



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – MNDC, MNSD, FF

For the landlord – MND, MNR, MNSD, MNDC, 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 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; for a Monetary Order to recover the security deposit and to recover the filing fee from the landlord for the cost of this application. 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 tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant testifies that they did receive the landlord's evidence but not the landlord's application and Notice of Hearing. The landlord provided evidence that these documents were set to both tenants by registered mail on November 27, 2013. The tenants are deemed to have been served five days later pursuant to s. 90 of the Act. 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 money owed or compensation for damage or loss?
- Are the tenants entitled to recover the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- 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?

Background and Evidence

The parties agree that this month to month tenancy started on May 01, 2013. Rent for this unit was \$1,200.00 plus utilities. The tenants paid a security deposit of \$600.00 on May 01, 2013. The tenancy ended on October 01, 2013.

The tenant testifies that they gave the landlord written notice to end the tenancy on August 21, 2013 with an effective date of the end of September. The tenant testifies that the landlord served the tenants with a Two Month Notice to End Tenancy on August 29, 2013 with an effective date of October 31, 2013. The tenant testifies that the Notice states that the landlord needs to make repairs or renovations to the unit that require vacant possession. The tenant testifies that as they had already given the landlord one months notice to end the tenancy earlier than the effective date of the Two Month Notice the tenants did not provide another Notice to the landlord as the landlord was aware the tenants were leaving at the end of September.

The tenant testifies that they had paid the rent for September. However the landlord did not return that rent of \$1,200.00 to the tenants for their compensation for the Two Month Notice. The tenants seek to recover the \$1,200.00 paid for September from the landlord.

The landlord disputes the tenants' claim. The landlord testifies that he did not give the tenants September's rent back due to the damage and cleaning left at the unit by the tenants and due to unpaid utilities.

The landlord testifies that the tenants were given copies of Fortis Bills for electricity. This was not included in the rent and the tenants were supposed to have put the utilities in their own name but failed to do so. The house also came with a full oil tank for the furnace which the tenants were supposed to re-fill at the end of the tenancy. The landlord testifies that the tenants did not pay the electric bills of \$133.80 for June 12 to August 12, 2013 and \$303.50 for August 12 to September 30, 2013. At the end of the tenancy the landlord also determined that the oil tank had not been refilled and the landlord seeks to recover \$808.93 for the oil. The landlord has provided receipts from Fortis and the Oil Company in documentary evidence.

The landlord testifies that at the end of the tenancy they did not conduct a move out inspection as the tenants were supposed to vacate on September 30, 2013 a witness on October 01, 2013 they found that the tenants had not left the unit in a clean condition. There was damage to the unit with a hole in the bedroom ceiling, the heat had been turned up to full and all the windows curtains and blinds were missing, the unit was not clean, there were piles of garbage left at the unit and there was damage to a laminate floor.

The landlord's witness was the person who had cleaned the unit prior to this tenancy. This witness has provided a sworn affidavit to the condition she found the unit in and mentions the hole in the bedroom ceiling with plaster still laying on the floor, the home was extremely hot and all the windows were wide open, the floors were not swept and unwashed, the washer was filled with a red thread or yarn, the stove and fridge were

dirty inside and out, the bathroom was filthy, there were piles of garbage left outside the home, an area rug was damaged, the laundry room floor was soaking wet, there was some damage to the laminate flooring from water damage, there were two cuts in the linoleum in the bathroom floor, there was two inches of water in the basement, two horizontal blinds were missing from each main floor bedroom, the dining room and living room curtains and rods were missing and the bathroom shower curtain.

The landlord testifies that the curtains and blinds were approximately six months old and the linoleum in the bathroom was approximately six years old. The landlord testifies that the tenants only returned one of the two keys issued at the start of the tenancy and the landlord had to replace a deadbolt due to this. The tenants had already damaged one washing machine which the landlord replaced with a used machine. The landlord is not sure of the age of that machine. The landlord found the machine full of a red thread that had also damaged this replacement machine and the repairman informed the landlord that it was beyond repair. The landlord replaced this with another new machine which was a scratched and dented model. The landlord testifies that he had four tires stored at the property in a garage. The landlord agrees that this garage did not have a door. These tires were not there at the end of the tenancy. The landlord testifies that these were snow tires for a truck and had only been used for one season. The landlord seeks to recover the cost of replacement tires from the tenants.

The landlord seeks to recover the following costs to clean the unit and rectify the damage:

Cleaning - \$184.00

Carpet cleaning - \$89.55

Replacement dead bolt - \$48.15

Repairs to ceiling, bathroom and garbage removal - \$1074.36

Washing machine - \$446.88

Replacement curtains and rods – 240.00

Replacement blinds - \$40.00

Four tires - \$400.00

The landlord seeks an Order to keep the security deposit to offset against the landlord's claim for unpaid utilities and damage. The tenant seeks to recover the security deposit.

The tenant disputes the landlords claim. The tenant testifies that they had paid all utilities up to the end of the tenancy. These were paid in cash to the landlord with the tenants' rent. The tenant testifies that the landlord would not provide a receipt. The tenant testifies that they had never turned on the oil furnace as they lived in the unit through a hot summer. The tenant testifies that the landlord threatened to drain the oil tank.

The tenant testifies that the landlord's photographic evidence is not dated so how can the tenants know when these pictures were taken. The tenant testifies that they cleaned the unit on October 01, 2013 for over two hours. The carpets had also been cleaned. The tenant disputes that the oven shown in the pictures was their oven used during the tenancy. The tenant disputes that the landlord gave the tenants two keys at the start of the tenancy.

The tenant testifies that the hole in the bedroom ceiling just appeared and fell in on the tenant's four year old child while he was sleeping. The tenant testifies that there was also another area of ceiling that came down in the hallway. The tenant testifies that the linoleum was damaged by the bathroom door which rubbed on the flooring. The landlord was informed but he would not do anything. The tenant testifies that when she returned to the unit on October 01, 2013 to clean, they found the door open and the washing machine hose was spewing water out. The tenant testifies that they called the police and were informed that there was random vandalism in the area. The tenant disputes that there was anything wrong with the washing machine when they vacated on September 30, 2013.

The tenant disputes the landlord's claim for curtains and blinds. The tenant testifies that there were no curtains or blinds in place at the start of the tenancy and the tenants' had

to hang blankets at the windows. The tenant testifies that anyone could have taken the landlords tires as the garage did not have a door on it.

The landlord disputes the tenants' claim. The landlord argues that the pictures were taken on October 01, 2013 and are the photographs showing the unit. The landlord testifies that he did take the bathroom door off after the tenant complained and planned it down so it would not rub on the floor. The cuts in the linoleum could not have been caused by the door but rather deliberate actions of the tenants. The landlord testifies that every window with the exception of one in the kitchen had either a blind or a curtain in place. The landlord refers to his photographic evidence showing at least one blind still in place.

The landlord refers to his evidence of a police report sought by the landlord. This report indicates that the tenants have made a plethora of complaints about the landlord since the beginning of August and all have been unfounded / unsubstantiated and the tenants have been recently warned about public mischief. The report does not indicate that there is random vandalism in the area.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation due to the Two Month Notice; I refer the parties to s.51 of the *Act* which states:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

*(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*

A tenant is entitled to end the tenancy earlier than the date of the landlord's Notice. If rent has been paid for that period then the landlord must reimburse the tenant an amount equal to the last month's rent in compensation. As the tenants had already effectively given notice for September 30, 2013 prior to the landlord giving the tenants the Two Month Notice I accept that the tenants could end the tenancy on that day and would be entitled to compensation equivalent to one month rent. The tenants are therefore entitled to recover the amount of **\$1,200.00** pursuant to s. 51 of the Act.

With regard to the landlords claim for unpaid utilities; when one parties evidence contradicts that of the other party then the person making the claim must provide evidence to support the claim. In this matter that burden of proof falls to the tenants to show they paid the utilities. As the tenants have provided insufficient corroborating evidence I must find in favour of the landlord's claim that utilities remain unpaid and award the landlord the sum of **\$437.30**.

With regard to the landlord's claim for \$800.93 for oil; the landlord claims the oil tank for the property was full at the start of the tenancy. The tenant argues that as it was the summer months they did not use any oil and did not turn on the furnace and therefore the tank could not have been full. In this matter the landlord has the burden of proof that the oil tank was full at the start of the tenancy. As the parties contradict each other then the landlord must provide corroborating evidence to support his claim. In the absence of any corroborating evidence to show the oil tank was full at the start of the tenancy the landlord has not met the burden of proof and his claim for \$800.93 is dismissed.

With regard to the landlords claim for damages and cleaning; 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.

With this test in mind I am satisfied from the evidence presented that the tenants failed to leave the rental unit in a condition that could be regarded as reasonably clean as required under s. 32 of the *Act*. The landlord's photographic evidence along with the notarized statement from the landlord's witness is sufficient evidence to show that the unit was not cleaned and the landlord has provided an invoice for the cleaning in evidence. I therefore uphold the landlords claim for cleaning of **\$184.00**.

With regard to the landlords claim for carpet cleaning; the tenant argues that she did clean the carpets at the end of the tenancy however has provided no evidence to show that this work was done. Having found the tenants failed to do other cleaning in the unit and due to the condition the unit was left in I find it highly likely that the tenants did not clean the carpets and these also were left unclean. I therefore uphold the landlord's claim for carpet cleaning for the amount shown on the invoice provided in evidence and award the landlord the amount of **\$89.55**.

With regard to the landlords claim for the deadbolt; the landlord has provided insufficient evidence to show that the tenants were given two keys at the start of the tenancy. Had the landlord completed a move in condition inspection report on an approved form there



is space there for a landlord to document this information. Without any corroborating evidence it is one person's word against that of the other and the burden of proof is not met. Consequently the landlord's claim for \$48.15 is dismissed.

With regard to the landlord's claim for repairs to the ceiling and linoleum; I have considered the evidence before me and find due to the nature of the hole in the ceiling and the cut marks on the linoleum that it is likely that this was done through the actions of the tenants. The tenant submits that the ceiling fell through on her child however the landlord's cleaner and witness has sworn that the debris was still on the floor. If a ceiling had fallen onto a child's bed while they were sleeping it is unlikely that the debris would still be located on the floor at the end of the tenancy. As the linoleum was approximate six years I would normally make a deduction for depreciation of the cost of new linoleum. However, the landlord has not claimed for new linoleum only the labour costs to fit it. Therefore no deductions will be made. I therefore uphold the landlord's claim for repairs and to remove garbage for **\$1,074.36**.

With regard to the landlord's claim for a new washer; the landlord has provided no evidence to show that the tenants are responsible for any damage to the washer. The parties agree that the flooding occurred because of a damaged hose. The landlord has provided insufficient evidence to show that whatever the red material in the washer was prevented the washer from working or that the washer was irreparable. Consequently I must dismiss the landlord's claim of \$446.88.

With regard to the landlord's claim for curtains, rods and blinds; I am satisfied with the evidence before me that there were curtains and blinds in the unit at the start of the tenancy. The landlord's photographic evidence does show at least one blind remaining in the unit which makes the tenant's testimony less than credible that there were no blinds or curtains provided at all. As these curtains and blinds were relatively new I will not make any deductions for depreciation. However the landlord has provided no evidence to show the actual cost to replace the curtains, rods or blinds and I must limit the

landlords claim accordingly. Consequently I find the landlord is entitled to recover **\$140.00**.

With regard to the landlords claim for four tires; the parties agree that these tires were stored in the garage and that the garage did not have a door and was therefore not secure. The landlord must meet the above test to show that the tires were removed by the tenants and as I have insufficient evidence to support this due to the fact that the garage was not secure and anyone could have removed the tires the landlord has not meet the burden of proof and I must dismiss the landlords claim for \$400.00.

With regard to both parties applications concerning the security deposit; as the landlord has been partially successful with his claim I find the landlord is entitled to keep the security deposit of **\$600.00** in partial satisfaction of that claim pursuant to s. 38(4)(b) of the Act.

As both parties have been partially successful with their respective claims I have offset the tenants' claim against that of the landlords. I further find that both parties must bear the cost of filing their own application. A Monetary Order will be issued to the landlord for the following amount:

Unpaid utilities	\$437.30
Cleaning	\$184.00
Carpet cleaning	\$89.55
Repairs	\$1,074.36
Curtains and blinds	\$140.00
<b>Subtotal for the landlord</b>	<b>\$1,925.21</b>
Less security deposit	(-\$600.00)
<b>Amount due to the landlord</b>	<b>\$1,325.21</b>
Compensation to the tenants offset against the landlord's monetary award	\$1,200.00
<b>Total amount due to the landlord</b>	<b>\$125.21</b>

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. The tenants' award of \$1,200.00 has been offset against the landlord's monetary award

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$125.21**. The Order must be served on the respondents. Should the respondents 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 20, 2014

---

Residential Tenancy Branch

