



# 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 – MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order to recover the security and pet deposit and to recover the filing fee from the landlords for the cost of this application. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords 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. 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

- Are the tenants entitled to a Monetary Order for the return of the security and pet deposits?
- Is the landlord entitled to keep the security or pet deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

### Background and Evidence

The parties agree that this month to month tenancy started on September 04, 2011. Rent for this unit is \$1,100.00 per month and was due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$550.00 on October 31, 2011 and a pet deposit of \$550.00 on October 01, 2011. Both parties attended a move in and a move out inspection of the unit. The tenancy ended on April 31, 2013 and the tenants provided their forwarding address by text message on May 20, 2013.

The tenants testify that they agreed with the indications made on the move out condition inspection form regarding cleaning and carpet cleaning and agreed that the landlord may deduct the costs to clean the unit and carpets. The tenants testify that the stove was left dirty and needed to be cleaned but there was no damage to the stove as stated on the move out report. The tenants also dispute the landlords claim for the replacement of the entrance carpet and state that as this carpet is exposed to the weather the tenants cannot be held responsible for its replacement.

The tenants agree that the landlord may deduct \$158.81 for carpet cleaning and \$550.00 for the itemized cleaning from the security and pet deposits.

The landlord testifies that they now withdraw their claim for the entrance carpet and agree that this area is exposed to some weather. The landlord's agent testifies that the gasket in the oven door was ruined. It appeared as if there had been a fire in the oven as this gasket was burnt. The oven was a brand new appliance which was fitted in the rental unit in August 2012. It was a self cleaning oven but at the move out inspection it appeared as if the tenants had used oven cleaner in the oven as it had a white film on the interior. The bottom of the oven was also damaged either through the oven cleaner which should not be used on a self cleaning oven or by the burning that damaged the gasket. The landlord seeks to recover \$71.00 for the replacement gasket, \$45.00 for the new plate in the bottom of the oven and \$75.00 for the labour costs to repair the oven. The landlord has provided photographic evidence of the oven which the landlords agent testifies were taken before the landlord's agent started to clean the oven.

The landlord's agent testifies that the tenants gave notice to end the tenancy by phone on April 06, 2013. The landlords agent testifies that she informed the tenants that this was late notice but if the landlord could re-rent the unit for May 01, 2013 then it would not be a problem. The landlord's agent testifies that the unit was not re-rented until September and had been advertised on internet sites, in the local papers and in local stores. As the unit could not be re-rented for May 01, 2013 the landlord seeks to recover a loss of rent for May of \$1,100.00.

The landlord seeks an Order to keep the security deposit and pet deposit for carpet cleaning, general cleaning, oven repairs and unpaid rent.

The tenants dispute the landlords claim. The tenants testify that there was never a fire in the oven and no oven cleaner was ever used as this is a self cleaning oven. The tenant KW testifies that she does not know what caused this damage or that the damage exists as it is not indicated on the move out inspection report. Instead the report indicates that the oven is dirty.

The tenants' testify that they had a conversation with the landlord's agent in which the landlord's agent stated that if the tenants moved out on April 31, 2013 and the unit was not re-rented then it would not be a problem as it would give the landlord time to repaint the unit.

The tenant testifies that the landlord did not mitigate the loss of rent as the landlords agent did not show up for a scheduled appointment to show the unit to prospective tenants. For another scheduled appointment to show the unit the landlord's agent showed up at the end of the appointment. The tenant testifies that they ended up having to show the unit to prospective tenants.

The landlord's agent disputes the tenants claims that they were told it would not be a problem if the unit did not rent as the landlord could repaint the unit. The landlord's agent testifies that what was said was that it would not be a problem if the unit was re-rented for May 01, 2013.

The landlord's agent disputes the tenants' claims concerning the scheduled appointments to show the unit. The landlord's agent testifies that she had called the tenants prior to the appointments and asked the tenants to show the unit and the tenants agreed to do so.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the parties claims for the security and pet deposits; the tenants are required to provide a forwarding address in writing to the landlord. The landlord then has 15 Day from either the date they receive the forwarding address in writing or the date the tenancy ends whichever is the later date to either return the security deposit or file an application to keep it. As the parties agree the tenants sent a forwarding address by text message this is not a recognized form of providing a forwarding address for the purposes of the Act.

With this in mind I will not be ordering the landlord to pay double the security and pet deposits because the landlord did not apply to keep the security or pet deposit within 15 days of the end of the tenancy because the tenants have not provide a forwarding address in writing. The tenants have agreed in writing, and at the hearing today, that the landlord can keep \$158.81 and \$550.00 of the deposits for carpet cleaning and the other general cleaning. Consequently I am not required to make a decision on those issues. The amount of \$708.81 will be deducted from the security and pet deposit leaving a balance of \$391.19 which will be dealt with at this hearing.

With regard to the landlords claim for repairs to the oven; when one person's testimony is contradicted by that of the other and both explanations sound probable then the burden of proof falls to the person making the claim. The landlord would be required to provide corroborating evidence to support their claim that the tenants were responsible for causing damage to the oven. The Move out inspection report identifies that the oven was left dirty and at the end of the report it is indicated that the stove is to be repaired. The landlord has also provided some photographic evidence which although the pictures are small they clearly show a white substance consistent with oven cleaner on the inside of the oven and a

picture of what appears to be a damaged gasket on the oven door. Consequently I am satisfied that on a balance of probabilities that the tenants caused damage to the oven and therefore I find the landlord has met the burden of proof in this matter and is entitled to recover the cost for the oven repair of **\$191.00**.

With regard to the landlords claim for a loss of rent due to improper notice; I refer the parties to s.45 (1) of the *Act* which states:

*(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

As the tenants gave the landlord notice on April 06, 2013 and vacated the rental unit on April 31, 2013 this is insufficient notice to end a periodic tenancy for the purposes of this *Act*. In Order for the tenants to have ended the tenancy by April 31, 2013 the tenants should have provided written notice to the landlord on or before March 31, 2013. Furthermore I have no evidence from the tenants to show that the landlord's agent agreed the tenants could move out without penalty if the unit could not be re-rented for May 01, 2013. I therefore find the landlords evidence more compelling and consequently I find in favour of the landlords claim to recover a loss of rent for May, 2013 to an amount of **\$1,100.00**.

I Order the landlord to keep the balance of the security and pet deposit pursuant to s. 38(4)(b) of the *Act*.

I further find the landlord is entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Carpet cleaning	\$158.81
General cleaning	\$550.00
Oven repair	\$191.00
Loss of rent for May	\$1,100.00
<b>Subtotal</b>	<b>\$1,999.81</b>
Plus filing fee	\$50.00
Less security and pet deposit	(-\$1,100.00)
<b>Total amount due to the landlord</b>	<b>949.81</b>

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$949.81**. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 17, 2013

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Residential Tenancy Branch

