



# 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 landlords – MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants have applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; a Monetary Order to recover the security deposit; and to recover the filing fee from the landlords for the cost of this application. The landlords have applied for a Monetary Order for damage to the unit, site or property; an Order to keep part of the security deposit and to recover the filing fee from the tenants for the cost of this application.

The tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants 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

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

- Are the tenants entitled to a Monetary Order to recover the balance of the security deposit?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep part of the security deposit to cover the claim for damages?

### Background and Evidence

The parties agree that this tenancy started on March 01, 2012 for a fixed term tenancy until February 28, 2013 after which time the tenancy continued on a month to month basis. Rent for this unit was \$1,775.00 per month and was due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$887.50 and a pet deposit of \$887.50. The parties attended the move in and move out inspection of the unit and the tenants provided a forwarding address in writing on October 31, 2013. The tenancy ended on that date.

The landlord testifies that the tenants caused some damage to the stove top. There was a chip on the stove top caused by some sort of impact. The tenants did not repair this damage prior to the end of the tenancy and it was documented on the move out inspection report. The tenant attending the move out inspection acknowledged that this damage was caused during the tenancy and signed the inspection report indicating the landlord could make an unknown deduction for this damage. The landlord informed the tenant that the landlords would have to do something about the chip. The landlord testifies that they had spent a great deal of money renovating the kitchen and a chip of this nature on the stove devalues the kitchen.

The landlord testifies that she attempted to find a cheaper way to repair the damage but was informed that the stove top would have to be replaced otherwise it would invalidate the warranty on the stove top. The landlord testifies that the stove was only three years

old and there was another two years left on the warranty. The landlords had a call out from a repair man which cost \$85.05; a replacement stove top was then fitted and cost \$402.24 with a further \$85.05 service call charge and \$140.00 labour charge. The total amount for the stovetop repair came to \$682.50. The landlords seek to recover \$601.90 for this repair and have deducted this from the security deposit. The landlords have provided the invoice for the repair and photographic evidence of the stove top.

The landlord testifies that the baseboard heater in the bedroom was left unclean. It was a gray colour and is normally white. The landlord cleaned this heater and seeks to recover \$20.00 for her labour. The landlords have provided photographic evidence of the baseboard heater. The landlords have deducted this amount from the security deposit.

The landlord testifies that the tenants left some spots of green hair dye on the bathroom wall. The female tenant has green streaks in her hair. The landlord painted over these spots with existing paint and seeks to recover \$20.00 for her labour. The landlords have deducted this amount from the security deposit.

The landlord testifies that the tenants were sent a cheque for the pet deposit of \$887.50 and the balance of the security deposit of \$245.60 on November 10, 2013. The landlords seek an Order to retain the amount from the security deposit of \$641.90. The landlord also seeks to recover the filing fee of \$50.00.

The tenants testify that the chip was caused during their tenancy. However, it was so small it did not impact on the use of the stove top and should be considered normal wear and tear as it is cosmetic damage only. The tenants' dispute the amount deducted from their security deposit as being an unreasonable amount.

The tenants testify that they had cleaned the unit prior to vacating and then engaged the services of two professional cleaners to go over the unit again. The tenants dispute the landlords claim for cleaning the baseboard heater and for painting the bathroom. The

tenants testify that they did not notice any green spots on the bathroom wall and the female tenant gets her hair dyed in a salon.

The tenants testify that they were told that as the landlord had not returned the security deposit within 15 days the tenants could recover double the security deposit. The tenants seek to recover \$1,283.80 from the landlord. The tenants acknowledge that they have received the sum of \$1,133.10 from the landlords.

### Analysis

With regard to the landlords claim for damage to the stove top; I refer the parties to s. 32(3) of the *Act* which states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. I also refer the parties to s. 32(4) of the *Act* which states that a tenant is not required to make repairs for reasonable wear and tear.

Having considered the evidence before me and I am satisfied that this chip to the stove top does affect the overall appearance of the stove top and devalues the stove. I also find that although this chip may not have occurred through the deliberate actions of the tenants it is deemed to be more than normal wear and tear and consequently the landlords are entitled to recover an amount to replace the stove top. The total amount of the repair came to \$682.50 and the landlords have only deducted \$601.90 from the security deposit. As this stove was three years old I must take into account some depreciation of the stove top. The normal life expectancy of a stove is deemed to be 15 years. Therefore I must deduct \$136.50 for three years of depreciated value. As the landlords have already reduced the claim by \$80.60 I must deduct a further amount of \$55.90 from the landlords claim.

Consequently the landlords are entitled to retain from the security deposit the amount of **\$546.00** for the stove top repair pursuant to s. 38(4)(b) of the *Act*.

With regard to the landlords claim for \$20.00 for cleaning the baseboard heater; under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and if the baseboard heater was the only area that required attention then the landlord must bear the cost of cleaning this. The landlords claim for \$20.00 is therefore dismissed.

With regard to the landlords claim for painting; I find that due to the colour of the splashes on the bathroom wall that this is likely to be associated with the hair dye from the female tenant. Even if these marks were minor the fact remained that they were in evidence and the landlord had to paint over them to conceal them. I therefore find the landlords claim for painting at **\$20.00** to be reasonable and the landlords are entitled to retain this from the security deposit pursuant to s. 38(4)(b) of the *Act*.

As the landlords have been largely successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

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 and pet 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 and pet 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 landlords did receive the tenants forwarding address in writing on October 31, 2013. I further find that although the tenants did agree that the landlord could retain an amount from the security deposit in writing; no amount was actually agreed upon at that time. As a result, the landlords had until November 15, 2013 to return the tenants' security and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did file an application for Dispute Resolution to keep part of the security deposit within the deadline.

Therefore, I find that the tenants have not established a claim for the return of double the security deposit and this section of the tenants claim is dismissed.

The landlords retained the amount of \$641.90 from the security deposit. The landlords returned the pet deposit of \$887.50 and the balance of the security deposit of \$245.60. However, I have found the landlords are entitled to a lesser amount of the security deposit than that retained. I have also found that the landlords are entitled to recover the filing fee paid for their application the total amount the landlords are entitled to retain from the security deposit is therefore \$616.00. I therefore find the tenants are entitled to recover an amount of **\$25.90** of the security deposit and I Order the landlords to return this amount to the tenants pursuant to s. 38(6)(b) of the *Act*.

As the tenants have been largely unsuccessful with their claim I find the tenants must bear the cost of filing their own application.

### Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlords are entitled to retain the amount of **\$616.00** from the security deposit.

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 **\$25.90**. The Order must be served on the respondent. Should the respondent 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: March 05, 2014

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Residential Tenancy Branch

