



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlords: MND MNR MNSD MNDC FF

For the tenants: MNDC MNSD FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for authorization to retain all or part of the security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants applied for the return of double their security deposit and pet damage deposit under the *Act*, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover their filing fee.

The landlords and tenant ES attended the teleconference hearing. Tenant ES confirmed she was representing both tenants during the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 1, 2011 and ended on May 31, 2012. The parties disputed that a second fixed term was signed between the parties after May 31, 2012. As a result and in the absence of another fixed term tenancy agreement in evidence, the original tenancy agreement submitted in evidence which began on June 1, 2011 would automatically revert to a month to month tenancy after May 31, 2012.

Monthly rent in the amount of \$3,500.00 was due on the first day of each month. The tenants paid a security deposit of \$1,750.00 and a pet damage deposit of \$1,750.00 at the start of the tenancy which the landlords continue to hold. The parties agree that the tenants vacated the rental unit on September 15, 2013. The parties confirmed that the tenants provided their written forwarding address to the landlords by e-mail and that the landlords received that e-mail on September 15, 2013. The landlords applied for dispute resolution claiming unpaid rent and requesting authorization to keep all or part of the tenants' security deposit and pet damage deposit on September 26, 2013.

The tenants have applied for the return of double their security deposit. The landlord's monetary claim of \$14,206.00 is comprised of the following:

Item 1. Hardwood floor damage	\$6,300.00
Item 2. Cleaning/Hauling/Gardening/Grass transport and installation for 300sf of grass.	\$1,850.00
Item 3. Carpet removal due to dog urine and replace with hardwood flooring	\$950.00
Item 4. Outstanding water bill	\$110.00
Item 5. Heat pump damage due to dog hair	\$926.00

Item 6. Irrigation system damage	\$239.00
Item 7. Unpaid rent for September 2013	\$3,500.00
Item 8. Cost of grass (referred to in Item 2 above)	\$246.00
Item 9. Pressure washing	\$85.00
<b>TOTAL</b>	<b>\$14,206.00</b>

### Settlement Agreement

During the hearing, the parties mutually agreed that the tenants would surrender \$110.00 of their security deposit to the landlords as compensation for the unpaid water bill portion of the landlord's monetary claim. As a result, item 4 of the landlord's claim has been resolved by way of a mutually settled agreement between the parties.

### Evidence for remaining items

The parties agreed that the landlords did not complete an incoming or an outgoing condition inspection report during the tenancy. The tenant denied that the tenants or her dog damaged the items being claimed by the landlords.

### Item 1 – Hardwood floor damage

The landlords confirmed that they did not submit any photos of the hardwood flooring at the start of the tenancy. The landlord referred to a letter submitted in evidence from one of the tenants at the start of the tenancy which reads in part "1) I noticed some deep scratches on your wood stairs near the front doors. I think that your mover must have done that and hopefully you know about it. I don't want you to think we scratched it. The scratches are on the front edges." The landlord stated that this letter confirms that the remainder of the hardwood flooring in the rental unit was not scratched. The tenant disputed the landlord's claim and stated that the hardwood floors were "very soft" as the hardwood floors were scratched at the start of the tenancy.

### Items 2 and 8 - Cleaning/Hauling/Gardening/Grass transport and installation for 300sf of grass plus cost of grass

The landlord confirmed that there was no addendum to the tenancy agreement or written agreement at the start of the tenancy regarding yard maintenance. The written tenancy agreement submitted in evidence confirms that there was no addendum as part of the original tenancy agreement. The landlord referred to a photo of the yard which the

landlords alleged was taken at the start of the tenancy. The photo submitted in evidence is not dated.

Items 3 and 5 - Carpet removal due to dog urine and replace with hardwood flooring and heat pump due to dog hair

The landlords agreed that the rental unit was left clean by the tenant; however, after the tenants vacated the rental unit, a carpet began to smell like dog urine and was replaced with hardwood as a result. The tenant denied that her dog urinated on the carpet and testified that the carpets were professionally cleaned at a cost of \$200.00 to the tenants, and that the rental unit was cleaned by a professional cleaning company at a cost of \$350.00.

Items 6 and 9 - Irrigation system damage and pressure washing

The landlord referred to a note submitted in evidence from tenant GS, which indicates that a company “came out and turned off the zone that was the problem. It was nothing serious. Have a happy Thanksgiving!”. The landlord testified that he considered this note from tenant GS as supporting evidence that the tenants damaged the sprinkler system, which the tenant disputed.

Item 7 – Unpaid September 2013 rent

The tenant confirmed during the hearing that the tenants did not pay rent for the month of September 2013 in the amount of \$3,500.00. The tenant testified that on August 7, 2013 the tenants provided their 1 Month Notice to End Tenancy to the landlords effective September 30, 2013.

Analysis

Based on the documentary evidence, testimony, and on the balance of probabilities, I find the following.

*Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Landlords' Item 7** - The tenant stated that they did not pay rent for the month of September 2013 in the amount of \$3,500.00. Section 26 of the *Act* requires that tenants pay rent on the date that it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, **I find** the landlords have met the burden of proof and are entitled to compensation of **\$3,500.00** for unpaid rent for the month of September 2013.

**Landlords' Items 1, 2, 3, 5, 6, 8 and 9** – There is no dispute that the landlords failed to complete an incoming and outgoing condition inspection report. As a result, **I find** the landlord breached sections 23 and 35 of the *Act*. Section 23 of the *Act* requires that the landlords complete an incoming condition inspection report at the start of the tenancy, and section 35 of the *Act* requires that the landlords complete an outgoing condition inspection report at the end of the tenancy. Regarding items 1, 2, 3, 5, 6, 8, and 9, the tenant disputed these portions of the landlords' claim and **I find** that the landlords have failed to meet the burden of proof by providing insufficient evidence to support items 1, 2, 3, 5, 6, 8, and 9. For example, I do not accept that the letter submitted by the landlord supports that the rest of the hardwood flooring was not scratched at the start of the tenancy. Furthermore, the landlords did not complete an addendum or written agreement with the tenants at the start of the tenancy regarding yard maintenance, and failed to provide supporting evidence to prove the remaining items. Therefore, **I dismiss** items 1, 2, 3, 5, 6, 8, and 9 due to insufficient evidence, without leave to reapply. For these reasons, the landlords are encouraged to comply with section 23 and 35 of the *Act* in the future.

**Tenants' application for return of double their security deposit and pet damage deposit** - The landlords continue to hold the tenants' security deposit of \$1,750.00 and pet damage deposit of \$1,750.00 which has accrued \$0.00 in interest since the start of the tenancy. The landlords applied for dispute resolution claiming towards the tenants'

security deposit and pet damage deposit on September 26, 2013, which also included a claim for unpaid rent. Section 38 of the *Act* states:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

[emphasis added]

There is no dispute that the tenants provided their written forwarding address by e-mail on September 15, 2013 and that the landlords received that e-mail on September 15, 2013. The landlords applied for dispute resolution on September 26, 2013, which is within the 15 day timeline permitted under section 38 of the *Act*. Based on the above, **I find** the landlords did not breach section 38 of the *Act* as they claimed towards the security deposit and pet damage deposit in accordance with section 38 of the *Act* and the landlords have been successful in their claim for \$3,500.00 for unpaid rent for the month of September 2013, and that the tenants' security deposit and pet damage deposit may be used to offset the unpaid rent owed by the tenants. Based on the above, **I find** the tenants have failed to meet the burden of proof regarding their monetary claim. Therefore, **I dismiss** the tenants' application, without leave to reapply.

As the tenants' application did not have merit, **I do not grant** the tenants the recovery of their filing fee.

As a portion of the landlords' application had merit, **I grant** the landlords the recovery of half of their \$100.00 filing fee in the amount of **\$50.00**.

**I find** the landlords have established a total monetary claim in the amount of **\$3,660.00** comprised of \$110.00 for the unpaid water bill which was agreed upon by way of a

mutually settled agreement described earlier in this decision, \$3,500.00 for unpaid rent for the month of September 2013, plus \$50.00 of the landlords' filing fee.

**I ORDER** the landlords to retain the tenants' full security deposit of \$1,750.00 and full pet damage deposit of \$1,750.00 in partial satisfaction of the landlords' claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenants in the amount of **\$160.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenants' claim has been dismissed in full, without leave to reapply.

The landlords have established a total monetary claim in the amount of \$3,660.00. The landlords have been ordered to retain the tenants' full security deposit of \$1,750.00 and pet damage deposit of \$1,750.00 in partial satisfaction of the landlords' claim and have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenants in the amount of \$160.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 9, 2014

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Residential Tenancy Branch

