



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MND, MNSD, MNDC, FF  
Tenant: MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for compensation for loss or damage under the Act, regulations or tenancy agreement, for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on June 14, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on June 21, 2013, in accordance with section 89 of the Act.

The Landlords and Tenants both confirmed that they received the other's hearing packages.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so how much?
3. Is there loss or damage to the Landlord and if so how much?

4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to retain the Tenants' deposits?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

### Background and Evidence

This tenancy started on October 26, 2010 as a fixed term tenancy with an expiry date of April 30, 2011. The tenancy was then renewed 4 times with additional fixed term tenancies. The final fixed term tenancy ended on May 31, 2013. Rent was \$1,315.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$647.50 on October 26, 2010.

The Landlord said that they did a move out condition inspection report with one of the Tenants (S.J.) on May 31, 2013, but the Tenant did not agree with the Landlords' view of the condition of the unit and therefore the Tenant would not sign the report. The Landlord said the Tenant did agree to come back to the unit over the next 2 days to clean the unit better. The Landlord said they are not claiming compensation for general cleaning of the unit, but compensation for damages to the carpets and other parts of the rental unit.

- The Landlord said the Tenants damaged a set of blinds that were replaced at a cost of \$40.26. The Landlord provided a copy of the receipt to verify the loss.
- The Landlord said the Tenants did have the carpets cleaned, but the job was not done well and they believe it was not done by a professional carpet cleaning company as specified in the tenancy agreement. The Landlord traced the carpet cleaner the Tenants used and indicated that he was not a legitimate carpet cleaning company, but a maintenance company that did some carpet cleaning with rented equipment. The Landlord said they hired a professional carpet cleaning company to remove stains in the carpet and clean the carpets to an acceptable standard. The Landlords said the carpets are acceptable now. The Landlords' provided a paid receipt of \$274.68 for carpet cleaning.
- The Landlords continued to say that they hired a company to repair the walls because the Tenants had used large hanging anchors and nails in the walls

- to hang pictures. The cost of repairing the walls was \$112.00 and the Landlords provide a copy of the paid receipt.
- The Landlords also said they are requesting 2 days of overholding rent in the amount of \$86.46 because the Tenants cleaned the unit on the first 2 days of June, 2013 after the tenancy ended on May 31, 2013. The Landlords said they calculated a daily rent of \$43.23 and then applied it for two days in the amount of \$86.46.
  - The Landlords said their next claim was for a plugged toilet that had to be replaced in November, 2012. The Landlord said the Tenants flushed a plastic top down the toilet which plugged the toilet. When the plumber tried to unplug the toilet he was unsuccessful and he had to remove the toilet to unplug it and the toilet had to be replaced. The Landlord said they did not advise the Tenants they would have to pay for the new toilet and for the work that was done until this application was filed. The Landlords submitted a paid receipt for the plumbing work and for the new toilet in the amount of \$590.46.
  - The Landlords also requested compensation for the filing fee of \$50.00 for this proceeding and for the registered mail costs of \$20.66.

The Landlords said their total claim is for \$1,174.52.

The Tenant said they moved out of the rental unit on May 31, 2013. The Landlord and the Tenant did a move out condition inspection and she did not agree with it so she did not sign the report. The Tenant said she was not aware that she could sign the report as not agreeing to the condition inspection, because this was her first tenancy. The Tenant said she made arrangements with the Landlords on May 31, 2013 to come back and clean the rental unit again. The Tenant said they completed the cleaning on June 2, 2013. The Tenant continued to say the tenancy was over on May 31, 2013 and they had moved out of the unit on May 31, 2013 so they do not owe the Landlords for two days rent in the amount of \$86.46.

The Tenant continued to say that she agrees that they are responsible for the blind replacement in the amount of \$40.26.

With respect to the carpet cleaning the Tenant said they thought the person they hired was a professional carpet cleaner as he was referred to them by the Tenant's mother. The Tenant agreed the carpet cleaner they hired did not do an excellent job of cleaning the carpets as there were still stains on the carpet after he had completed the job. The Tenant continued to say that the original move in condition inspection report shows stains on the carpet in four of the rooms in the rental unit. The Tenant said the carpets

were cleaned and the stains may have been there when they moved into the unit so they do not believe they are responsible for the carpet cleaning costs of \$274.68 the Landlords incurred.

The Tenant continued to say that there is nothing in the original tenancy agreement about nails in the walls for hanging pictures. The tenancy agreement signed on September 29, 2012 does have a clause about nails and hangers in the wall, but the Tenant said this was done well after the nails and hanger were in the wall; therefore the Tenant said she does not feel she is responsible for the wall repairs of \$112.00 as this item is normal wear and tear in a rental unit.

The Tenant said the plugged toilet was an accident. A top of a bottle fell into the toilet from the overjohn in the bathroom and was accidentally flushed down the toilet. The Tenant said she contacted the Landlord immediately and the Landlord sent a plumber to fix the toilet. The Tenant said the Landlord requested that they move all things that could fall into the toilet after the incident, but the Landlord did not say anything about the Tenant paying for the repairs or the new toilet. The Tenant said they are not responsible for the toilet repairs as it was an accident and they were not told about it until the tenancy was over.

The Tenant continued to say that her application is for double the security deposit back in the amount of \$1,295.00. Since making the application she has learned the application should have been for just her security deposit returned less the cost of the blinds. The Tenant said her application should be amended to \$607.24.

The Tenant also requested to recover the filing fee of \$50.00 for this proceeding.

### Analysis

In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

With respect to the Landlords' claim of \$40.26 for replacement blind and as there is agreement of both parties that the Tenant is responsible for the blinds; I award the Landlords \$40.26 for blind replacement.

Further as the original condition inspection reports indicates staining on the carpets in all for rooms and since the Tenants hired a carpet cleaner that was presented to them as a professional carpet cleaner, I find that the Tenants meet their responsibility to leave the carpets in comparable condition as they were at the start of the tenancy. I find the Landlords have not established proof that the Tenants solely damaged the carpets as some of the stains may have been from the previous tenancy. Consequently I dismiss without leave to reapply the Landlords claim for carpet cleaning in the amount of \$274.68.

With respect to the Landlords claim for wall repairs, I find the original tenancy agreement has no mention of wall hangers and the wall hangers and nails were in the walls at the start of the tenancy with this Landlord; therefore the Landlords have not proven the loss or damage resulted in this tenancy and I dismiss without leave to reapply the Landlords' claim for \$112.00 for wall repairs due to picture hangers and nails in the walls.

In addition the Landlord has requested two additional days of overholding rent from the Tenants in the amount of \$86.46. I find the tenancy ended on May 31, 2013 as indicated in the condition inspection report dated May 31, 2013 that the Landlords submitted in their evidence package. I find the Tenants did not over hold the tenancy, but they made an agreement with the Landlords to come back and do additional cleaning in the rental unit; therefore the Landlords request for addition rent in the amount of \$86.46 is dismissed without leave to reapply.

Further the Landlord has requested \$590.46 for the repair and replacement of a toilet that the Tenants plugged during the tenancy. Both parties agreed the Landlord did not indicate to the Tenants that they were responsible for the cost of the repairs and the replace of the toilet in November, 2012 when the problem happened. I find that the repairs and replacement of the toilet are normal wear and tear of a tenancy and because the Landlord did not indicate to the Tenants at the time of the problem they were responsible for it, I find the Landlord has not proven the loss and I dismiss the Landlords' claim without leave to reapply.

As well the Landlords have requested the mailing costs for this application and as the Branch view these costs as part of the hearing process not part of the tenancy these costs are not eligible to claim. The Landlords' claim for \$20.66 for mailing costs is dismissed without leave to reapply.

With respect to the Tenants' application for the return of their security deposit of \$647.50, less the cost of the blinds in the amount of \$40.26, I find in favour of the Tenants' claim. The Landlords are holding the security deposit at this time and as their claim has been unsuccessful; therefore I order the Landlord to return \$607.24 of the Tenants security deposit to the Tenants forthwith.

As the Tenants have been successful in this matter, they are also entitled to recover from the Landlords the \$50.00 filing fee for this proceeding. The Tenants will receive a monetary order for a total of \$657.24 representing the security deposit less the blinds and the filing fee of \$50.00.

As the Landlords have been unsuccessful in this matter I order the Landlords to bear the \$50.00 cost of this application which they have already paid.

### Conclusion

A monetary order has been issued to the Tenants' for \$657.24.

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 12, 2013

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Residential Tenancy Branch