



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants confirmed that they received copies of the landlords' dispute resolution hearing package sent by the landlords by registered mail on February 8, 2014. The tenants also confirmed that they received the landlords' written evidence package. I am satisfied that the landlords have served the tenants with the above documents in accordance with sections 88, 89(1) and 90 of the *Act*.

The female tenant (the tenant) testified that the tenants sent copies of their written evidence by Canada Post's Certified Mail service on May 13, 2014, the same day she sent this material to the Residential Tenancy Branch (the RTB). The RTB received the tenants' 18 pages of written evidence on May 14, 2014. The tenant provided the Canada Post Tracking Number to confirm the mailing to the landlords. The female landlord (the landlord) testified that the landlords have not received any written evidence from the tenants nor have they received any card from Canada Post indicating that there is a package available for them. The landlord asked which address the tenants used to send their written evidence to the landlords. The tenant testified that she sent the written evidence package to the address listed on the landlords' application for dispute resolution. The landlord testified that the address the landlords provided on their application for dispute resolution is the address of the rental premises and not their actual address.

The RTB form used by the landlords to submit their application for dispute resolution required the landlords to provide their “(address for service of documents or notices – where material will be given personally, left for, faxed, or mailed)”. The male landlord testified that the landlords sold the rental property as of April 1, 2014. I find that the landlords are responsible for failing to provide the tenants with their accurate and current address where the tenants’ documents could be served to the landlords. Under these circumstances and in accordance with sections 88 and 90 of the *Act*, I find that the landlords were deemed served with the tenants’ written evidence on May 19, 2014, the fifth business day after the mailing of this written evidence by the tenants.

#### Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, e-mails, invoices, receipts, estimates, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords’ claim and my findings are set out below.

The parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on June 18, 2012 for a tenancy that commenced on July 1, 2012. The initial fixed term was to expire on June 30, 2013. Neither party entered into written evidence a copy of this Agreement. The landlords entered into written evidence a copy of an Addendum to that Agreement signed only by the tenants on June 18, 2012. Prior to the expiry of the initial term of this Agreement, the landlords maintained that the parties entered into a new oral fixed term one-year Agreement.

The parties agreed that monthly rent throughout this tenancy was set at \$1,750.00 payable on the first of each month. The landlords continue to hold the tenants’ \$875.00 security deposit paid on June 18, 2012. The tenants vacated by January 25, 2014, returning their keys to the landlords on February 4, 2014.

The landlord first testified that there was and there wasn’t a joint move-in condition inspection when this tenancy began. She explained that the tenants knew when they took occupancy of the rental unit that repairs and renovations that the landlords had undertaken would not be completed for some time. She said that this work on the rental unit was not completed until September 2012, at least two months after this tenancy

commenced. In their written evidence and in their sworn testimony, the tenants maintained that the rental unit was in the midst of repairs when this tenancy began. The male tenant testified that the rental unit was not at all clean when they moved into the rental unit. The tenants' written evidence noted that the premises were supposed to have been repaired and renovated by July 1, 2012, but the landlords' work was not done for some time afterwards.

Although the landlords entered into written evidence a condition inspection report citing June 30, 2012 as the date when a joint move-in condition inspection was conducted and the report issued, there is no tenant signature on this report. At the hearing, the landlord testified that those items listed under the heading "Condition at Beginning of Tenancy" actually described the conditions noted by the landlord at the end of this tenancy. When questioned about this Report, the landlord testified that no move-in condition inspection report was prepared nor did any actual joint move-in condition inspection occur when the tenants took occupancy because the rental unit was still undergoing repairs and renovations.

The landlord testified that she was expecting the tenants to participate in a joint move-out inspection when the tenants handed over their keys to the rental unit on February 4, 2014. When the tenants did not agree to a move-out inspection that day, she conducted her own inspection, completing the report that she entered into written evidence herself. She provided the tenants with a copy of this report as part of the landlords' written evidence.

The landlords' application for dispute resolution cited a "lease break agreement" the landlords maintained was breached by the tenants when they decided to end their tenancy before the scheduled end to their Agreement. However, as there was no written Agreement entered into between the parties, the landlords provided no copy of the original Agreement, and the tenants did complete the initial term of their one-year fixed term tenancy, the landlords would not be eligible to claim against a lease-break fee cited in the Addendum.

At the hearing, the landlord clarified that the \$875.00 monetary award that the landlords were seeking was for damage arising out of this tenancy. In support of this application, the landlords supplied a series of photographs taken at the end of this tenancy and invoices showing that many of these items were replaced or repaired either shortly before this tenancy began or as part of the repairs and renovations that were completed in the first few months of this tenancy. The landlords also maintained that the rental unit was not properly cleaned at the end of this tenancy, even after two attempts by the company hired by the tenants to undertake this cleaning. The landlords maintained that

the tenants did not fulfill the provision in the Addendum they signed when this tenancy started requiring them to “have the suite professionally cleaned prior to vacating the premises- receipt to be provided.” The landlords alleged that the tenants had not supplied the required receipt to demonstrate their compliance with this provision.

The tenants entered written evidence that the rental unit was not clean when this tenancy began and that the tenants had to undertake extensive cleaning as they lived in the rental unit while renovations and repairs were being undertaken around them. The tenants also entered into written evidence a copy of a February 4, 2014 invoice for 3 hours of professional cleaning by two professional cleaners, totalling 6 hours. This cleaning resulted in a \$210.00 payment by the tenants to the cleaning company that the tenants said the landlords recommended for this task. The invoice also includes reference to an extra charge for returning to the rental unit to conduct additional cleaning work requested by the landlord at the end of this tenancy.

#### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once established, the claimant must provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlords confirmed at the hearing that they did not have any repairs done to the damage they were claiming from the tenants. They also said that they did not have any receipts to demonstrate any losses they incurred as a result of the damage they attributed to the tenants. This evidence on its own may very well have been sufficient to dismiss the landlords’ application for a monetary award for damage, as the landlords have failed to meet the burden of proof required to demonstrate actual losses arising out of the tenants’ actions during this tenancy.

The male landlord said that the landlords had to settle for a reduced sale price for this rental property due to the damage caused by the tenants. However, he produced no documentation of any type to substantiate this claim. I note that it would be exceedingly difficult if not impossible to show that the tenants’ actions and the tenants’ actions alone led to a reduced sale price. Many factors factor into the eventual sale price in a real

estate transaction. I am unclear as to how a landlord would be able to isolate damage alleged to have arisen as a result of the tenants' actions as opposed to all of the other factors that may have contributed to the sale price of the property. At any rate, the landlords have not provided any evidence to demonstrate any loss in value they may have experienced as a result of the tenants' actions.

Separate from the landlords' failure to provide evidence of any actual losses incurred as a result of the alleged damage and the landlords' failure to even provide a copy of the signed Agreement between the parties, there is a dispute as to the condition of the rental unit at the beginning and end of this tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, the landlords did not conduct a joint move-in condition inspection as by the landlords' own admission repairs and renovations were being undertaken while the tenants lived there. No report of a joint move-in inspection was issued by the landlord, and the landlord provided a feeble explanation as to why this did not occur.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

**23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day...*

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) *the landlord has complied with subsection (3), and*

(b) *the tenant does not participate on either occasion...*

Section 24 of the Act reads in part as follows:

**Consequences for tenant and landlord if report requirements not met**

**24** (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 23 (3) [2 opportunities for inspection],*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Section 35 of the Act provides similar requirements with respect to the joint move-out inspection process:

**35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit, or*

*(b) on another mutually agreed day.*

*(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

*(3) The landlord must complete a condition inspection report in accordance with the regulations.*

*(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

*(5) The landlord may make the inspection and complete and sign the report without the tenant if*

*(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*

*(b) the tenant has abandoned the rental unit...*

Section 36(1) of the Act reads in part as follows:

***Consequences for tenant and landlord if report requirements not met***

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

I find that the landlords have failed to follow most of the above-noted provisions of the Act with respect to the move-in and move-out inspections and reports. No meaningful joint move-in inspection was conducted, no joint move-in report was produced and the landlords did not provide two scheduled written opportunities for inspection of the rental premises at the end of this tenancy. A failure to abide by any one of the provisions outlined above extinguishes the landlords' right to claim against the security deposit.

Since I find that the landlord did not follow the requirements of the above-noted sections of the Act, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy has been extinguished. This does not preclude the landlords from making a separate claim for damage arising out of this tenancy. However, after considering the landlords' claim for damage arising out of this tenancy, I find that the landlords have not demonstrated that they have incurred actual losses arising out of the tenants' actions or that any cleaning that was necessary left the rental unit in any worse condition than was present when this tenancy began. I also find that the tenants have complied with the requirement in the Addendum they signed to have the rental unit professionally cleaned at the end of their tenancy and that they have supplied a copy of the receipt for this professional cleaning. I find that the landlords have been unsuccessful in demonstrating to the extent required that damage arose during the course of this tenancy without a properly executed condition inspection and condition inspection report from the beginning of this tenancy. For these reasons, I dismiss the landlords' application for a monetary award for damage without leave to reapply.

As the landlords have been unsuccessful in their application, they bear the cost of their filing fee for this application.

Since the landlords' application to retain the tenants' security deposit is dismissed without leave to reapply, I order the landlords to return the tenants' security deposit forthwith.

Conclusion

I dismiss the landlords' application without leave to reapply.

I order the landlords to return the tenants' \$875.00 security deposit plus applicable interest to the tenants immediately. No interest is payable over this period. I issue a monetary Order in the tenants' favour to this effect.

The tenants are provided with these Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 23, 2014

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Residential Tenancy Branch



