



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss however the tenant withdrew this section of the application at the outset of the hearing. The tenant also applied for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlords agents attended the conference call hearing gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?

- Is the landlord entitled to a Monetary Order for unpaid utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this tenancy started originally on July 01, 2009. Further tenancy agreements were entered into through the course of the tenancy with the last agreement starting on July 01, 2011 for a month to month tenancy. Rent for this unit was \$1,650.00 per month plus 60 percent of utilities. Rent was due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$825.00 on June 01, 2009.

### **The tenant's application**

The tenant testifies that the tenants and landlord attended a move in inspection of the interior of the rental unit at the start of the tenancy. The tenant testifies that they signed this inspection report but did not receive a copy of the report until the landlord served the tenant with the evidence package. The tenant testifies that the inspection report is not the one that was signed by the tenants and has been altered by the landlord to show only a partial inspection and no signatures of the tenants. The tenant testifies that this is evident because at the start of the tenancy it documents that the kitchen flooring and carpet in the living room are in good condition yet at the move in inspection it was noted that these areas were in an appalling condition. The landlord's agent agreed to split the cost of replacing the kitchen and living room flooring with the tenants. This flooring was not replaced until after the inspection was done as the flooring invoice shows that the tenant has provided in evidence.

The tenant testifies that at the end of the tenancy the landlord's agents did not complete a move out condition inspection report but rather just made some hand written comments on a piece of paper as provided in the landlords evidence package.

The tenant testifies that at the end of the tenancy on October 31, 2012 the tenants gave the landlord's agent their forwarding address in writing. The tenant testifies that at no time did they agree the landlord could keep the security deposit for damages but the tenants did orally agree that the landlord may deduct the amount of \$288.20 for a utility bill. The tenant therefore seeks to recover double the security deposit less the amount of the utility bill.

The tenant also seeks to recover the \$50.00 filing fee from the landlord.

### **The landlord's application**

The landlord's agent testifies that at the start of the tenancy the tenant attended the move in inspection but complained that it was taking too long so they agreed to finish the inspection three days later. However the tenant refused to finish the inspection as the tenant thought it was unnecessary. The landlord's agent agrees that they never finished the move in inspection report in the tenants' absence. The landlord's agent disputes the tenant's claim that the report was finished and disputes that the tenants signed the report. The landlord's agent testifies that the report provided in evidence is the original report and it has not been altered by the landlord or the landlord's agents.

The landlord's agent testifies that they did not do the move out condition inspection report as the tenant had not completed the move in report. Instead comments were just noted on paper. The landlord's agent agrees that they all agreed that they would share the cost of replacing the carpet and kitchen flooring and that is why it was documented as being good on the move in inspection report.

The landlord's agent testifies that during the move out inspection the landlord's agent questioned the tenant about the back shed and the tenant stated that the shed was not inspected at move in. The landlord's agent testifies that this shows that the move in inspection had not been fully completed. The landlord's agent also draws attention to the date on the move in inspection form which is dated 2007. The current forms on the Residential Tenancy Office website are dated 2011. The landlord's agent testifies that this shows the original form was completed in 2009 as the later forms were not available then.

The landlord's agent seeks to keep the tenants security deposit of \$825.00 in partial payment of the utilities and damages as the tenant has extinguished her right to claim the security deposit.

The landlord's agent testifies that at the end of the tenancy it was determined that the tenants had caused damage to the rear shed. The male tenant had practised archery and had put the target on the shed which resulted in numerous holes in the shed and a broken plexi glass window. The landlord's agent testifies that they had received a quote from their handyman to repair the shed of \$100.00 but feel the sum of \$50.00 is more reasonable. The landlord's agent testifies that the previous tenant in the basement suite had notified the landlord's agent that the male tenant was seen firing arrows at the shed.

The landlord's agent testifies that the tenants damaged a pantry door hinge. This hinge was left bent and the door closing magnet and plate had been removed. The landlord's agent testify that their handyman quoted \$100.00 to replace the hinge and magnet but the landlord feels \$50.00 is a more responsible amount.

The landlord's agent testifies that the tenancy agreement states that the tenants are responsible for professional cleaning of the drapes. The drapes were not cleaned and many of the panels were left stained. These drapes had been new in 2008 and the landlord seeks to recover the sum of \$308.00 to have the drapes cleaned. The landlord's agent testifies that he obtained quotes from a dry cleaning company which were higher but feels the sum of \$308.00 is more reasonable. The drapes have not yet been cleaned.

The landlord's agent testifies that the tenants failed to clean the carpets at the end of the tenancy and dents were left in the carpet from the tenants furniture. These carpets have not yet been cleaned. The landlord's agent provided quotes from 10 carpet cleaning companies in evidence and testifies that they will go with a middle quote of \$156.80.

The landlord's agent testifies that the tenants failed to replace the burnt out light bulbs at the end of the tenancy. There were two burnt out florescent tubes and a burnt out bulb in a

chandler and the laundry room. The landlord seeks to recover the sum of \$22.40 to replace the bulbs but has not provided the receipt in evidence.

The landlord testifies that the tenant failed to remove anchors from the walls in most rooms and failed to fill these holes. The landlord's agent states that they have been quoted the time of six hours to complete the work to remove the anchors. This entails, filling, sanding and painting the walls at \$35.00 per hour plus materials of \$30.00. The landlord therefore seeks to recover the sum of \$210.00. No quote or invoice has been provided in evidence.

The landlord's agent testifies that the tenants failed to clean the rental unit leaving dust, dirt and cobwebs in many areas as shown in the landlord's photographic evidence. The landlord's agent testifies that he cleaned the rental unit which took approximate 10 to 12 hours over a two day period. The landlord seeks to recover the sum of \$250.00 for this work.

The landlord's agent testifies that the tenant asked to use the carport at the start of the tenancy and then used it as a workshop. The carport was left with a thick layer of grim and filth on the floors and walls which will require power washing. The landlord seeks to recover the sum of \$350.00 to power wash this area and testify that this work has not yet been completed.

The landlord's agent testifies that the tenants did not clean the patio and left a round mark where a planter had been placed. This mark will require power washing and the landlord seeks to recover \$25.00 for this work.

The landlord's agent testifies that the tenants failed to remove some sandbags, folding chairs, leaves and garden debris. The landlord's agent testifies that they paid a handyman \$25.00 per hour to remove these items along with some garbage of the landlords. The landlord's agent therefore estimates the tenant share of these costs to be \$150.00 including the transfer station fee. No invoice or receipt has been provided in evidence.

The landlord's agent testifies that the tenant removed an ornamental bush from the yard. This bush was in good health at the start of the tenancy. The landlord seeks to recover the sum of \$50.00 to replace the bush. No quote or invoice has been provided in evidence.

The landlord's agent testifies that the tenants left a large hole in the carport storage area and 10 to 13 hooks and eyes installed in the side of the carport, the shed, the house and the fence posts. The tenants also removed two brackets from the house that were used for a planter. The landlord seeks to recover the sum of \$140.00 to remove these hooks and eyes and to fill, sand and paint the holes including those left from the brackets.

The landlord's agent testifies that the tenant removed the power adapter which belonged to Shaw. The landlord's agent testifies that he contacted Shaw and was quoted the sum of \$11.20 to replace this power adaptor.

The landlord also seeks to recover the \$50.00 filing fee from the tenants. The landlord has provided a significant number of photographs in evidence detailing the condition of the rental unit.

The tenant disputes the landlords claim. The tenant testifies that her husband did have an archery target on the shed but disputes that the window was broken by the tenants. The tenant disputes that any damage was caused to the pantry door hinge or that the magnet door closer was removed by the tenants.

The tenant disputes the landlords claim for cleaning the drapes. The tenant testifies that when they first moved in they discussed this clause in the tenancy agreement with the landlord's agent and were told by the female agent that they would only have to clean the drapes if they were dirty. The tenant testifies that not all 11 drape panels were stained. The tenant testifies that they removed a lot of the drapes and replaced them with the tenants own drapes. The tenant testifies that the roof to the unit was leaking which caused some mould on the drapes as the landlord left a tarp on the roof for a year before the roof was replaced. The roof leaked in the area where the drapes were stored. Therefore the tenant states they cannot be held responsible for cleaning the drapes when it was the landlord

negligence that caused the staining. The tenant testifies that there was also high moisture levels on the windows which also caused staining to the drapes. The tenant testifies that they did clean the carpets at the end of the tenancy and used a friend's carpet cleaner. Therefore they could not get a receipt for this work but there are no stains on the carpets. The tenant testifies that the landlord has to expect some dents in the carpets where the tenants' furniture was placed.

The tenant testifies that the female agent checked the light bulbs at the end of tenancy walk through. The tenant testifies that they had already replaced a blub in the chandler and all lights were working at the end of the tenancy. The tenant does not dispute the landlords claim that they used anchors in the walls. The tenant testifies that they do dispute the landlords claim for six hours to repair these few holes.

The tenant testifies that the landlord's photographic evidence shows many pictures of the same area. The tenant agrees that they may have missed cleaning areas such as the tops of the doors but testifies that the unit was left in a reasonably clean condition. The tenant testifies that they did not clean the streaks from the windows as the landlord's agent had informed the tenants that the windows were to be replaced. The tenant disagrees that it took the landlords agent 10 to 12 hours to clean the unit and testifies it would only have taken one hour. The tenant testifies that the appliances were not on wheels and therefore not the tenants responsibility to pull these out to clean under and behind them.

The tenant disputes the landlords claim for power washing the carport. The tenant testifies that this area was not used as a workshop but was used to store her husband's diving gear. The tenant disputes that the grime the landlords agents refer to was caused by the tenants as the tenants had placed a shed inside the carport at the start of the tenancy and when that was removed the area under the shed was also grimy.

The tenant disputes the landlords claim for power washing the patio. The tenant states this is unreasonable as the tenants had power washed the patio a year ago and it would not take long to wash away a mark left by a planter.

The tenant disputes the landlords claim for removing garbage and garden waste. The tenant testifies they did miss a sand bag, a planter and one small pile of leaves, however the chairs belonged to the landlord and the landlord claim of \$150.00 is extreme. The tenant testifies that when they moved into the unit they spent many hours and multiple trips to the transfer station to remove the landlord's garden waste and to trim the trees which had been neglected. The tenant testifies that the ornamental bush was not a healthy plant and only had six leaves on it. The plant would not survive so the tenant did cut it down because in the tenancy agreement the tenants were responsible for yard maintenance.

The tenant disputes the landlords claim for outside painting and repair. The tenant testifies that they did put in eyelets and hooks and it was an oversight that these were not removed. The tenant agrees that they took off the brackets as they had no function. The tenant testifies that they also built a fire wood cover against the carport to protect the firewood which they left for the landlords agents to use when the agents moved into the unit. The tenant disputes the landlord time and costs associated with these repairs.

The tenant testifies that they did not purposely remove the Shaw power adaptor however the landlord's agents did not notify the tenants so they could look for it and return it.

The landlord's agent argues that the tenant did not inform the landlords agents about the tenant's friend cleaning the carpets or to the quality of the carpet cleaner used. The landlord's agent testifies that she did turn on the lights in each room but did not check if any bulbs had blown at that time. The landlord's agent testifies that they did mention to the tenant that they were thinking of replacing the windows but no time frame was given. The landlord's agent testifies that the grime in the carport was not there at the start of the tenancy. The landlord's agent states that with every project things always take longer and cost more than expected therefore they disagree with the tenants comments that they are overcharging the tenants for repairs as the landlord's photographs speak for themselves.

The tenant argues that the tenants paid to have the bathroom floor replaced and painted the bathroom due to mould, they paid half of the costs for the replacement carpet in the living room and the kitchen flooring, they replaced the dishwasher and maintained the yard. The



tenant argues that the unit and yard were left in a much better condition than they were in at the start of the tenancy.

The landlord's agent cross-examines the tenant and asks the tenant if the tenant has seen the photographs and would the tenant still call that reasonably clean. The tenant responds and states that they have seen the photographs and the landlord's agents have exaggerated the areas left unclean.

The landlord's agent testifies that there was no mould in the house from the roof leak. The leak was fixed temporarily and then the roof was replaced.

### Analysis

With regard to the parties' claims concerning the security deposit; S. 24(2) and 36(2) of the Act states;

*The right of a landlord to claim against a security deposit or a pet damage deposit, or both, **for damage** to residential property is extinguished if the landlord*

*(a) does not comply with section 23 (3) [2 opportunities for inspection],*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Section 36(2) of the Act states:

*Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, **for damage** to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Therefore I find the landlord is entitled to file a claim against the security deposit because a portion of the landlords claim is for utilities and these sections of the *Act* only apply if the landlords claim was solely for damages.

With regard to the tenants claim to recover double the security deposit; the landlords agents argue that the tenant did not attend the move in condition inspection for its duration and postponed the inspection for a later date then deeming it unnecessary and therefore extinguishing the tenants right to file a claim to recover the security deposit. However in this matter the landlord has the burden of proof that the tenant did not attend the whole inspection or that the inspection report was simply not completed. When it becomes one persons word against that of the other then the burden of proof is not met. Therefore I uphold the tenants claim to apply for double the security deposit.

In this event I refer the parties to s. 38(1) of the *Act* that says a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on October 31, 2012. As a result, the landlords had until November 15, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security deposit and did not file an application to keep the deposit until February 18, 2013. Therefore, I find

that the tenant has established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act*.

With regard to the landlords claim for utilities; the tenant agrees that these utilities may be deducted from the security deposit Therefore I Order the landlord to keep the sum of **\$288.20** from the tenants security deposit.

With regard to the landlords claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the landlord has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlord did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I will therefore address each section of the landlords damage claim with this test in mind.

With regard to the claimed damage to the rear shed; I find the tenant agrees that her husband did have an archery target located on the shed therefore I find it likely that the tenant caused damage to the rear shed with the arrows and the landlords photographic evidence is consistent with arrows having been fired at the shed. Therefore I will allow the landlords claim for **\$50.00**.

With regard to the landlords claim for damage to the pantry door hinge and closer; I find there is insufficient evidence to indicate that the tenants are responsible for this damage through their actions or neglect therefore I deny this portion of the landlords claim.

With regard to the landlords claim for cleaning the drapes; I find the landlords evidence does show that the drapes were left stained however a landlord is required to provided evidence of the actual cost to have the drapes professionally cleaned and has failed to do so. I have considered both arguments in this matter and find that even if the tenant had removed the drapes and stored them the tenant was still responsible for the safe keeping of the drapes. Therefore without an actual quote or receipt for the drapes I find I must limit the landlords claim to **\$100.00**.

With regard to carpet cleaning; I direct the parties to the Residential Tenancy Policy Guidelines #1 which states, in part, that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. It does not state that the carpets must be professionally cleaned. I further find the landlord has provided no evidence to show that the tenant left the carpets with stains. Therefore I deny this portion of the landlords claim.

With regard to the landlords claim for burnt out light bulbs; the landlord has provided some photographic evidence that some lights bulbs were not working at the end of the tenancy. However I have no receipt for the replacement of these light bulbs or the actual amount that were burnt out. Therefore I find the landlord has not met the burden of proof in this matter and this portion of the landlords claim is denied.

With regard to the landlords claim for wall repairs; the landlord has shown that the tenant did leave anchors in the wall and the tenant agrees with the landlord's agent's testimony on this point. However the landlord has claimed the sum of \$210.00 to remove, fill, sand and paint these areas and the tenant disputes this. I find that the landlord has not provided a quote or receipt from their handyman to determine the actual cost of these repairs therefore I must limit the landlords claim to **\$75.00**.

With regard to the landlords claim for cleaning the rental unit; I find that as the landlord's agent did this work himself there is no receipt required. I have therefore considered the landlords photographic evidence relating to the unclean areas. Having considered this evidence I find there are many areas left unclean or with dust and cobwebs which indicate that the tenant had not cleaned these areas. A tenant is responsible to ensure a rental unit is left reasonably clean at the end of the tenancy in accordance with s. 32 of the *Act*.

However part of the landlords claim is for cleaning under and behind appliances which were not fitted with wheels. A tenant is not required to pull out appliances to clean behind them if they do not have wheels or without specific instructions and guidance from the landlord.

Therefore I must limit the landlords claim for cleaning and I award the landlord the sum of **\$200.00**.

With regard to the landlords claim for power washing the carport; the tenant argues that the carport was not used as a workshop and was left in the same condition they received it in. The landlord argues this is not the case and the dirt and grime built up during the tenancy. Without any evidence such as a move in condition inspection report indicating that the carport was clean at the start of the tenancy the landlord has not met the burden of proof that the tenants left the carport in a dirty condition at the end of the tenancy. Therefore this portion of the landlords claim is denied.

With regard to the landlords claim for power washing the patio; I find this section of the landlords claim is unreasonable. This is an outdoor patio and the landlord must expect some marks caused by planters or the weather. I further find the amount claimed to be extravagant to clean a small area under a planter taking one hour to power wash this area. This portion of the landlords claim is therefore denied.

With regard to the landlords claim for the removal of items and garbage; I find the landlords have not shown what waste was left by the tenants and what waste belonged to the landlord. Furthermore I have taken into consideration the tenants claim that the yard was not in a good tidy condition at the start of the tenancy and their neighbour has attested to the amount of yard work the tenants performed during the tenancy. The landlords have

provided no evidence to support their claim for \$150.00 or evidence of a transfer station fee. Therefore this portion of the landlords claim is denied.

With regard to the landlords claim for replacement costs for an ornamental bush; the landlord argues that this bush was in good health. The tenant argues that the bush was not in good health and was dying. The tenancy agreement allows the tenants to maintain the yard and this would include the removal of any plants that were dead or dying. Therefore I find that the landlord has insufficient evidence that the bush was in good health and no evidence of the actual cost to replace the bush. This portion of the landlords claim is therefore denied.

With regard to the landlords claim for outside repairs and painting; I have considered the landlords evidence and the tenants testimony and find the tenants did not remove the eyelets and hooks from areas around the property and this burden has been placed upon the landlords agents. I also find the tenant agrees they removed the brackets from the house and installed a wood cover for the wood pile. I therefore find the landlords claim that they had to remove these items and to fill sand and paint these areas to protect the property to be upheld. However the landlord has provided no evidence such as a quote from the landlord's handyman showing the actual costs for this work. Therefore I limit the landlords claim **\$100.00**.

With regard to the landlords claim for a replacement power adaptor; the tenant agrees they may have removed this from the property and I find the landlords claim to be reasonable to replace this adaptor at a cost of **\$11.20**.

With regard to the parties claim to recover the filing fee paid for each application. As both parties have been partially successful I find each party must bear the cost of filing their own applications. I have offset the landlord's monetary award against that of the tenants as follows:

|                                |             |
|--------------------------------|-------------|
| Double the security deposit    | \$1,650.00  |
| Less outstanding utilities     | (-\$288.20) |
| Less damages as awarded        | (-\$536.20) |
| Total amount due to the tenant | \$825.60    |

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to keep the sum of \$824.40 from the tenants' security deposit.

I hereby find in partial favor of the tenants monetary claim. The tenant is entitled to double the security deposit to the sum of \$1,650.00 less the amount awarded to the landlord of \$824.40 which has been offset against the tenants' monetary award. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$825.60**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

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 28, 2013

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Residential Tenancy Branch

