



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for an order compelling the landlord to return their security deposit and a cross-application by the landlord for a monetary order and an order permitting him to retain the security deposit. Both parties participated in the conference call hearing.

### Issues to be Decided

Are the tenants entitled to a monetary order as claimed?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in 2006 at which time the tenants paid a \$400.00 security deposit and that it ended at the end of September 2012 pursuant to the tenants' one month notice that they would be vacating. The tenants testified that they gave their forwarding address in writing to the landlord several times and the landlord acknowledged having received it on October 20, 2012.

There is no evidence that the parties conducted an inspection of the unit at the beginning of the tenancy or that they generated a condition inspection report at that time. The parties agreed that on September 27 after their belongings had been moved out of the unit, the male tenant, F.B., spoke with the landlord and asked him to complete an inspection. The landlord advised that F.B. was not finished cleaning so an inspection could not be completed yet. F.B. returned the keys to the landlord and left the rental unit. The landlord did not attempt to schedule a condition inspection at any time after that and claimed that he took the position that the tenants had abandoned the rental unit and therefore had extinguished their right to claim against the security deposit.

The landlord's claim primarily deals with the time spent to clean the rental unit and prepare walls for painting. The landlord testified that he spent 15 ¼ hours on these tasks and seeks to recover \$457.50, which represents an hourly rate of \$30.00 per hour.

The landlord testified that he spent 5 ½ hours scrubbing and bleaching the grout on the tile floor as it was black when the tenants vacated the unit. The tenants did not dispute that the grout was discoloured, but claimed that the landlord must not have sealed it properly prior to them moving in and alleged that the landlord had accused their cats of tracking disease into the house and wanted it cleaned for that purpose.

The landlord testified that there were numerous nail holes in the walls and scotch tape which had to be removed, pulling part of the gyproc with it, and that as a result, he spent 5 ½ hours filling and sanding to prepare the walls for painting. The tenants testified that there were numerous nail holes in the walls when they moved into the unit, but acknowledged having used scotch tape on the walls.

The landlord testified that there were a number of holes in the bedroom door which it took him one hour to fill, sand and repaint. The tenants testified that the holes were in the door at the outset of the tenancy.

The landlord testified that it took 1 hour to clean the stove top, bottom and sides. The landlords provided just one photograph of the area beneath the stove which showed some deposits of ash. The tenants testified that they believed they had adequately cleaned the stove.

The landlord testified that it took him 1 ½ hours to scrape black tape off of the kitchen door and to fill, sand and repaint that door. The landlord provided 2 photographs of doors, one of which showed a hole and one which showed a discoloured area. The tenants did not comment on this claim.

The landlord testified that it took him ¾ of an hour to clean the refrigerator and freezer. The landlord provided one photograph of the back of the refrigerator, showing that the coils were dusty and that the tiles were soiled. The tenants did not comment on this claim other than their general comment that they believed they had adequately cleaned the rental unit.

The landlord provided a photograph of one page of the tenancy agreement which indicated that "Appliances will be supplied and maintained in working order as indicated below." The agreement listed various appliances and for the washer and dryer, boxes were checked to indicate that the tenants were responsible. The landlord testified that

neither machine was functional at the end of the tenancy. The tenants argued that the landlord had performed repairs during the tenancy and that they should not be held responsible for the issues with the machines as they had advised him in an email prior to the end of the tenancy that they were not functioning. The landlord claims \$150.00 as the cost of replacing the washing machine.

The landlord seeks an additional \$17.00 as the cost of purchasing materials to repair the walls.

Both parties seek to recover the filing fees paid to bring their applications.

### Analysis

The tenants gave the landlord a one month notice that they were vacating the rental unit. They moved all of their belongings out of the unit and cleaned the unit to a point which they believed to be reasonable and at that time offered to do an inspection with the landlord. I find that the landlord did not have the right to refuse to do an inspection until after the tenants had performed additional cleaning; rather, because the tenants told him they were finished, the landlord should have performed an inspection. I find that the tenants did not abandon the unit as they were vacating in accordance with their notice and returned the keys to the landlord. I find that the tenants have not extinguished their right to claim against the deposit.

The landlord has the obligation to conduct an inspection of the unit at the end of the tenancy and as he refused to do so when F.B. indicated that he was available and as he failed to schedule a final opportunity for an inspection pursuant to the Residential Tenancy Regulations, I find that the landlord has extinguished his right to claim against the deposit. However, there is nothing in the Residential Tenancy Act which prevents the landlord from advancing a monetary claim against the tenants and I find that I must address the merits of the landlord's claim.

I will first address the tenants' claim. Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find that the landlord received the tenants' forwarding address by October 20 at the latest and did not file his claim until February 5, 2013 and I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the address and is therefore liable under section 38(6) which provides that the landlord must pay the tenants double the amount of the security deposit.

The landlord currently holds a security deposit of \$400.00 which has accrued \$13.83 in interest to the date of this judgment. I award the tenants \$813.83. As the tenants have been successful in their claim, I find that they are entitled to recover their filing fee and I award them \$50.00 for a total award of \$863.83.

Turning to the landlord's claim, the landlord did not submit any evidence showing the condition of the rental unit at the outset of the tenancy. Had the parties completed a condition inspection report at the beginning of the tenancy, it would have proved a useful resource to prove the condition of the unit.

As the tenants did not dispute that the grout was discoloured and as they did not allege that the problem pre-dated the tenancy, I find that the tenants failed to adequately clean the grout. I find the claim that the landlord wanted to curb the spread of cat-borne disease to be irrelevant as it is clear that the grout required cleaning for cosmetic purposes. I find that the fact that the landlord was able to get the grout clean through scrubbing shows that it was possible to adequately clean it and for that reason, I find it irrelevant whether the landlord had properly sealed the tiles or grout. The landlord's photographs show that the grout was not left reasonably clean and I find that the landlord's claim for 5 ½ hours of cleaning time is reasonable. However, I find that the hourly rate set by the landlord is unreasonable as I find it approaches professional rates. I find that an hourly rate of \$20.00 per hour is more appropriate and I award the landlord \$110.00 based on that rate.

Because I am unable to determine the condition of the walls at the beginning of the tenancy, I find that the landlord has not proven that the tenants caused the extent of the damage claimed by the landlord. The tenants admitted that they left tape on the walls, but they also said that there were numerous nail holes already in place when the tenancy began. I find inadequate evidence to prove that the tenants caused those nail holes or that they were so numerous that they went beyond what may be characterized as reasonable wear and tear and I find that the landlord would likely have had to spend time filling and sanding those holes in any event. I find that the landlord may have had to spend an additional hour repairing rips caused by the scotch tape and therefore I award the landlord \$20.00 in compensation for that one hour of additional labour.

I am unable to determine whether the holes in the bedroom door were present at the beginning of the tenancy. The landlord has the burden of proving that the tenants caused that damage and I find that he has not proven this on the balance of probabilities and accordingly I dismiss this part of the claim.

The tenants claimed that they adequately cleaned the stove while the landlord claims that they did not. The only evidence given by the landlord to corroborate his claim for

one hour of time to clean the stove is a photograph showing a buildup of ash under the stove. I find that the tenants failed to clean this area, but I find that the cleaning required would have required so little time that it does not warrant compensation and I dismiss this part of the claim.

As the landlord did not allege that the kitchen door had a hole in it, I assume that the photograph of the door with a slight discolouration is the kitchen door which he claims that he had to spend time scraping, filling and sanding. I find that the photograph does not show that the labour was required that was described by the landlord and for that reason I find that the landlord has not proven that he has suffered any loss and I dismiss this part of the claim.

The landlord claimed that it took him  $\frac{3}{4}$  of an hour to clean the refrigerator and freezer, but he did not provide evidence that would corroborate that claim. The one photograph of the refrigerator shows a build up of dust at the back of the refrigerator, which could be removed very quickly, and shows that discoloured tiles required cleaning, but this cost has been addressed in the award for the cost of cleaning tiles. I therefore dismiss this part of the claim as there is insufficient evidence to show that  $\frac{3}{4}$  of an hour of additional cleaning was required.

The tenancy agreement contains a specific provision under which the tenants are responsible for supplying and maintaining the washer and dryer. Although the agreement indicates that the tenants were to supply those appliances, the parties agreed that the landlord supplied the appliances. As a general rule, landlords who supply appliances are responsible to maintain them as is reflected in Residential Tenancy Policy Guideline #1. I find that because the landlord supplied the washer and dryer, the provision in the tenancy agreement is not applicable and I find that the landlord was responsible for the maintenance of those machines. The landlord did not dispute that the tenants had advised him that the machines were not functioning and in the complete absence of evidence that the machines broke through some misuse instead of through reasonable wear and tear, I find that the landlord has not established an entitlement to compensation. I dismiss this part of the claim.

As the landlord has been held responsible for most of the repairs to the walls and doors, I find that he must also bear the \$17.00 cost of materials and I dismiss this part of the claim.

As the landlord has been only partially successful in his claim, I find that he is entitled to recover just \$20.00 of the filing fee paid to bring his application and I award him that sum. The landlord's total award totals \$150.00 which represents \$110.00 for grout

cleaning, \$20.00 for filling and sanding walls damaged by tape and \$20.00 for the filing fee.

Although the landlord has extinguished the right to claim against the security deposit, section 72(2)(b) of the Act permits me to set off any award made to a landlord against the security deposit and I find it appropriate to do so in these circumstances.

The tenants have been awarded \$863.83 and the landlord has been awarded \$150.00. Setting off these awards as against each other leaves a balance of \$713.83 payable by the landlord to the tenants. I grant the tenants an order under section 67 for \$713.83. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The tenants are granted a monetary order for \$713.83.

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: April 19, 2013

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Residential Tenancy Branch

