



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on December 14, 2012 for:

1. A Monetary Order for damage to the unit – Section 67;
2. An Order to retain all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on January 16, 2013 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy started on May 1, 2009 and ended on December 1, 2012. Rent of \$1,700.00 was payable and at the outset of the tenancy the Landlord collected \$700.00 as a security deposit. No move-in or move-out inspection was conducted. On November 14, 2012 the Tenants gave the Landlord notice that they would be moving out of the unit on December 1, 2012. The Tenants pursuant to a two month notice to end tenancy for landlord's use issued on October 25, 2012 with an effective date of January 1, 2013.

The Tenants state that they did not receive the equivalent of one month's rent from the Landlord and that the Landlord did not return the security deposit. The Tenants state that they provided their forwarding address to the Landlord on December 3, 2012. It is noted that the Landlord made an application for dispute resolution claiming against the security deposit on December 14, 2012. The Tenants claim return of double the security deposit of \$1,400.00 and \$1,700.00 for the one month's rent equivalency. The Landlord states that the Tenants obtained their one month's equivalent amount as the Landlord did not cash the Tenant's rent cheque for January 2013.

The Landlord states that the Tenants left the unit damaged as claims as follows:

- \$98.00 for the replacement of a door that had been removed and relocated by the Tenants. The Landlord provided an invoice for this cost. The Tenants state that the door had been relocated to make a suite and that the Landlord gave permission for this relocation. The Landlord denies this permission;
- \$1,857.74 for the estimated cost of materials and labour to replace carpets in the bedrooms and hallway in the basement. The Landlord provided a copy of the estimate. The Landlord states that the carpets smelled like animal urine and that on the advice of a realtor that told the Landlord that the carpets were not fit for health and sanitary reasons. The Landlord did not attempt to clean the carpets. The Landlord states that the carpets were purchased new in 2003. The Landlord did not provide photos of the carpets. The Witness for the Landlord states that

he viewed the carpets the day after the Tenants moved out of the unit and that they smelled horrible and that they looked as though someone has been in there a long, long time. The Tenants state that approximately a year prior to the end of the tenancy the dishwasher caused a flood that leaked water into the basement causing the carpets to be damaged and that although the Landlord repaired the dishwasher and was informed about the leak, nothing was done in relation to the leak to the basement. The Tenants state that the carpets in the basement were old and likely original to the house or only original in the 1970's. The Tenants state that they cleaned the carpets at move-out. The Landlord states that the Tenants did not inform the Landlord that the dishwasher caused leaks into the basement;

- \$378.26 and \$44.00 for the cost of materials and labour to paint one room in the basement that has one wall gouged and marks and scratches on the other walls. The Landlord provided estimates and a paint invoice for this cost along with photos. The Landlord states that this room had been painted three years prior. The Tenants state that the gouge was small, approximately 1" by 2" and that this spot could have been repaired without painting the entire room and that the other marks on the wall were reasonable wear and tear;
- \$302.34 for the cost of refinished the top of an antique table that had been left in the unit. The Landlord states that the table top was scratched and gouged reducing the value of the table. The Tenants state that the table was left by the Landlord under the stairs in the storage area and that this table had never been used by the Tenants;
- \$196.00 for landscaping costs to trim hedges. The Landlord does not know whether this is provided for in the tenancy agreement and states that there was an oral agreement for the Tenants to undertake this work. The Tenant states that there was no agreement for landscaping work and that the lawn was maintained during the tenancy.

### Analysis

Section 50 of the Act provides that upon receiving a notice to end tenancy for landlord's use of property, the Tenant may provide 10 days notice and end the tenancy earlier than the effective date of the Notice to End Tenancy and is required to pay the amount of rent due to the effective date of the tenant's notice. This section further provides that ending a tenancy in this manner does not affect the tenant's right to compensation.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant provided notice and moved out of the unit on December 1, 2013 no further rent was payable to the Landlord. Based on the undisputed evidence that the Landlord did not provide compensation of one month's rent pursuant to the notice to end tenancy for landlord' use, I find that the Tenants are entitled to **\$1,700.00**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord filed an application with 15 days receipt of the forwarding address, I find that the Landlord is not required to pay the Tenant double the security deposit.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Tenants evidence of the age of the carpet, considering that the Landlord did not supply supporting evidence of the age of the carpet, noting that the Landlord's

Witness provided evidence that the carpets appeared to have been lived on for a long time, and considering that the Landlord's did not attempt to clean the carpets before replacing them, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenants caused the carpet to be so damaged as to require their replacement. I therefore dismiss this claim of the Landlord. Given the lack of a tenancy agreement for evidence, the Landlord's uncertainty in relation to the contents of the tenancy agreement and considering the Tenant's denial of a verbal agreement to carry out landscaping work, I find that the Landlord has not substantiated an entitlement to the claim for landscaping work and I dismiss this claim.

Although the Landlord argues that all the bedroom walls were damaged, I note that only one photo was provided showing a gouge and that the Tenant stated that this gouge was small in size. As there was nothing in this photo to provide context to determine the size of the gouge, and no other photo evidence of wall damage beyond reasonable wear and tear, I find that the Landlord has not substantiated on a balance of probabilities that all the walls of the bedroom required repair and painting. I therefore dismiss this claim.

Based on the undisputed evidence that the Landlord left the table in the unit and that the table was stored, I find that the Landlord has not substantiated that the Tenants caused the table to be damaged. I therefore dismiss this claim. Although the Landlord denies that permission was provided to the Tenants for altering the position of the door, given the undisputed evidence that one room by the door was altered to become a suite, implying consent from the Landlord to make alterations to enable the creation of the suite, I find that the Tenant's evidence of consent for the alteration holds a ring of truth. I therefore dismiss this claim.

As none of the Landlord's claims for damage to the unit has been successful, I decline to award the Landlord recovery of the filing fee and I order the Landlord to return the security deposit of **\$700.00** plus zero interest to the Tenant's forthwith. As the Tenant's application has been substantially successful, I find that the Tenant is entitled to

recovery of the **\$50.00** filing fee for a total entitlement of **\$2,450.00** (\$1,700.00 + 700.00 + 50.00).

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$2,450.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: March 20, 2013

---

Residential Tenancy Branch