



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – MNSD, FF (MNDC)

For the landlord – MND, 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 to recover double the 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 landlord for the cost of this application. The landlord applied for a Monetary Order for damage to the unit, site or property; 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.

The tenants 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 relevant 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 to recover the security deposit?

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- 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 money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this tenancy started on May 01, 2012 for a six month fixed term. The tenancy has since reverted to a month to month tenancy which ended on September 30, 2013. Rent for this unit was \$850.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$425.00 on April 17, 2012. The tenants and landlord attended a move in and move out condition inspection of the unit and the tenants provided a forwarding address in writing on October 01, 2013.

### **The tenants' application**

The tenants testify that the landlord did not return their security deposit within 15 days of receiving their forwarding address in writing. The landlord has not applied to keep the security deposit and the tenants did not give the landlord written permission to keep all or part of the security deposit as no monetary amount had been agreed upon. The tenants seek to recover double the security deposit of \$850.00.

The tenants testify that the tenancy agreement states that water is a charge they should be paying but the landlord has also charged the tenants for sewage costs on the City bill. The tenants testify that there is no mention of sewage charges being the tenants' responsibility on the tenancy agreement. The tenants seek to recover an estimated amount of \$299.00 for sewage charges paid during the tenancy. The tenants later revise their testimony when it was pointed out that water charges were not paid by the tenants but rather were included in the rent and were not on the utility bill from the City.

The landlord agrees that she has not returned the tenants' security deposit and has not filed a claim to keep the security deposit.

The landlord testifies that she paid the water bills for the tenants unit. The landlord testifies that she lives on the main floor of the property and the tenants live upstairs. Both units have separate billing for sewage and this is the tenants' responsibility to pay their bill from the City as it is not included in the rent and the bill is in the tenants name along with electricity.

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

The landlord testifies that when the tenants moved into the unit everything was clean and in good working order. When the tenants moved out of the unit the landlord and NR did the move out inspection. At that inspection NR agreed that the stove and oven were not clean and the second bedroom carpet was stained. The landlord testifies that a carpet cleaner came out to clean the carpets and has documented that they were stained and some stains could not be removed. The landlord seeks to recover \$104.95 for the carpet cleaner. As the second bedroom carpet could not be cleaned successfully the landlord obtained a quote to have this carpet replaced. The landlord has provided the original receipt for the carpet when it was purchased four years ago and the quote for replacement costs of \$390.82.

The landlord testifies that the tenants damaged the bottle bar in the fridge and had glued it together. This was replaced by the landlord at a cost of \$20.66.

The landlord testifies that when the new tenant moved into the unit all the cupboards had been cleaned out however a few days later that tenant saw a mouse and when the landlord looked in the cupboards and crawlspace there were mice dropping. The landlord testifies that these tenants had not informed the landlord that there had been a mouse problem in the unit. The landlord went and bought mice traps and poison however the problem persisted. The landlord had to bring in a pest control company to

seal access points and put down traps and bait. The landlord seeks to recover \$38.02 for the traps and poison purchased and \$210.00 for the pest control company.

The landlord testifies that the tenants did not leave the bathtub and appliances clean. The landlord had to clean these areas and seeks to recover \$40.00 for her time. The landlord testifies that the tenant initialled the move out inspection report and agreed that the stove, oven and carpets required cleaning.

The landlord testifies that the tenants' cat had caused damage to the screen in the living room. This screen will need to be replaced. The landlord testifies that she called a company concerning this and obtained a telephone quote for \$35.00.

The landlord testifies that due to the cleaning that was required in the unit, the landlord had to reduce the incoming tenants rent by \$50.00 per month for six months. This compensated the incoming tenant for the mice problem and the cleaning that she did. The incoming tenant cleaned the bathroom, baseboards, kitchen cupboards inside and out, light fixtures and ceiling fan. The landlord testifies that when the move out condition inspection was completed there were no lights working in the bathroom and kitchen and so the landlord documented that everything was fair or good in these areas. Later the landlord discovered that the unit was not clean. The landlord seeks to recover \$300.00 in compensation for this loss of rent.

The tenants dispute the landlords claim. The tenants testify that there was a mouse issue when they first moved into the unit. They had noticed some mice droppings in the kitchen cupboard and had joked with the landlord over the fact that their cat had caught eight mice. The tenants testify that they had informed the landlord however as their cat was doing a good job catching the mice the landlord did not take any more action. The mice were coming in through a hole in the kitchen cupboard. The tenants testify that in the landlord's submissions the landlord has accused the tenants of bringing farm produce home from their work however this is ludicrous as all farm produce is prepared at work. The tenants testify that the landlord was aware of the mice problem as the

landlord had stated to the tenants that she had pulled out dead mice from the crawl space and to make sure these spaces were clean before the tenants left.

The tenants dispute the landlords claim concerning cleaning. The tenants agree that during the walk through they had agreed with the landlord that the oven and stove were not clean and the landlord said she would do the work for the cost of the cleaner but an amount was never agreed upon. The tenant testifies that she had also agreed that the carpet was stained but again no price was agreed on and the landlord never got back to the tenants until a month later. The tenants do however dispute that the carpet in the second bedroom needs to be replaced. The stain was caused from a bottle of laundry detergent which had spilled on the carpet.

The tenants agree that the bottle bar in the fridge was broken when the tenants closed the fridge door on something. The tenant DC agrees that he glued this together.

The tenants testify that the move in condition inspection report shows that the bath was stained at the start of the tenancy. The tenants testify that they cleaned the bath but the staining would not come off.

The tenants dispute that their cat damaged the screen. The tenants testify that this screen could not be reached by their cat and was already worn at the start of the tenancy.

The tenants dispute the landlords claim for a loss of rent. The tenants testify that they cleaned the unit, they washed walls and baseboards and all cupboards. The blinds were cleaned as was the fridge. The tenants testify that the reason the lights were out in the bathroom was not because of the bulbs but rather an electrical problem which the landlord did not repair. The tenants refer to the move out condition inspection report that states these areas are all fair or good. The tenants question why the landlord has provided no photographic evidence of this cleaning completed by the incoming tenant.

## Analysis

### **The tenants' application**

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 landlord did receive the tenants forwarding address in writing on October 01, 2013. As a result, the landlord had until October 16, 2013 to return the tenants' security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep the deposit. I further find that although the tenant did agree that there was some cleaning required for the carpets, stove and oven no amount was agreed on for the landlord to deduct from the security deposit. Therefore, I find that the tenants have established a claim for the return of double the security deposit to an amount of **\$850.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants claim to recover amounts paid to the City for sewage. Unless the landlord has specified on the tenancy agreement that a utility of this nature is covered under the rent then it is a utility charged by the City to the occupants and is therefore the tenants' responsibility to pay. This section of the tenants claim is therefore dismissed.

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

With regard to the landlords claim for carpet cleaning; tenants are required to clean carpets in a rental unit for a tenancy of longer than a year and if they have a pet which

is not caged. The tenants agree that the carpet in the second bedroom was stained I therefore find in favour of the landlords claim for carpet cleaning of **\$104.95**.

With regard to the landlords claim for replacement of the bedroom carpet; I have considered the evidence before me and find the landlord has provided sufficient evidence to show that this bedroom carpet could not be cleaned successfully. The landlord is therefore entitled to replace this carpet. However, as the carpet is four years old and carpets have a useful life of 10 years I must deduct a percentage of the landlords claim for depreciation. The landlords claim has therefore been reduced by 40 percent to **\$234.50**.

With regards to the landlords claim for the damage to the bottle bar in the fridge; the tenants do not dispute that this damage occurred during the tenancy when they closed the fridge on an object. I therefore find in favour of the landlords claim for replacing this bottle bar of **\$20.66**.

With regard to the landlords claim for cleaning the bath and appliances; I refer the parties to s. 32(2) of the *Act* which states:

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

The landlord testifies that the tenants did not clean the bath and appliances. The tenants agreed that the stove and oven were left unclean and the landlord's photographic evidence shows the fridge remained with some food spills. However, the tenants dispute the landlords claim concerning the bathtub and testify that the move in report shows that the tub was stained at the start of their tenancy. The landlord has claimed \$40.00 for this work. The landlord has the burden of proof to show that the staining of the tub was the tenants' responsibility. When the move in report clearly indicates that the tub was stained prior to the tenancy then the landlord cannot hold the

tenants responsible for cleaning the tub at the end of the tenancy. I therefore limit the landlords claim for cleaning to the stove and oven and fridge to a sum of **\$30.00**.

With regard to the landlords claim for mouse traps, poison and the pest control company. The landlord testified that the tenants did not inform the landlord of a mice problem. The tenants testify that they had informed the landlord but as their cat was dealing with it the landlord did not put down traps. The tenants also testify that the landlord was aware of this problem when they moved in as the landlord had removed dead mice from the crawl space. When one person's testimony contradicts that of the other then without further corroborating evidence from the landlord it is one person's word against that of the other and the burden of proof is not met. In the absence of any corroborating evidence it is impossible for me to determine that the landlord knew about this problem or that the tenants did not inform the landlord. Consequently, I must find that the landlord has not met the burden of proof that the mice problem was as a result of the tenants actions or neglect and therefore it is the landlords responsibility to cover any costs incurred to eradicate the mice. This section of the landlords claim is therefore dismissed.

With regard to the landlords claim for a replacement screen; I have considered the evidence before me and find the move in and move out condition inspection reports indicate that the screen is in a good condition. Without further corroborating evidence from the landlord to show the tenants' cat damaged the screen the landlord has not met the burden of proof in this matter. This section of the landlords claim is dismissed.

With regard to the landlords claim for compensation for a loss of rent paid to the new tenant; I have considered the evidence before me and find when one party's testimony contradicts that of the other party then the person making the claim has the burden of proof. The tenants have testified that they cleaned the unit with the exception of the carpets, stove and oven. The landlord has testified that there were other areas left unclean. The landlord has provided some photographic evidence showing areas the landlords cleaned but there is insufficient corroborating evidence to show that the



tenants did not leave the rental unit in a reasonably clean condition. I have also found that the landlord must bear the responsibility for the mice problem the new tenant encountered. Consequently, the landlords claim for \$300.00 compensation paid to the new tenant due to the mice problem and cleaning is dismissed.

As both parties have been partially successful with their claim I find both parties must bear the cost of filing their own applications.

### Conclusion

I HEREBY FIND in partial favour of the landlord's monetary claim. The landlord is entitled to a monetary award of **\$390.11**. This amount has been offset against the tenants monetary award.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$459.89**. 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: February 20, 2014

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Residential Tenancy Branch

