



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord 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*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and all parties gave affirmed testimony. The landlord also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenants. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property, or for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on August 15, 2013 and ended on February 28, 2014. Rent in the amount of \$1,400.00 per month was originally payable under the tenancy agreement, but at the outset of the tenancy the tenants

asked the landlord to reduce the rent to \$1,325.00 per month and the landlord agreed. However, the tenants paid the landlord a security deposit of \$700.00 which is still held in trust by the landlord. No pet damage deposit was collected.

The landlord also testified that no move-in or move-out condition inspection reports were completed but the rental unit was new at the start of the tenancy. The landlord made arrangements to walk through the rental unit with the tenants after the tenants' belongings were removed at the end of the tenancy, and when the landlord attended damage and required cleaning were noted.

The oven was not cleaned and it had a chip in the enamel. The landlord has provided a copy of an invoice dated August 19, 2013 showing that the range was new and testified that if there had been any damage, it would be noted on the invoice. The landlord has not had the chip repaired or the range replaced.

The landlord further testified that the rental unit was rented furnished and a wooden buffet was damaged at the end of the tenancy. A photograph has been provided showing a burn mark or damage to the wood on top. The landlord has not had the buffet repaired or replaced.

The landlord has also provided receipts for cleaning the rental unit which also includes carpet cleaning. The landlord testified that cleaners were hired and were paid the minimum charge of 4 hours for 3 cleaners and the bill came to \$108.00 in addition to \$70.00 for carpet cleaning and \$8.90 for taxes. The stains in the carpet didn't all come out so the landlord had to retain a second cleaner and has provided a receipt for \$75.60.

The landlord also testified that a chair in the rental unit had only previously been used for display, and was left soiled by the tenants. A photograph has been provided of the underside of the chair. Also, the bedframe is wobbly, which was not at the commencement of the tenancy.

The landlord also testified that the tenants did not provide the landlord with a forwarding address in writing and the landlord had to conduct a search to locate them for service. The landlord had given a reference to the tenants' current landlord and located an address for service from that landlord.

The landlord requests an order to keep the security deposit for the damages and cleaning required at the end of the tenancy.

The first tenant testified that the security deposit paid was not \$700.00 but \$665.00.

The tenant further testified that the rental unit was left reasonably clean and does not agree that the landlord is entitled to \$108.00 for cleaning, but does agree that the oven could have been left cleaner. He further testified that the tenants left stains on the carpet, however carpeting was also in the kitchen and the tenants placed their own carpet over it to minimize soiling.

The tenant also testified that the tenant had a plug-in type of air freshener which he unplugged and set on the buffet, but it was still too hot and burned the buffet.

With respect to the chair, the tenant testified that he does not know when or how the soiling on the underside happened. Also, he agrees that the bed is now wobbly but questions the cost of repair.

The other tenant also testified that the security deposit was \$665.00 and stated that the landlord was provided with a forwarding address in writing by registered mail as well as by email communication between the parties, but provided no dates or any evidence.

With respect to the chip in the stove, the tenant testified that to the best of her knowledge, the chip was there at the time of delivery. It was certainly there the first time the tenant saw the new range.

The tenant further testified that the tenants had agreed to pay for carpet cleaning but wanted to know the cost. The tenant also agrees that the damage to the buffet but testified that the soiling of the chair was not caused by the tenants.

### Analysis

The *Residential Tenancy Act* states that a landlord must ensure that move-in and move-out condition inspection reports are completed at the beginning and the end of a tenancy and the regulations to the *Act* go into specific detail about how that is to be done. It further states that if a landlord fails to ensure the reports are completed, the landlord's right to make a claim against the security deposit for damages is extinguished. In this case, it is clear that the landlord did not do so and therefore, I must find that the landlord's right to make a claim against the security deposit for damages is extinguished.

However, the landlord's right to make a claim for damages is not extinguished. The regulations also specify that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy but in this case there are no reports to

compare. The landlord testified that the rental unit was new at the commencement of the tenancy but has provided no evidence of that.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

A tenant is not required to leave a rental unit in a pristine condition that a landlord may want for re-renting or selling a rental unit, but is required to leave it reasonably clean and undamaged except for normal wear and tear. The tenants agreed that the oven was not clean and that the carpets needed cleaning. There is no other evidence before me that the amount of cleaning completed by the cleaners was for more than normal wear and tear. I find that the landlord has established a claim for carpet cleaning in the amount of \$70.00 plus tax in the amount of \$3.50 as well as an additional \$75.60 for the second cleaner.

The tenant also agreed that the oven could have been left cleaner, and as a result of the testimony of the parties, I find that the tenants did not clean the oven and the landlord is entitled to recovery towards the cleaning bill for 1 hour. The invoice specifies \$108.00 for 3 cleaners for 4 hours, which I calculate to be \$9.00 per hour for one cleaner, and I find that the landlord has established a claim for cleaning the oven in that amount.

The balance of the landlord's claim for cleaning is hereby dismissed.

The tenants also agree that the buffet and bed were damaged during the tenancy, but the landlord has not provided any evidence of the cost associated with their repair, and I find that the landlord has failed to establish element 3 in the test for damages.

Similarly, the landlord has not provided any evidence of the amount that the chipped range or the soiled chair has cost the landlord, or that either was caused by the tenants. I find that the landlord has failed to establish elements 2 and 3 of the test for damages.

With respect to the security deposit, the landlord testified that \$700.00 was collected but both tenants testified that it was only \$665.00. I accept the testimony of the tenants,

and find that the amount collected was \$665.00 and that it is still held in trust by the landlord.

The *Act* requires a landlord to return all of a security deposit to a tenant or file an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date that the landlord receives the tenant's forwarding address in writing. Having found that the landlord's right to claim against it for damages is extinguished, the landlord must return it. If the landlord fails to comply, the landlord must be ordered to repay the tenant double.

In this case, one of the tenants testified that a forwarding address in writing was provided to the landlord by registered mail but has provided no date or evidence of that. The landlord testified that no forwarding address had been received and that the landlord had to search for the tenants to serve this application. I accept the testimony of the landlord and I find that the tenants have not provided the landlord with a forwarding address in writing, and therefore, the tenants are not entitled to double recovery.

Having found that the landlord has established a claim for carpet cleaning in the amount of \$149.10 for 2 attempts, including taxes, and \$9.00 for cleaning the oven, I find that the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application, and that the amount ought to be set-off from the \$665.00 security deposit owed to the tenants. I order the landlord to retain \$208.10 and return the balance to the tenants.

### Conclusion

For the reasons set out above, I hereby order the landlord to retain the sum of \$208.10 of the security deposit and I order the landlord to return the balance to the tenants.

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: June 24, 2014

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Residential Tenancy Branch

