



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – MNSD, FF

For the landlord – MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. One of the tenants has applied for a Monetary Order for the return of double the security deposit and to recover the filing fee from the landlord for the cost of this application. The landlord has applied 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, the landlord and the landlord's agent 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. The parties confirmed receipt of evidence. 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 recover double 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 month to month tenancy started on January 01, 2012. Rent for this unit was \$1,300.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$625.00 on December 17, 2011. The tenant provided a forwarding address in writing on either April 28 or 29, 2013. The tenancy ended on May 01, 2013.

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

The tenant testifies that when they moved into the unit it was very dirty and the tenants had to clean the unit and remove garbage. The landlord did not do a move in inspection report to detail how dirty the unit was. At the end of the tenancy the landlords agent came to the unit at least four times while the tenants were moving out and said that the tenants would never get the house clean enough to get their security deposit back. The tenant testifies that the landlord's agent did not do a move out inspection report with the tenants. The tenant testifies that the landlord has not returned the tenant's security deposit and has not filed an application to keep it. The tenant therefore seeks to recover double the security deposit from the landlord to an amount of \$1,250.00. The tenant also seeks to recover the \$50.00 filing fee.

The landlord testifies that they did do a move out condition inspection report and this was signed by the tenant. A video recording was also taken at move out. The landlord agrees that he has not provided these items in evidence. The landlord testifies that he has only received a PO Box address for the tenants and this is not a forwarding address.

The landlord's agent testifies that when the tenant came to give their forwarding address the tenant asked when the landlord was going to return the security deposit but the tenant was told that the place was not clean and the tenants would not be getting their security deposit back.

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

The landlord testifies that the house was left in a dirty condition at the end of the tenancy. The whole house had to be cleaned including the bathrooms and appliances. The landlord testifies that they had to bring in cleaners to do this work and the landlord seeks to recover \$796.59 from the tenants. The landlord has provided no evidence.

The landlord testifies that when the tenants moved in they agreed to paint the walls and the landlord purchased paint for the tenants use to do two coats. The tenants only put up one coat of paint and the landlord found the rest of the paint in the garage.

The landlord testifies that the tenants were originally responsible for all the Hydro costs. This was revised after large bills came in for the two units the Hydro related to and the landlord agreed that the tenants could pay \$150.00 each month towards Hydro and the bills would then be reviewed every two months. The landlord testifies that there is a shortfall in what the tenants paid and the amounts of the bills. The landlord has filed a claim for Hydro for the final bill for March, 2013 of \$557.79. The landlord has provided a copy of the Hydro bill in evidence.

The landlord testifies that the tenants had use of a ride on lawn mower and this was left damaged with a plate missing that covers the engine. The landlord testifies that they had to take the mower to be repaired and seek to recover the cost of this repair of \$400.00 from the tenants. The landlord has provided some photographic evidence showing the lawn mower but no invoice for the repair.

The tenant disputes the landlord evidence. The tenant testifies that the house was cleaned at the end of the tenancy including the carpets. The tenant testifies that she had help to clean other areas in the unit such as the cupboards and bathrooms. The tenant testifies that the landlords stove was never used by the tenants and was put in the garage as the tenants used their own stove. The tenant testifies that the house was 50 times cleaner at the end of the tenancy then it was when they moved in.

The tenant testifies that they had agreed to paint the living room, hallway and another area and this work was done for free for the landlord. The landlord just supplied the paint. The painting was done and the unused paint was left at the unit at the end of the tenancy.

The tenant disputes the landlords claim for Hydro, the tenant testifies that at the beginning of the tenancy they paid all the Hydro for the two units and burnt wood in their unit to keep the costs down. When high Hydro bills came in the tenants testifies that the Hydro was put back into the landlords name and the landlord agreed that the tenants could just pay \$150.00 per month. There was no agreement either verbally or in writing that the tenants would have to pay any more Hydro costs.

The tenant disputes the landlords claim for the lawn mower repair. The tenant testifies that her husband was away in the summer and did not use the lawnmower. The lawnmower was already in this condition and it was damaged by the landlords ex father in law and not the tenants.

The landlord disputes the tenant's testimony concerning the Hydro. The landlord testifies that the original agreement was for the tenants to pay all the Hydro for the two units as the tenant had use of the garage for his tools and used the garage in exchange for paying all the Hydro costs. When the bills became too high the Hydro was put back into the landlords name and the tenants' paid \$150.00 per month. The landlord agrees that it was not documented anywhere that the tenants had to pay any access of the Hydro bills.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover double the security deposit; Section 38(1) of the *Act* says that 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 landlords did receive the tenants forwarding address in writing on either April 28 or April 29, 2013. The landlord argues that this is a PO Box address and not a forwarding address. However if it is an address provided by the tenants then it is deemed to be a forwarding address for the purpose of the *Act*. The tenancy ended on May 01, 2013 and as a result, the landlord had until May 16, 2013 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 has not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to an amount of **\$1,2500.00** pursuant to section 38(6)(b) of the *Act*.

As the tenant has been successful the tenant is also entitled to recover the **\$50.00** filing fee from the landlord.

With regard to the landlords claim for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant 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 claimant 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 claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has not provided any copies of inspection reports to show that the condition of the unit at the start and end of the tenancy. The landlord has provided some photographic evidence showing the lawn mower but no evidence to support his claim that this was damaged by the tenants. The landlord has provided no receipts or invoices for cleaning or repairs. I therefore find the landlord has not met the burden of proof that the tenants failed to leave the rental unit in a reasonable clean condition or that the tenants damaged the lawn mower. Consequently I must dismiss the landlords claim for cleaning and repairs.

Furthermore, I find the landlord has claimed Hydro for March of \$557.79. If this Hydro is for two units then the tenants are only responsible for Hydro for their own unit unless the landlord has evidence to the contrary. The tenant argues that they had agreed that the tenants would pay \$150.00 per month for Hydro and the landlord has not meet the burden of proof that there was an agreement in place for any additional Hydro to be paid over and above this amount when the bills came in. Consequently I must dismiss the landlords claim for Hydro costs.

As the landlord has been unsuccessful with his claim the landlord must bear the cost of filing his own application.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,300.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord claim is dismissed in its entirety without leave to reapply.

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: September 25, 2013

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Residential Tenancy Branch

