



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Away West Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for 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 *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person to the tenants on December 17, 2013.

The landlord and an agent for the landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testifies that this tenancy started on October 01, 2010 for a fixed term tenancy of one year. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$1,025.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$512.50 on September 28, 2010. The parties attended a move in inspection of the unit at the start of the tenancy. At the end of the tenancy the landlord gave the tenant at least two opportunities to attend the inspection however the tenant did not appear. The tenants have not provided a forwarding address in writing to the landlord however the landlord has determined the address the tenants moved to and served the tenants with hearing documents at that address.

The landlord testifies that at the end of the tenancy it was determined that the tenants had not cleaned the unit and had left damages in the unit. The landlord seeks to recover the following costs for damages and cleaning of the unit and has provided photographic evidence showing the condition of the unit a copy of the inspection report and invoices for the amounts claimed. The landlord testifies that:

- The garage door was damaged when the tenant drove her car into the door. The tenant later acknowledged to the landlord that she had done this damage and agreed to pay for a new door but failed to do so. The landlord seeks to recover \$948.00 for the new garage door.
- The tenants failed to replace the burnt out light bulbs in the unit. Nearly every bulb was burnt out. The tenants were using a lamp they owned for light and the house was left vertically dark. The landlord seeks to recover \$68.25 for new bulbs

- The carpet was left in a dirty and stained condition. The landlord thought originally that the carpet would have to be replaced however the landlord was able to mitigate the loss by having it professionally cleaned. The landlord seeks to recover \$263.77.
- The entire unit was left dirty. It took a month for the landlord to clean the unit with a cleaning company doing the bulk of the work. The landlord seeks to recover \$361.56.
- The tenants failed to return the keys at the end of the tenancy. The landlord had the locks changed and seeks to recover the cost of this work to an amount of \$108.17.
- The tenants left garbage everywhere. There was more than a truck load that had to be removed from the property including food from the kitchen. The unit was left so bad that the landlord was not able to show the unit to prospective tenants. The landlord seeks to recover \$312.50 for this work.
- The tenants did not repair items in the home which were damaged by the tenants. This included a light fixture that had been pulled off and broken, nearly all the light switches were left broken, cabinet doors were broken and the front cover on a cabinet was missing. All the blinds were damaged. The landlord seeks to recover \$504.00 for the labour costs to repair this damage.
- The landlord seeks to recover the costs for new blinds. The blinds were replaced for blinds of a lesser value. The original blinds were six years old and in perfect condition at the start of the tenancy.
- The landlord seeks to recover \$120.00 for the replacement light fixture and light switches. These items were six years old but all in perfect condition at the start of the tenancy.
- The tenants caused extensive damage to the drywall throughout the unit. The walls had all been freshly painted at the start of the tenancy. At the end of the tenancy there were holes in the walls, crayon drawn on the walls, posters stuck on the walls other children's drawings on the walls and a sticky substance was

left on a wall. The walls had to be repaired and repainted. The landlord seeks to recover \$2,709.00 for this work.

- The tenants were responsible for yard work as indicated in the tenancy agreement. The tenants left the yard in a poor condition and had not carried out anything other than the basic maintenance such as mowing the lawn occasionally in the summer. The landlord had to have ground maintenance done and seek to recover the cost of this work to an amount of \$267.75. This cost only covered basic maintenance as it was the winter months.
- The tenants caused damage to the appliances namely the stove, the fridge and the dishwasher. The tenants had allowed their children to draw and write on these appliances with a permanent marker pen. This pen could not be removed from the appliances. The stove was left with such a build up of grease that it could not be successfully cleaned. The handle of the fridge had been broken off and no replacement could be found. The interior of the fridge had missing shelves, butter tray and door trays. If the landlords had been able to replace the door, shelves and trays it would have been more expensive than replacing the fridge with a less expensive model. The dishwasher also had dents in the door. These appliances were all six years old. The landlord seeks to recover the package price paid to replace the stove, dishwasher and fridge with cheaper models of \$1,758.40.

The landlord testifies that due to the high level of work required in the unit to re-rent the unit the unit could not be re-rented for December, 2013. The landlord did however re-rent the unit for January 01, 2014. The landlord seeks to recover rent of \$1,100.00 as this is the amount they would have received for the unit through December if it had been suitable to rent.

The landlord seeks an Order to keep the security deposit to offset against the damages and loss of rent and a Monetary Order for the balance. The landlord also seeks to recover the filing fee of \$100.00.

### Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and sworn testimony before me.

With regard to the landlords claim for damage to the unit, site or property; 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: 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.

Having reviewed the evidence and sworn testimony before me I find the tenants failed to comply with s. 32(2) and (3) 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.*

*(3) 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 am satisfied that the tenants failed to clean the unit at the end of the tenancy and failed to repair damage caused during the tenancy. When a landlord files a claim for damage or loss I would consider the items that required replacement against the useful life of that item and then make calculation as to the depreciation costs associated with any

item in accordance with the Residential Tenancy Policy Guideline #40. In this matter most of the damaged items were six years old; however, the landlord has replaced these items with items of a lesser value in order to mitigate any loss. I am not therefore prepared to also make a deduction for depreciation of the value of these items due to the age of the items and with regard to the good condition of the items at the start of the tenancy as shown in the landlord's documentary evidence.

Consequently, I find the landlord has established a claim for **\$8,622.60** for cleaning, removal of garbage, yard work, repairs and for the replacement of damaged appliances as indicated above.

With regard to the landlords claim for a loss of rent; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. I am satisfied that the extent of the repairs and clean up of this unit resulted in the landlord not being able to show the unit to prospective tenants through December, 2013. I am also satisfied that the extent of the repairs and cleaning would have taken a considerable amount of time to complete. Consequently I am satisfied that the landlord suffered a loss of rent for December, 2013. However the tenants rent was \$1,025.00 per month and the landlord did re-rent the unit for \$1,100.00 per month. As the rent for this unit was not increased during the tenancy from 2010 I find in favor of the landlords claim that they could have re-rented the unit at **\$1,100.00** for December. I therefore award this amount to the landlord pursuant to s. 67 of the *Act*.

There was an error on the landlord's Monetary Order worksheet where the landlord had claimed for the cost of lock replacement twice. This was now been adjusted in the calculations at the hearing.

I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*. I ORDER the landlord to keep the security deposit of **\$512.50** pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlord's monetary award. A Monetary Order has been issued to the landlord for the following amount:

Damages, yard work, garbage removal and cleaning	\$8,622.60
Loss of rent for December, 2013	\$1,100.00
Filing fee	\$100.00
Less security deposit	(-\$512.50)
Total amount due to the landlord	\$9,310.10

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$9,310.10**. 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: April 04, 2014

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Residential Tenancy Branch

