



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – MND, MNR, MNSD, MNDC, FF

For the tenant – MNSD, FF

### Introduction

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

The tenant and landlord 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

- Is the landlord entitled to a Monetary Order for unpaid utilities?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the security deposit?

### Background and Evidence

The parties agree that this tenancy started on September 29, 2012 for a fixed term tenancy which ended on September 28, 2013. Rent for this unit was \$3,100.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$1,550.00 on September 26, 2012.

The landlord testifies that the tenants have failed to pay the City Utility bill for water of \$312.54. This bill has since been paid by the landlord and the landlord seeks to recover this amount from the tenants. A copy of the bill has been provided in evidence.

The landlord testifies that a move in condition inspection of the property was conducted with the tenants at the start of the tenancy. However at the end of the tenancy the tenants did not attend the inspection despite the landlord providing four dates for the tenants to attend by email and text message. On October 03, 2013 the landlord testifies that he did the inspection in the tenants' absence and found the following damage at the unit:

- The living room drapes had not been professionally cleaned by the tenant. The landlord agrees these drapes already had some mould staining on them but testifies that the tenancy agreement specifies that the tenants must have drapes professionally cleaned when the tenancy ends. The landlord testifies he had paid to have them cleaned by request of the tenant after the tenancy had started and

the mould marks would not come out. The landlord has provided a receipt for that cleaning in evidence but testifies he has not yet had the drapes cleaned after the tenants moved out. The landlord seeks to recover \$224.38.

- The hardwood flooring was left with a stain approximately 12 inches by 12 inches. The tenants had said there was some staining by the fireplace from a water leak however this stain was 12 feet away from the fireplace and no water leak was in evidence on the ceiling and this particular mark is not noted on the move in inspection report. The landlord testifies that the flooring is 35 to 40 years old and the landlord agrees he has never refinished this flooring since he purchased the home in 2002. The landlord testifies that as he is renovating the house he has not yet refinished the flooring but seeks to recover \$250.00 for this damage.
- Miscellaneous cleaning; the landlord testifies that the tenants did not clean under the fridge and this area was left filthy. The fridge is on wheels and could have been moved by the tenants. The tenants failed to clean the fan filter over the stove and the oven was left dirty. The tenants also left a few items outside the house. The landlord testifies that he cleaned these areas himself and seeks to recover \$100.00 for his labour.
- Plant removal; the landlord testifies that the tenants removed two mature shrubs from the front of the property. The tenant had contacted the landlord about ants getting into the house and the landlord sent a pest control company to deal with this issue. The tenants then said they had cut down the shrubs on the advice of the pest control man. The landlord submits that the tenants should not have done this without permission and the shrubs could have been sprayed. The landlord testifies that it is hard to put a price on mature shrubs but estimates that the replacement costs including the landlord's time and labour would be \$300.00.

- Repairs to walls, trim and doors. The landlord testifies that the tenants left over 80 picture nails and hangers in the walls. These holes had to be filed, sanded and repainted. The tenants had also put nails in the moulding which had to be repaired. Three bedroom doors and bathroom door were left with two coat hooks in each door. The landlord testifies that these had to be removed and filled and the side of the doors repainted. The landlord testifies that most of the unit was last repainted in 2008 with some areas finished in 2012. The landlord testifies that he is doing this repair work himself and seeks to recover \$525.00.

The landlord states that there are no further monetary claims for money owed or compensation for damage or loss.

The landlord seeks an Order to keep part of the security deposit to offset against the damages, cleaning and unpaid utility bill.

The tenant agrees there is an outstanding utility bill. The tenant testifies that he was only given a copy of this bill in the landlord's evidence package and testifies that he never had any intention of not paying the bill. The tenant agrees the landlord may deduct this amount of \$312.54 from the tenant's security deposit.

The tenant disputes the landlords claim for damages and cleaning. The tenant testifies that when they took the house on it was through a property management company they had used before. However upon moving into the house they found it to be fairly substandard. The poor condition of the house is documented on the move in condition inspection report. The tenant also refers to a letter provided by the management company in which they agree the house was in a poor condition and will no longer be rented for the landlord due to its condition.

The tenant testifies that the curtains were already mouldy at the start of the tenancy and even after the landlord had them cleaned there was mould visible on the curtains. The tenant disputes that they are responsible to have these curtains cleaned.

The tenant disputes the landlords claim that they caused any damage to the flooring. The tenant refers to the move in condition inspection report which documents the poor condition of the flooring. The tenant testifies that the floor had various water marks from a roof leak; it was scratched and generally in a very poor condition. The flooring was very old and had splinters and nails sticking up which the tenant had to hammer down. The tenant testifies that the landlord is renovating this house and now expects the tenants to pay towards the landlord's renovation.

The tenant disputes the landlords claim for cleaning. The tenant testifies that the area under the fridge was not cleaned by the tenants as it was unclean at the start of the tenancy. The tenant refers to the landlord's photographic evidence as to the level of dirt under the fridge and states this shows it was not clean prior to them moving in. The tenant testifies that they had a professional cleaner come to clean the unit at the end of the tenancy and have provided evidence from this cleaner as to the work and hours completed. The tenant testifies that the house was left cleaner than it was when they moved into it a year ago. The tenant testifies that they had to ask to have the house cleaned at the start of the tenancy and when the tenants moved in they did a lot of the cleaning themselves.

The tenant disputes the landlords claim for repairs to the walls, mouldings or doors. The tenant testifies that the move in report indicates many holes in the walls at the start of the tenancy. The tenant testifies that there were also many picture hooks and nails in the walls and moulding which the tenant used to hang their own pictures. The tenant agrees they also put up some additional picture hooks. The tenant testifies that they did not put nails in the moulding and did not hang coat hooks on the doors. The coat hooks were already in place at the start of the tenancy. The tenant testifies that prior to moving

out he did fill some holes to prepare the walls for the landlord to paint as the unit had not been painted for many years.

The tenant disputes the landlord's claim concerning the shrubs. The tenant testifies that there were carpenter ants coming into the house and the shrubs had major activity of ants on them. When the pest company came out they informed the landlord about this and recommended that the shrubs be removed. The tenant spoke to the landlord and said he would remove the shrubs if he has the time and the landlord verbally agreed that the tenant could take them out. The tenant refers to the letter provided in evidence from the pest control company in which they recommend that the shrubs should be removed to prevent ants entering the home.

The tenant seeks to recover the security deposit less the final utility bill. The tenant disputes that the landlord offered the tenant four opportunities to attend the inspection. The tenant testifies that on September 28, 2013 it was pouring with rain and they were running about an hour behind. The tenant sent the landlord a text message to let him know and the landlord asked the tenant to just leave the keys to the house in the shed. The tenant testifies that two days later the landlord contacted the tenant again to set up a meeting to inspect the house but wanted to do it at 9.00 a.m. and the tenant testifies that as he is working that was not convenient. The tenant emailed the landlord and said that everything was fine in the house with no issues and to let the tenant know if there were issues. The tenant testifies that the next thing he knows is that the landlord has filed a claim against the tenant without issuing the tenant with a Final Opportunity for Inspection Notice. The tenant testifies that 15 days later the tenants got another email asking to meet for an inspection on a Saturday. The tenant agrees they did not attend as this was after 15 days that the tenancy had after the landlord had their forwarding address in writing.

The landlord testifies that he sent an email to the tenant asking them to attend an inspection the next day, the day after or another day. This gave the tenants three options to give them a date to arrange the inspection. However the landlord testifies that

the tenant never got back to the landlord. The landlord agrees he did not do an inspection the day the tenant vacated as by the time they had finished moving it was too dark.

### Analysis

With regard to the landlord's claim for damage to the rental unit, site or property; I have reviewed the condition inspection report, the photographic evidence from both parties and the letter from the original property management company. I have also taken into consideration the testimony of the parties when making this decision. 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.

I am not satisfied that the tenants are responsible for the drapery cleaning. The landlord has shown that the drapes were in fact stained with mould at the start of the tenancy

and even after the landlord had the drapes cleaned these marks did not come out. Therefore the landlord cannot now blame the tenants for not cleaning the drapes as the tenants are only expected to have drapes professionally cleaned if they have stained them or they have smoked on the premises. The tenants are not responsible for water stains due to inadequate windows or for mould in the unit and consequently the landlords claim in this matter is dismissed.

With regard to the landlord's claim for water damage to the floors; having reviewed the move in inspection report it is indicated on that report that the living room floor is scuffed and has 15 paint spots. On the move out inspection the same issues are identified again. The landlord's photographs show some marks on the floor. However I have insufficient evidence to show that the tenants are responsible through their actions or neglect for any further damage to the flooring. Consequently the landlord's claim in this matter is dismissed.

With regard to the landlord's claim for cleaning the floors, oven, under the fridge and filter; an arbitrator may determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenants. I have reviewed the inspection report and the landlord's photographs. From this evidence it is clear that the filter was not left clean, the oven appears to be reasonably clean however the oven pan has some burnt on residue, there is some mess left in a drawer, there are some items left at the unit and there is an unclean area of flooring under the fridge. I have considered the amount of grime and dirt under the fridge and find that this is an amount that I would deem to be excessive and dirt that has accumulated for more than a year.

Consequently as the landlord has insufficient evidence to show that this area was clean at the start of the tenancy the landlord cannot hold the tenants responsible for cleaning underneath the fridge at the end of the tenancy. It is therefore my decision that the landlord did have to spend some time doing some minor cleaning on the oven pan, the filter and the drawer for which the tenants were responsible. However, I find the amount



claimed by the landlord for this nominal work is excessive. I have therefore limited the landlord's claim to **\$50.00**.

With regard to the landlord's claim for replacement shrubs; the tenant has testified that these needed to be removed to prevent carpenter ants accessing the home. This was done with the verbal permission of the landlord and with a recommendation of the pest control company. The landlord has testified that he did not give permission and could have just sprayed the shrubs. When one person's testimony contradicts that of the other then the person making the claim must provide corroborating evidence to meet the burden of proof. In this matter it is one person's words against that of the other that the landlord gave verbal permission and consequently the burden of proof is not met. Even if the landlord had shown that the tenants were negligent in removing the shrubs the landlord has provided insufficient evidence to show the actual cost of replacing the shrubs and therefore the landlord would not have meet the test for damage or loss claims in this matter. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim to fill, sand and paint the walls, moulding and doors; having reviewed the move in inspection report I find there were already numerous holes in the walls at the start of the tenancy. The tenant agrees he did hang additional pictures with new picture hooks but filled these holes at the end of the tenancy. The Residential Tenancy Policy Guidelines #1 discusses picture hooks and states:

*Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.*

In this instance the landlord states that there were 80 nails used. However the move in report indicates a large number of nail holes were in place at the start of the tenancy.

The landlord has not shown that this tenants used excessive amounts of picture hooks and therefore cannot be held responsible for a previous occupant's damage. This section of the landlord's claim is therefore dismissed.

The landlord has not met the burden of proof that the tenants were responsible for nail holes in the moldings or the coat hooks in the doors. This section of the landlord's claim is also dismissed.

With regard to the landlord's claim for an unpaid utility bill of \$312.54; the tenant agrees at the hearing that the landlord may deduct this amount from the security deposit. I therefore Order that the landlord may retain the sum of **\$312.54** from the security deposit pursuant to s. 38(4)(b) of the *Act*.

With regard to both parties claim for the reminder of the security deposit; the parties have argued that each party has extinguished their right to file a claim for the security deposit. The tenant argues that the landlord did not provide a Final Opportunity for Inspection Notice. The landlord claims that the tenants were given four opportunities to attend an inspection and failed to do so.

Section 17 of the regulations states:

***Two opportunities for inspection***

**17 (1)** *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

*(2) If the tenant is not available at a time offered under subsection (1),*

*(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*

*(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.*

*(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

The landlord is required to provide the tenants with a Notice called a Final Opportunity for Inspection. If the landlord fails to do so then text messages and emails are not considered to be an appropriate final notice for inspection. Consequently the landlord's argument that the tenants were given at least two opportunities to attend an inspection has no merit. However the tenant's argument that the landlord has extinguished his right to file a claim against the security deposit equally has no merit as the landlord only extinguishes his right to do so if the landlord is applying solely against the security deposit for damages. In this case the landlord has also applied to keep the security deposit for unpaid utilities and therefore I will allow both parties applications to keep the security deposit to proceed.

As the landlord has been successful in part of their claim for cleaning I will allow the landlord to deduct the sum of \$50.00 from the security deposit along with the amount the tenant has agreed upon for the utility bill. The balance of the security deposit of **\$1,187.46** must be returned to the tenant.

As both parties have been partially successful with their claims I find they must both bare the cost of filing their own applications.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to retain the sum of **\$362.54** from the security deposit.

The reminder of the landlord's application is dismissed without leave to reapply

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,187.46**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced 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: January 15, 2014

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Residential Tenancy Branch

