



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlords for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This month-to-month tenancy commenced November 1, 2009. The monthly rent, which was due on the first day of the month, was \$1395.00 at the start of the tenancy and \$1448.01 at the end. The rent included all utilities. The tenant paid a security deposit of \$700.00.

There was a written tenancy agreement. The agreement included a clause that stated: "No animals allowed (exception made for part-time custody of dog)."

On May 13, 2013, the landlords issued and served a 1 Month Notice to End Tenancy for Cause with an effective date of June 30, 2013.

On May 31 the landlords received a call from their employee and downstairs tenant that the tenant was moving out. The landlord testified that when he went to the rental unit to have a look the tenant called the police. The tenant said that when she returned to the rental unit after dropping off a load at the new place she encountered two large trucks belonging to the landlord's business blocking the driveway. The landlord yelled at her about the June rent and some other issues. She felt threatened and called the police.

The landlord left. He returned at 6:00 pm. The tenant again called the police.

The landlord testified that he went into the home with the police and found all the windows and doors open, all the lights on, and all the taps running. The police asked

him not to confront the tenant. They told him that the tenant was leaving and that the keys were in the mail box. He turned everything off, closed all the windows and doors, and locked the doors. The tenant was in the driveway.

The tenant testified that the police asked if it would be okay if the landlord walked through the house if he was accompanied by them. She told them that she had finished moving but she had not finished cleaning. She testified that to make sure the keys were not lost in the confusion of moving, she had put them in the mailbox. After the landlord came out of the house, he locked it up and left with the keys. She said the taps were running because the municipality had asked her to do that in response to complaint she had made the previous day about water.

The parties agree that a move-in inspection was not conducted and a move-in condition inspection report was not completed. The landlords filed photographs of the rental unit which the landlord said were taken before the start of this tenancy.

The tenant testified that the photographs did not reflect the condition of the rental unit when she moved in. She specifically mentioned a blue toilet seat shown in a photograph which she said was not there at the start of the tenancy and the furniture which she recognized as belonging to a previous tenant.

In response to the tenant's evidence the landlord testified that the photographs had been taken in February of 2009 and that an acquaintance of theirs had stayed in the unit for few months between the date when the photographs were taken and the date that this tenancy started. He stated that nevertheless he thought the photographs were an accurate reflection of the condition of the unit at the start of this tenancy. He also testified that the unit had been empty for several months before the start of this tenancy and that it had been cleaned professionally between occupants.

The tenant responded by stating that when she looked at the unit two weeks before she moved in, there was a family living in it.

The evidence each party gave regarding the specific claims of the landlords was as follows.

*Locksmith - \$439.18*

The landlord testified that not all the keys were returned and they were worried about the tenant re-entering the unit so they had the locks changed. The invoice from the locksmith is dated June 6, 2013. The tenant said she returned all the keys.

*Cleaning - \$693.00*

Two cleaners worked for twelve hours each at \$27.50 per hour. According to the letter filed by the cleaners the landlord contacted them on June 7 and they did the work on June 10 and 12. Their letter described a very dirty house. One of the items mentioned was the strong smell of cat urine in one of the bedrooms. The tenant's position is that the landlord prevented her from finishing the cleaning which she had started.

*Hardwood floors - \$2625.00*

The home was built in 1972 and the landlords bought it in 2004. They have never had any work done to the floors until this summer. The invoice, which is dated July 10, 2013, charges \$2300.00 for sanding and refinishing 717 square feet of hardwood flooring; \$200.00 for patching the urine stained areas; and GST.

The landlords' 2009 photograph of the area in front of the sliding glass door in a dining area, which was taken from a distance, shows some discolouration in front of the door. The 2013 photograph, which is taken from a much closer vantage point, shows significant water damage and wear.

The landlord filed a 2009 photograph of the corner under the bedroom window. The floor appears to be undamaged. The 2013 photograph is of an area in front of the closet doors, which shows staining on the hardwood floor. Assuming the photographs are of the same room, they are not of the same areas of the floor.

There is a 2013 photograph showing significant wear at the top of the stairs, There is no comparable photograph from 2009.

The tenant testified that the floors were splintering throughout the tenancy. The landlords testified they never received any complaints about the floors during the tenancy.

The tenant testified that she babysat a cat for three weeks. The cat refused to leave the bedroom. She thought having the cat would be all right because whenever she complained about the noise of the most recent downstairs tenant's dog, she was told it was a pet friendly unit. She also thought the cat was using the litter box that was in the room.

*Remediate Oil Spill in the Driveway - \$1020.13*

This property has a gravel driveway. The tenant's motor vehicle had leaked oil onto the driveway. In February, the landlords told the tenant she had to clean the oil up. The landlord, who is in the remediation business, did not give the tenant any information

about what steps she should take because he thought that would be a conflict of interest. The tenant works in a mechanic shop so she applied a product that is used in the shop to clean up oil. The landlord testified that this product works well on cement and asphalt but does not work on gravel. After the tenancy was over the landlord had a different company dig out the affected area and replace it with clean fill and gravel. This also had the benefit of cleaning up hundreds of cigarette butts off the driveway. The invoice for the work is dated July 15.

*Paint and Painting Supplies - \$418.94*

The claim was for materials only. The landlords have done all the work themselves. The invoice is dated June 25. The landlords testified that the home had last been painted in February 2009. The tenant was of the opinion that the home had not been painted before she moved in.

*Baseboards - \$198.45*

This claim was for materials only. The invoice is dated July 19. The baseboards had to be replaced as part of the floor refinishing.

*Closet Doors - \$363.23*

This claim is for materials only. The invoice is dated July 29. The landlord testified that these were the original closet doors.

*Replace Miscellaneous Items - \$149.49*

This invoice is dated June 30. The landlords claimed the cost of replacing a mouldy wicker shelf in the bathroom, a smoke alarm, a shower curtain and rod, a CO2 alarm and light bulbs. The tenant testified that there never was a smoke alarm, shower curtain, or CO2 alarm in the unit. She also testified that she replaced all the light bulbs before moving out. Finally, she testified that the wicker shelf was not in very good condition at the start of the tenancy.

*June Rent - \$1448.01*

The tenant moved out of the rental unit without giving the landlords any notice. She relied upon the statement in the notice to end tenancy that said: "If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice. (You can move out sooner)."

*July Rent - \$1448.01*

The landlords testified that the unit has not yet been re-rented because they have not finished all the repairs that required. One of the reasons for the delay is the length of

time it took the flooring contractor to finish the hardwood floors. He finished his work on July 10.

The tenant gave her forwarding address in writing to the landlords on June 10. They filed this application for dispute resolution on June 12.

### Analysis

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

In this case the landlords have put themselves at a disadvantage when trying to prove the state of the rental unit at the start of this tenancy.

First of all, there is no move-in condition inspection report. The great advantage of a properly completed move-in or move-out condition inspection report is that section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Secondly, the “before” photographs are of minimal probative value. Not only were they taken nine months before the start of this tenancy, they were taken before another tenancy started and ended.

Finally, the manner in which the information about the date of the photographs and the intervening tenancy came out in the hearing damaged the landlord’s credibility.

With respect the various claims made by the landlords I find as follows.

### *Locksmith*

The landlord testified they had the locks changed because they were afraid the tenant would re-enter the unit but instead of changing the locks immediately, which is usually what landlords with this concern do, the locks were changed a week later. The landlord

did give evidence about vandalism at the rental unit but that vandalism occurred after the locks were changed and there is no evidence that the tenant was responsible for the vandalism. Further, the landlords' evidence described a dirty and messy property but there was no evidence of willful damage to the property such as holes in walls; kicked out door frames; ripped out doors, appliances or cabinets; spray painting or graffiti; sawed off railings; or other forms of intentional damage to the unit by the tenant. I find that the lock replacement was part of a general renovation of the property and the tenant is not responsible for this cost.

### *Cleaning*

This home needed a lot of cleaning and the number of hours charged by the cleaners seems very reasonable.

The landlord argued that the tenant had abandoned the property; the tenant argued that the landlord prevented her from finishing the cleaning.

The tenant did not "abandon" the property. Abandonment is defined in section 24 of the Residential Tenancy Regulation and the situation here did meet that definition. If the tenant was not on site and the unit was substantially empty, the fact that the keys were in the mailbox may have been yet another indication of abandonment. However, the tenant was still on the property when the landlord locked the doors and took the keys.

The usual practice at the end of a tenancy is that a landlord will identify deficiencies in cleaning and repairs and give the tenant an opportunity to remedy the deficiencies, particularly if there is time before the next tenant moves in. If this situation had not been so confrontational, a situation for which the landlord is substantially responsible, this could have been the procedure followed here. (I draw my conclusion about the landlord's responsibility based upon his evidence about the instructions given to him by the police.)

The tenant was mistaken in her belief that she had until midnight to finish moving and packing. Section 37 of the *Residential Tenancy Act* states that a tenant must be out of the rental unit by 1:00 pm on the last day of the tenancy. However, even if the tenant had worked until midnight, she would not have completed all the cleaning and garbage removal that was required.

I allow the tenant a partial credit for the cleaning she could have done, if allowed to do so, in the amount of \$165.00. I award the landlords \$528.00 for cleaning.

### *Hardwood Floors*

The expected useful life of hardwood floors in a rental unit is twenty years so the depreciated value of these floors is nil. However, this was a no pets unit; the tenant wrongfully kept a cat in the unit; and the cat did damage the floor. The tenant is responsible for the repairs required by the cat damage in the amount set out in the invoice, \$200 plus GST, a total of \$210.00.

### *Remediate Driveway*

The expected useful life of a gravel driveway or parking lot is ten years and this is not a new driveway. On the one hand, the tenant did cause the problem and did not make much of an effort to find out what she should do to remedy it. On the other hand, the landlord who is knowledgeable in the area and whose property was being damaged by the oil spill did not do anything to mitigate his damages during this tenancy. After considering all of these factors, I find that the parties should split the cost of the driveway remediation. I award the landlords \$510.00 for this item.

### *Painting Supplies*

The expected useful life of interior paint in a rental unit is four years. The landlords testified that this unit had last been painted in February 2009. The depreciated value of the paint finishes is nil. Accordingly, nothing will be allowed for this item.

### *Baseboards*

These were the original baseboards. Their depreciated value was minimal and their replacement was required because the floors were being refinished. Accordingly, nothing will be allowed for this item.

### *Closet Doors*

The expected useful life of doors in a rental unit is twenty years. These were the original doors so their depreciated value was nil. Accordingly, nothing will be allowed for this item.

### *Replace Miscellaneous Items*

The only evidence as to whether all these items, except for the wicker shelf in the bathroom, were present at the start of this tenancy is the contradictory oral testimony of the parties. There is no other evidence, such as a properly completed condition inspection report, to tip the balance of probabilities in the landlords' favour. Although the parties agreed there was a wicker shelf in the bathroom at the start of the tenancy, they gave conflicting evidence as to its condition at that time. As the landlords have not established these claims on a balance of probabilities, they are dismissed.

### *June Rent*

If the tenant wanted to move out before the effective date on the notice to end tenancy, she still had to give the landlords written notice to end tenancy. I find that the tenant is responsible for the June rent in the amount of \$1448.01.

### *July Rent*

As explained in *Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*, if a rental unit is un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

There is no evidence of any haste in arranging for the cleaning or repairs. The cleaners were not contacted until June 7. Although the flooring contractor was finished on July

10 the baseboards were not purchased until July 19 and the closet doors were not purchased until July 29. The driveway repair, which was not contingent on the flooring contractor, was not done until July 15. I find that the landlords have not mitigated their damages as required by section 7(2) and I dismiss their claim for the July rent.

*Filing Fee*

Although the landlords forgot to include this item on their application for dispute resolution the Act allows me to order repayment of the fee paid by a party to a dispute resolution proceeding. As the landlords were only partially successful on their application I find that the tenant must reimburse the landlords for half of the fee they paid for this application, a total amount of \$50.00.

Conclusion

I find that the landlords have established a total monetary claim of \$2746.01, as detailed above. I order that the landlords retain the security deposit of \$700.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$2046.01. 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: August 14, 2013

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Residential Tenancy Branch

