



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was originally scheduled for June 24, 2014 to deal with a landlord's application for a Monetary Order for damage to the rental unit, unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. At the originally scheduled hearing both parties appeared; however, I adjourned the hearing due to a language barrier and instructed the landlord appear at the reconvened hearing with someone able to translate for her and/or assist her in communicating in English. At the reconvened hearing of August 21, 2014 both parties appeared, including a person that translated for the landlord. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The tenants submitted at the outset of the hearing that the parties had been to dispute resolution before and that the landlord's application should not be permitted to proceed. Upon review of the previous dispute resolution decision, I noted that the matter of unpaid rent for December 2013 and disposition of the security deposit had already been heard and decided upon. That previous dispute resolution decision was also the subject of an Application for Review Consideration filed by the landlord and the landlord's request for a review hearing was dismissed. However, the reviewing Arbitrator noted that the landlord remained at liberty to pursue a damage claim by way of a separate application. As decisions of an Arbitrator are final and binding, subject only to applicable review provisions, I informed the parties that I would not consider the landlord's claim for unpaid rent and request to retain the security deposit again but that I would consider the landlord's damage claim.

I also determined that there were issues with respect to service of hearing documents upon each other as described below.

The tenants submitted that they were served with the landlord's Application for Dispute Resolution and evidence only three days before the original hearing date of June 24, 2014; however, the tenants indicated a willingness to proceed with the hearing as opposed to risk the matter being dismissed with leave and deal with the matter at a later date. As such, I deemed the tenants sufficiently served with the landlord's hearing documents and evidence and the hearing continued.

The landlord was in receipt of the tenants' evidence but was not served with the tenants' written submission that provides a response to the landlord's claims. I accepted the tenant's documentary evidence and photographs into evidence but excluded the written submission from further consideration. The parties were informed that the tenants would be permitted to provide their position orally during the hearing and the landlord an opportunity to respond orally during the hearing.

#### Issue(s) to be Decided

Has the landlord established an entitlement to compensation for cleaning and damage, as claimed?

#### Background and Evidence

The tenancy commenced April 15, 2012 and the tenants participated in a move-in inspection with the landlord's agent on April 11, 2012. The landlord's agent provided the tenants with a copy of the "Statement of Unit Condition and Security Deposit Return" prepared on April 12, 2012 (herein referred to as the "move-in inspection report"), along with photographs taken during the move-in inspection. The tenants moved out of the rental unit in December 2013. A move-out inspection was not scheduled with the tenants by the landlord or the landlord's agent and a move-out inspection report was not prepared by the landlord or her agent.

The rental unit included four bedrooms on the upper level of a house, along with a staircase that leads to the lower entry and exclusive use of the attached garage. The house had previously contained two basement suites; however, use of the basement suites ceased during this tenancy following an inspection by the City. The tenants resided in the rental unit with their toddler and new born child.

Although I heard and have considered a considerable amount of testimony with respect to this dispute, I have summarized the landlord's claim for \$3,990.00 for cleaning and damage and the tenants' responses, below.

**Painting and wall repairs: \$2,500.00**

The landlord submitted that the tenants damaged the walls during their tenancy, which required filling, and then re-painting. The landlord referred to photographs taken in April 2012 and compared them to photographs taken by the landlord in January 2014. The landlord provided an invoice dated “2014-1” for “Indoor Painting & filling” in the amount of \$2,500.00 that included the following description:

“Upstare 2<sup>nd</sup> floor – Master Room, Living Room & 2 bedrooms – drywall brocken require to repair (fill & painting)”

[reproduced as written]

The tenants denied damaging the walls. The tenants submitted that the walls had been patched and painted with a mismatching paint before they moved in, as seen in the photographs taken by the landlord’s agent in April 2012. Further, there was existing wall damage that was noted by the landlord’s agent on the move-in inspection report. Finally, the landlord’s photographs taken in January 2014 depict damage that was not present when the tenants moved out and not apparent in the photographs taken by the tenants in December 2013.

The tenants enquired as to whether the painters painted over the pre-existing damage and patches. In response, the landlord claimed that the painters did not paint over the pre-existing damage or patches. The landlord explained that she showed the painters photographs of the pre-existing damage and patches and the more recent damage and instructed them to only repair and paint the recent damage caused during this tenancy.

**Carpet cleaning: \$800.00**

The landlord submitted that the tenants left the carpets in a dirty and stained condition and that she had them cleaned for \$800.00 in January 2014. The landlord referred to photographs of the carpeting she took in January 2014 and those taken before the tenancy commenced. The landlord explained that the cost to clean the carpets was high because it took special effort to remove the stains. The landlord provided an Invoice dated “2014-1” with the description “wash carpet (upstare)”.

The tenants objected to the landlord’s claim for carpet cleaning. The tenants submitted that they had the carpets cleaned in December 2013 after they removed their

possessions and pointed to a receipt dated December 20, 2013 in the amount of \$90.00 for "carpet deep clean and shampoo".

The tenants also submitted that the photographs provided by the landlord are misleading as they include carpet mats that were located outside of the entry door and include extreme close ups that make it impossible to determine where the photographs were taken. The tenants submitted that such pictures could be of carpet mats that are outside of the entry door.

Further, the tenants pointed out that the carpets had pre-existing stains as evidenced by the photographs taken by the landlord's agent in April 2012 and the move-in inspection report.

**Garbage removal: \$690.00**

The landlord submitted that the tenants left a considerable amount of garbage at the rental unit and that she had it removed at a cost of \$690.00. The landlord referred to photographs she took in January 2014 that depict magazines in the living room; cardboard boxes in the garage; furniture left in the garage, entry and balcony; and various other items in the driveway including a child's picnic table.

The tenants acknowledged leaving magazines on the hearth of the living room fireplace and cardboard boxes in the garage. The tenants acknowledge that they should have removed these items but were of the position these items could have been recycled.

With respect to the few pieces of furniture in the landlord's photographs, the tenants submitted that the furniture was actually left in the backyard by the former basement suite tenants and that the tenants took the furniture into the garage and the balcony for protection from the elements. The landlord doubted the tenant's submission since the garage, the balcony, and entry were areas for which the tenants had exclusive use.

Further, the landlord submitted that the former basement suite tenants did not abandoned furniture at the property as she had an agent confirm this. The tenants submitted that an agent did not confirm the removal of all of the furniture left by the former basement suite tenants.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlord's claims for cleaning and damage against the tenants.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: Useful Life of Building Elements.

### **Painting and wall repairs: \$2,500.00**

The Act requires that a tenant repair damage that they, or persons they permit on the property, cause by way of their actions or neglect. A tenant is not required to repair pre-existing damage. Further, the Act provides that normal wear and tear is not damage. Of further consideration is that landlords are expected to repaint at reasonable intervals. Pursuant to Residential Tenancy Policy Guideline 40, interior paint has an ordinary life of four years.

The photographs taken in April 2012 show wall patches with mis-matching paint in several rooms, including: the bedrooms, hallway, living room and dining room. Further, the move-in inspection report notes pre-existing "stains, scratches and nails" on the walls in the bedrooms.

I find the landlord's submissions that she showed the painters photographs of old patches and damage and photographs of more recent damage and instructed them to

not paint over the pre-existing damage and mismatched patches to be unlikely and inconsistent with what an ordinary person would do when bringing painters. Nor, did the painters indicate on their invoice that only certain walls or rooms were painted or that certain pre-existing damage and patches were excluded from their scope of work. Rather, I find the painter's invoice indicates they painted the entire upper floor, without any notable exceptions.

In light of the above, I find it more likely that the rental unit was largely in need of repainting mainly due to the normal aging process, normal wear and tear, as well as pre-existing damage and patches. Therefore, I deny the landlord's request to hold the tenants liable for repainting and wall repairs in the amount of \$2,500.00.

**Carpet cleaning: \$800.000**

The Act requires that a tenant leave a rental unit reasonably clean at the end of the tenancy. Residential Tenancy Policy Guideline 1 provides that tenants are normally expected to clean the carpets where the tenancy exceeded one year in duration, as it did in this case. The tenants submitted that they did clean the carpets, as evidenced by their photographs and carpet cleaning receipt. At issue before me is whether the tenants' cleaning efforts were sufficient.

It was undisputed that some carpet stains existed at the end of the tenancy; however, the dispute concerned whether stains were pre-existing.

The move-in inspection report indicates the carpets had been steam cleaned in the living room, dining room, and hall but no such indication is made with respect to the bedroom carpeting. The move-in inspection report indicates the carpeting in all rooms was "good"; however, the photographs taken in April 2012 do show some pre-existing damage and stains, such as: a burn mark in the dining room, stains by the living room fireplace and in the blue bedroom.

Upon review of the photographs, considering the tenants paid only \$90.00 for carpet cleaning – which I find is very low for a house of this size – and considering the tenant's statement that any stains they caused were cleaned to the best of their ability, I find it likely that some additional stains were created during this tenancy. Based upon what is before me, I find the tenants likely responsible for a stain in the master bedroom and stains on the staircase carpeting. However, I find the landlord's invoice of \$800.00 to be very high and the carpet cleaners did not provide any detailed information on their invoice that would explain the exceptionally high charge. Nor, did the landlord reduce the claim to reflect the pre-existing stains. Therefore, I provide the landlord with a

nominal award of \$100.00 for stains I find were likely caused by the tenants and remained visible after they had the carpets cleaned.

**Garbage removal: \$690.00**

The Act requires that a tenant leave the rental unit reasonably clean and vacant at the end of the tenancy. I interpret these provisions to mean that the tenants are required to remove all of their possessions, garbage and recycling.

Based upon the undisputed testimony, I find the tenants violated the Act by leaving their magazines and several cardboard boxes behind which the landlord had to deal with.

The landlord's photographs include a child's picnic table, which I find likely belonged to the tenants considering they had a toddler while living in the rental unit.

With respect to the furniture pieces left in the garage, entry and balcony, I find the tenants responsible for the removal of these items. Even if I were to accept the tenants' position that furniture had been abandoned in the back yard by previous tenants, in my view, when they took that furniture, especially into the entry and their exclusive use balcony, that they had taken possession of it for their own use. I find it more likely that had the furniture been abandoned by previous tenants, the tenants would have either left it in place or sought its removal by the landlord if the tenants did not have a use for it. .

Given the above, I find the tenants responsible for removal of the magazine, cardboard boxes, furniture and child's picnic table, along with the other miscellaneous items left in the rental unit. However, I find the cost of \$690.00 to remove the quantity of possessions depicted in the landlord's photographs to be excessive. Nor, did the invoice detail what was hauled away, its weight, or any other description that would reconcile the amount claimed to what is depicted in the photographs. Based upon the landlord's photographs, I find it reasonable that the possessions left behind by the tenants could be removed for approximately \$150.00 and that is what I award to the landlord.

**Filing fee and Monetary Order**

Given the landlord's very limited success in this application I make no award for recovery of the filing fee.

The landlord has been awarded a sum of \$250.00 for carpet stains and garbage removal and I provide the landlord with a Monetary Order in that amount to serve upon the tenants and enforce as necessary.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$250.00 to serve upon the tenants and enforce as necessary.

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: September 12, 2014

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Residential Tenancy Branch



