspected the unit at reasonable intervals the landlord may have noticed the high humidity or rusting appliances sooner and minimized the damage caused. As stated previously, a party making a monetary claim against another party has an obligation to take reasonable steps to minimize the damage or loss..

In light of the above, I limit the landlord's claim to one-half of the amount she is seeking from the tenants considering:

- the landlord did not take reasonable steps to minimize the damage or loss by properly investigating the rust complaint or inspecting the rental unit at reasonable intervals; and,
- the rust was surface rust not affecting the function of the appliances that may have been repaired.

With respect to the baseboard heaters, I further reduce the landlord's claim of \$199.00 by 70% to reflect depreciation of the replaced heaters.

Therefore, I award the landlord as follows:

Fridge, stove, dryer:  $\$1,347.00 \times 30\% \times 1/2 = \$202.05$ .

Baseboard heaters  $\$199.00 \times 30\% \times 1/2 = \$29.85$

### *Kitchen flooring*

Although the landlord referred to the flooring as linoleum I find it more likely it was vinyl as linoleum was commonly installed many, many years ago and is very expensive.

The landlord provided pictures of two marks on the kitchen vinyl flooring, one of which the tenants acknowledged causing. The list of pre-existing damage prepared at the



beginning of the tenancy does not indicate any damage to the kitchen flooring. Therefore, I accept that the tenants are responsible for two marks on the floor.

The parties provided different submissions as to the age of the vinyl flooring that was replaced. The tenants submitting that it was likely older than the 7 or 8 years estimated by the landlord.

Upon review of the photographs, I note that there appears to be newer looking vinyl flooring in the bathroom but the pattern in the kitchen appears more outdated. The landlord also referred to the kitchen flooring as brittle. Therefore, I find it more likely than not that the kitchen flooring was older than 7 or 8 years at the end of the tenancy. As vinyl flooring has an average useful life of 10 years, I find it likely this flooring was at the end of its economic life and I make no award to the landlord for its replacement.

#### *Basement carpet*

This claim was withdrawn.

#### *Office carpet and other carpeting*

Awards are intended to restore or compensate a party for the loss they suffered as a result of another party's violation of the Act, regulations or tenancy agreement. The landlord is claiming amounts that would have likely been paid to clean the carpets if they had not been replaced. Considering the carpets were 15 years old and carpets have an average life of 10 years I find they were due for replacement. Therefore, I find the landlord did not suffer a loss for cleaning the carpets and I dismiss this portion of the landlord's claim.

#### *Woodstove*

Upon review of the photograph of the wood stove it would appear there are rust marks and indication something melted on the top of the stove. The list of pre-existing damage makes no mention of damage or discolouration on the wood stove. Therefore, I accept that this occurred during the tenancy.

I accept the landlord tried cleaning the discolouration to no avail. Likely, the top will be improved by painting it with stove paint. I find it reasonable that this may be accomplished with \$50.00 and I award this amount to the landlord.

#### *Labour: cleaning*

As provided in Residential Tenancy Policy Guideline 1 the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including

removing mould. Further, the tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Upon review of the photographs, I accept that the ceilings and walls needed to be cleaned of soot or other type of smoke residue that may have been caused by the wood stove, cooking or candles. Although the unit had not been painted during the tenancy, the tenants are not exempted from their obligations to leave the rental unit reasonably clean.

I also accept that the window frames and light fixtures needed additional cleaning based upon the photographs. Although there were no pictures of the blinds, I accept the landlord's testimony that they required cleaning since the landlord satisfied me that the walls, window frames and light fixtures required cleaning.

The policy guideline also provides that a tenant who rents a single family dwelling is responsible for "routine" yard maintenance. As the rental unit is a single family dwelling I grant the landlord's claim for sweeping the driveway, the exterior stairs, and the deck as I am satisfied this is routine maintenance and these items required sweeping based upon the photographs.

In light of the above, I grant the request to recover \$405.00 from the tenants for additional cleaning and routine yard maintenance.

*Labour: yard work*

Residential Tenancy Policy Guideline 1 provides that where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate. Based upon the photographs, I accept that the tenants did not sufficiently return the grass where their vegetable garden was located to its original condition upon vacating. I also find the landlord's claim for 2 hours to be reasonable and I grant the landlord's claim of \$30.00.

*Cupboard knobs*

I find the landlord has not satisfied me that the tenants are responsible for replacing all of the knobs or the amount claimed by the landlord considering: there were knobs missing at the beginning of the tenancy which the landlord was unable to replace; and, the former knobs appeared rather old for which the landlord has made no allowance for depreciation. Therefore, I deny this portion of the landlord's claim.

In summary, I have awarded the landlord the following amounts:

Item	Award
Fridge, stove, dryer	\$ 202.05
Baseboard heaters (2)	29.85
Kitchen vinyl flooring	0.00
Basement hall carpet	0.00
Office carpet	0.00
Wood stove damage	50.00
Carpet cleaning: living, dining, hall	0.00
Labour: cleaning	405.00
Labour: yard work	30.00
Cupboard knobs	<u>0.00</u>
Awarded to landlord	\$ 716.90

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

Where a landlord fails to prepare condition inspection reports that comply with the requirements of the Act or Regulations, the landlord's right to claim against the deposits, for damage, is extinguished. In this case, the landlord extinguished her right as she did not prepare condition inspection reports that comply with the Act or Regulations at the beginning and end of the tenancy. Undeniably, the tenants are entitled to return of the single amount of their deposits. They are also entitled to interest on their deposits, as provided by the Act and Regulations, which I have calculated to be: \$47.01 for both deposits.

I have considered whether the tenants are entitled to return of doubling of the deposits below.

Under the Act, the landlord has 15 days after the tenancy ends, or the landlord is provided a forwarding address in writing, whichever date is later, to either return the deposit to the tenant or an Application for Dispute Resolution claiming against it. A landlord that does not return the deposits or claim against the deposits within 15 days of the later date must pay the tenants double.

Based upon the documentary evidence provide to me, the tenants provided a forwarding address to the landlord in an email dated August 24, 2012. Where a party

gives a document to another a document it must be given in a manner that complies with the requirements of section 88 of the Act. An email is not an acceptable method of service under the Act.

I was not provided evidence that the tenants gave the landlord their forwarding address in another manner that would comply with section 88 of the Act prior to filing their Application for Dispute Resolution. Therefore, I find the tenants have not established an entitlement to return of double of their deposits as they requested.

A tenant is required to leave an oil tank with the same amount of oil they were provided. In this case, the tenants paid for the oil at the beginning of the tenancy and, as is the landlord's practice, they should be compensated for oil they leave in the tank. I find it unreasonable for the tenants to wait for an indefinite period of time before the landlord secures a new tenant and compensates the tenants for the oil they left in the tank. Especially considering that the longer the unit remains vacant the more likely the oil may be used after their tenancy ended. Therefore, I grant the tenants' request to recover \$345.04 from the landlord for oil since the rental unit has remained untenanted. It will be upon the landlord to reach an agreement with the incoming tenant with respect to the oil remaining in the tank.

In light of the above, the tenants are awarded return of their security deposit, pet deposit, interest on their deposits, and oil in the total amount of \$1,842.05.

### ***Filing Fee, Set-Off and Monetary Order***

I make no award for recovery of the filing fees as both claims had merit. I offset the amount awarded to the tenants by the sum awarded to the landlord and provide the tenants with a Monetary Order in the net amount of \$1,125.15 calculated as \$1842.05 less \$716.90..

The tenants must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of the court if necessary.

### **Conclusion**

Both parties were partially successful in their respective applications. The awards have been offset and the tenants provided a Monetary Order for the net balance of \$1,125.15 to serve upon the landlord and enforce as necessary.

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: February 21, 2013

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Residential Tenancy Branch

