



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlords: MND, MNDC, FF, O  
                              Tenants: MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted over the course of two days (January 17, 2014 and March 14, 2014) via teleconference and was attended by both landlords and the male tenant.

The hearing of January 17, 2014 had been scheduled for both the landlords' Application and the tenants' Application. However, due to an administrative error both files were not provided to me for adjudication and I conducted that hearing as if it were solely the tenants' Application. Once I discovered the error I reconvened the hearing to hear the landlords' Application as well.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for lost revenue; for damage to the rental unit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

Both parties provided copies of a tenancy agreement signed by the parties on October 16, 2010 for a month to month tenancy beginning on July 1, 2010 for the monthly rent of \$1,400.00 due on the 1<sup>st</sup> of each month with a security deposit of \$700.00 paid. The tenancy ended on September 30, 2013 after the tenants had provided notice, dated August 31, 2014 of their intention to end the tenancy. A move out condition inspection

was completed on October 1, 2014 and the tenants provided their forwarding address to the landlords at that time.

The parties agree the landlords returned \$222.80 from the deposit of \$700.00. The tenants submitted into evidence a copy of an undated letter from the landlords with a breakdown of what the landlords kept from the deposit as follows:

1. Labour – MR – 18 hours for filling, painting, wall & power washing	- \$270.00
2. Equipment Rental (power washer)	- \$72.80
3. Carpet Clean	- \$110.88
4. Kitchen Light fixture missing – replacement	- \$23.52
Total	<u>\$477.20</u>

The letter goes on to say

“Also FYI:-

Garden bed soil breakdown/spread	N/C
KJ ongoing cleaning	N/C
Cat damage to carpets (pulled threads)	N/C
Possession still on property 1 week after tenancy termination	N/C
Mail key not returned.”	

The tenants submitted their Application for Dispute Resolution on October 17, 2013 seeking return of double the deposit; the landlords submitted their Application for Dispute Resolution seeking compensation for damage to the rental unit/residential property and loss of revenue on November 7, 2013 seeking a monetary order of \$3,166.05.

The tenant submits that the only reason the landlords have made such a large claim is in retaliation for the tenants’ claim. The tenant submits that since the landlords had returned a portion of the security deposit the landlords clearly felt prior to receiving the tenants’ Application that all damage or losses they had suffered was worth less than the total amount of \$700.00 held in the security deposit.

The landlords provided no explanation in the hearing as to why the amounts they originally retained from the deposit were, in some cases, different than the amounts claimed in their Application. Specifically, the labour costs for MR; the carpet cleaning costs; KJ’s cleaning; and possessions on the property for 1 week after the tenancy termination.

The Condition Inspection Report submitted by the landlords includes documentation of the condition of the rental unit at both the start and end of the tenancy. However, I note that instead of two columns (one for move in condition and one for move out condition) the landlords have added a third column.

This third column is written in the space for the move out condition but it is adjacent to the move in condition column and this new column is entitled "Reply KJ/HJ". While this new column appears to be the landlord's "reply" to the condition of the unit at the start of the tenancy it is written in the same pen as the notations for the move out condition completed on October 1, 2013.

The landlords submit that there was damage to some of the carpets that been installed just at the start of the tenancy. The landlords submit that this damage includes some fraying and staining. The landlords have submitted an estimate for the damage based on their invoices for the carpets and installation prior to the start of the tenancy. They testified that they confirmed the calculation of their estimates with the carpet company.

The landlords also seek compensation for carpet cleaning. The tenant confirmed that the tenants did not have the carpets steam cleaned or shampooed. The landlords seek an amount of \$201.87 for professional carpet cleaning but did not provide any receipts for this work.

The landlords seek compensation for the rental of a power washer to clean moss off of the patios and walkways on the residential property. The landlords state that the tenancy agreement addendum contains a term that covers this issue. The term in the addendum states that the maintenance and general tidy appearance of the yard and house surrounds is the responsibility of the tenant. It goes on to say that lawn clippings and leaves may be disposed of in the composting area of the vegetable garden. The tenant submits that these costs are over and above any responsibility they had during or at the end of the tenancy. The landlords provided a receipt for this rental in the amount of \$72.80.

While the landlords had original submitted a claim for a replacement light fixture during the hearing they withdrew this portion of their Application.

The landlords also include, as part of their claim, the costs for hiring a labourer to complete the power washing of the patios and walkways and to complete repairs to the walls and painting inside the rental unit.

The Condition Inspection Report indicates that at the end of the tenancy the kitchen walls and ceiling was damaged and scratched; the living room walls were damaged and scratched; the stair well walls were stained; and the master bedroom walls were stained. The Report also indicates that at the start of the tenancy the walls in the kitchen and living room had "dents and divets" [reproduced as written]. The landlords submit, in their Application for Dispute Resolution that they paid their labourer in cash in the amount of \$180.00. The landlords provided into evidence copies of ATM withdrawal slips confirming withdrawals totalling these amounts.

The landlords also claim a total of \$110.00 for 5 hours of cleaning @ \$20.00 per hour, although they testified that they completed much more than 5 hours cleaning inside the

rental unit. The landlords did not explain what the additional \$10.00 was for in the hearing or their evidence.

The landlords submit that they had to clean out drawers and cabinets as well as wash down walls that appeared to be stained with cigarette smoke. The tenant submits that the smoke on the walls would have been from soot left behind from the wood burning stove that had an inadequate chimney at the start of the tenancy and that was replaced during the tenancy.

In addition, the landlords claim that because the tenants failed to remove all of their belongings from the residential property they lost a tenant who had originally been willing to wait a few extra days to have the tenants remove them.

The parties agree that the landlords had agreed to let the tenants leave behind some of their belongings after September 30, 2013 but that the tenants would be removing them as soon as possible. The parties disagree with what was agreed to be left behind temporarily. The parties agree the tenants had removed all of their belongings by October 7, 2013.

The landlords submit that on October 2 or 3, 2013 they entered into a tenancy agreement with a new tenant who was prepared to wait a few days before moving into the property. They state that on October 7, 2013 the new tenant decided that it was taking too long for these tenants to remove their belongings and he told the landlords he would not be renting the property. The landlords seek compensation in the amount of \$1,400.00 representing the month rent they did not receive from the new tenant.

The landlords' specific claim in their Application for Dispute Resolution is as follows:

Description	Amount
Damage to carpets due to cat – including installation	\$1,171.39
Carpet cleaning – no receipt provided	\$201.87
Power washer rental – to clean moss off of patio and walkways	\$72.80
MR – labour costs for power washing; wall repairs, preparation and painting	\$180.00
KJ – cleaning costs for 5 hours	\$110.00
Lost revenue	\$1,400.00
<b>Total</b>	<b>\$3,136.06</b>

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the testimony of both parties I find the tenancy ended on September 30, 2014 and the landlords had received the tenants' forwarding address by October 1, 2014. As such the landlord was required to either return the full deposit or file an Application for Dispute Resolution seeking to claim against the deposit no later than October 16, 2014.

As the landlords withheld \$477.20 of the deposit and did not file an Application for Dispute Resolution to claim any portion of the security deposit I find the landlords failed to comply with Section 38(1) and the tenants are entitled to double the amount of the full security deposit less the amount they have already received pursuant to Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In regard to the landlords' claim for damage to the carpets, I accept the landlords' evidence that some damage has occurred to some of the carpeting in the rental unit. However, I find the landlord has failed to provide sufficient evidence to establish the extent of the damage or how it was determined to be valued at \$828.18. Further, as the landlords have not had any carpets replaced nor did they indicate that they were planning to do so I find they have not suffered any losses in relation to installation. For these reasons, I dismiss this portion of the landlord's claim.

Residential Tenancy Policy Guideline #1 states generally at the end of a tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of at least 1 year. As the tenant has confirmed in his testimony that the tenants did not have the carpets cleaned and the tenancy lasted at least 3 years I find the tenants are responsible for carpet cleaning.

In regard to the value of the carpet cleaning I note that the landlords have not provided a receipt outlining any costs for carpet cleaning. I also note that when the landlords returned a portion of the deposit to the tenants they indicated that they were retaining \$110.88 for carpet cleaning and their claim in this Application is for \$201.87.

As the landlords have provided no explanation as to the additional amount of their claim for carpet cleaning I find they have failed to provide sufficient evidence to establish a

value for carpet cleaning. However, I accept as a reasonable amount of compensation for carpet cleaning the amount originally retained by the landlords for this purpose (\$110.88).

In regard to the landlords' claim for the rental of the power washer and labour for the removal of moss from patios and walkways I again refer the Residential Tenancy Policy Guideline #1. The guideline states generally the tenant is responsible for routine yard maintenance such as cutting grass and clearing snow. The tenant is also responsible for a reasonable amount of weeding the flower beds if noted in the tenancy agreement. The Guideline goes on to say that the landlord is generally responsible for major projects such as tree cutting; pruning; and insect control.

I accept the tenancy agreement does stipulate the tenants are responsible for general maintenance and ensuring the yard is "tidy". As such, I find the removal of moss from patios and walkways to be a major project and therefore the responsibility of the landlords. I dismiss this portion of the landlords' claim.

In relation to the other labour costs attributed to the landlords' labourer MR for wall repairs, preparation and painting I refer to the Condition Inspection Report that indicates that at the start of the tenancy there were "dents and divots" in the walls, as such the tenants should not now be held responsible for their repairs at the end of the tenancy.

Further to the claim for costs for hiring a labourer to complete work on the property I again note that the landlords had originally indicated, when they returned a portion of the security deposit, that the labourer costs were \$270.00 and in their Application and at the hearing they record it as \$180.00. Therefore, even if I had found the work was required as a result of the tenancy the landlords have failed to provide sufficient evidence to establish the value of the labourer costs. I dismiss this portion of the landlords' Application.

Based on the testimony of both parties I accept that the landlords did have to complete some cleaning and should be entitled to compensation. While again the landlords have attributed a different cost to them for this in their original breakdown of costs (i.e. N/C) I find that the claim for 5 hours of cleaning is reasonable, based on the testimony of both parties. In addition I find \$20.00 per hour to be a reasonable rate for that cleaning. I grant the landlords \$100.00 for general cleaning.

Finally, in regard to the landlords' claim for compensation for lost revenue from the landlords' new tenant I find because the landlords had agreed to allow the tenants to leave some possessions at the end of the tenancy to be removed later allowed the tenants to do so.

While the parties disagree with what each thought the tenants could leave behind I note that there is no written agreement stipulating what could be left behind and as such it is impossible for a third party to determine the terms of that agreement.

I note that while the landlords have provided some handwritten receipts regarding the collection and return of a security deposit they have provided no other evidence to establish that they had entered into a tenancy agreement with a new tenant or any documentary evidence of the new tenant's decision to no longer take the rental unit.

In addition, from the landlords' submission the tenants had removed all of their possessions on October 7, 2013 the same date that the landlords state the new tenant advised them that he was not going to take the unit because of the uncertainty of these tenants. The landlords' evidence also shows that the he returned the deposit on October 8, 2013.

I find the landlords returned the deposit the day after the tenants had vacated the property completely and as such the landlords could have advised the new tenant of the state of the property and the new tenancy could have continued. For these reasons I dismiss this portion of the landlord's claim.

### Conclusion

I find the tenants are is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,227.20** comprised of \$1,177.20 double the deposit less \$222.80 returned and the \$50.00 fee paid by the tenants for this application.

I find the landlords are is entitled to monetary compensation pursuant to Section 67 in the amount of **\$210.88** comprised of \$110.88 carpet cleaning and \$100.00 general cleaning. As the landlords were largely unsuccessful in their claim I dismiss their claim to recover the \$50.00 fee paid for this application.

Setting off the award granted to the landlords in the amount of \$210.88 against the award granted to the tenants of \$1,227.20 I grant a monetary order to the tenants in the amount of **\$1,016.32**. This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced 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: March 19, 2014

---

Residential Tenancy Branch

