



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. The hearing process was explained to the landlords and a summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlords testified that the Notice of Hearing, Application and first package of documentary evidence were served on the tenant by registered mail on May 6, 2014. The landlords provided a registered mail tracking number in evidence. According to the Canada Post online registered mail tracking website, the first package mailed to the tenant containing the Notice of Hearing, Application and first package of documentary evidence was successfully signed for by, and accepted by the tenant on May 16, 2014. Based on the landlords' undisputed testimony which is supported by the Canada Post registered mail website, I find the tenant was served as of May 16, 2014 with the Notice of Hearing, Application and first package of documentary evidence.

The landlords testified that they had the service address of the tenant from a previous dispute resolution file submitted by the tenant, the file number of which has been included on the cover page of this Decision for ease of reference. That file number supports that the tenant provided the service address used by the landlords for the application before me, and that the tenant successfully signed for and accepted the first package from the landlords on May 16, 2014.

The landlords stated that their second package to the tenant containing additional documentary evidence was returned as "mailbox closed" and that they did not mail their third documentary evidence package to the tenant as a result. As the landlords' second package to the tenant

containing additional documentary evidence was returned to the landlords as “mailbox closed” and due to the landlords confirming that the third package was not mailed to the tenant, the landlords’ second and third packages of documentary evidence have been excluded from the hearing and have not been considered as those packages were not served in accordance with the Rules of Procedure.

### Preliminary and Procedural Matters

The landlords testified that they have not applied for the compensation sought in this application at any previous dispute resolution hearing. In addition to the above, the landlords confirmed that although the tenant was served with 55 photos, the landlords served the Residential Tenancy Branch with a CD containing the 55 photographs and a list of what each of the 55 photos represent. As a result, I find the tenant would not be prejudiced by the landlord submitting the 55 photos to the Residential Tenancy Branch on a CD as the landlords included a list of what each of the 55 photos represent. I accept the landlords’ undisputed testimony that each of the 55 photos match the photos printed and served on the tenant.

### Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A periodic, month to month tenancy agreement began on July 1, 2013. Monthly rent in the amount of \$1,100.00 was due on the first day of the month. A security deposit of \$550.00 was paid by the tenant at the start of the tenancy which the landlords continue to hold.

The landlords have claimed \$2,434.44 comprised of three items, the first item in the amount of \$1,937.25 for various repairs to the rental unit, the second item in the amount of \$197.19 for damage to the garage entry door, and the third item in the amount of \$300.00 for yard maintenance not completed by the tenant. The landlords testified that the tenant did not provide her written forwarding address as required by the *Act*, however, they had the service address for the tenant from a previous Decision as described above.

The landlords stated that the tenant vacated the rental unit on April 30, 2014. A copy of the condition inspection report was submitted in evidence. The incoming condition inspection report was completed between the parties on June 28, 2013. The outgoing condition inspection report was completed by the landlords only as the tenant failed to participate in the inspection scheduled for April 30, 2014, although the tenant ultimately signed the outgoing condition inspection report dated April 30, 2014 indicating that the tenant did not agree with the outgoing condition inspection report.

Regarding the first item, the landlords have claimed \$1,937.25 for various damages to the rental unit. The landlord submitted an estimate for \$1,937.25 including taxes, comprised of the following repairs to the drywall and repainting required in the rental unit:

1. Kitchen cabinets – 5 cabinet door or panels repaint due to felt marker or paint
2. Living room – repair 2 holes in drywall and repaint 2 walls and entrance opening
3. Hallway – repair 1 hole in drywall and repaint wall
4. Bedroom – seal crayon/felt marker and repaint 1 wall
5. Bedroom – remove border and repair drywall and repaint 2 walls

The estimate is dated May 1, 2014 and includes the phone number of the contractor who provided the estimate to the landlords. The landlords referred to the condition inspection report in support of the estimated repairs described above. The landlords referred to eleven photos which the landlords stated support this portion of their claim for damages. The incoming condition inspection report submitted in evidence indicates that these items were in good condition at the start of the tenancy.

Regarding the second item, the landlords have claimed \$197.19 to repair the exterior garage entry door. The landlords submitted a receipt for \$197.19 including taxes for the exterior garage door and referred to the condition inspection report and four photos which the landlords stated support the damage caused by the tenant for this portion of their claim. The incoming condition inspection report submitted in evidence indicates that exterior doors were in good condition at the start of the tenancy.

Regarding the third and final item, the landlords have claimed \$300.00 for “upper lawn raking”, “bank raking”, “ditch raking”, and “removal of debris”, according to the estimate submitted by the landlords dated May 5, 2014 in the amount of \$300.00. The landlords referred to an addendum to the tenancy agreement which reads in part:

“...-Yard maintenance to be taken care of by renters. Their own tools. IE: Lawn mower, whipper snipper, garden hoses.  
- included is mowing lawns/bank/trees  
-water lawn/plants/trees...”

[reproduced as written]

The landlords referred to ten photos submitted in evidence to support this portion of their claim and the outgoing condition inspection report which indicates that yard maintenance was not completed in accordance with the tenancy agreement. The landlords confirmed that they did not sign the tenancy agreement addendum.

### Analysis

Based on documentary evidence of the landlords and their undisputed testimony, and on the balance of probabilities, I find the following.

#### Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

**Item 1** – The landlords have claimed \$1,937.25 for damages to the rental unit caused by the tenant. The landlords submitted an estimate dated May 1, 2014, that I find supports that the rental unit required all of the work included in the estimate. Section 37 of the *Act* applies and states:

#### **Leaving the rental unit at the end of a tenancy**

**37** (2) When a tenant vacates a rental unit, the tenant must

**(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

**(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

**[emphasis added]**

Based on the above, I find the tenant breached section 37 of the *Act* by failing to leave the rental unit in reasonably clean condition and undamaged at the end of the tenancy. I find that the damage is not consistent with reasonable wear and tear given that the tenancy began on July 1, 2013 and the details included on the incoming condition inspection report and which are supported by the photos. Given the above, I find the landlords have met the burden of proof in proving this portion of their claim. Therefore, **I grant** the landlords **\$1,937.25** for damages as claimed for this portion of their claim.

**Item 2** - The landlord has claimed \$197.19 to repair the exterior garage entry door. I find the condition inspection report, receipt and photos support that the garage door was damaged during the tenancy. As a result, I find the landlords have met the burden of proof and **I grant** the landlords **\$197.19** in compensation as claimed for this portion of their claim.

**Item 3** - The landlords have claimed \$300.00 for “upper lawn raking”, “bank raking”, “ditch raking”, and “removal of debris”, according to the estimate submitted by the landlords dated May 5, 2014 in the amount of \$300.00. The landlords referred to an addendum to the tenancy agreement which reads in part:

“...-Yard maintenance to be taken care of by renters. Their own tools. IE: Lawn mower, whipper snipper, garden hoses.  
- included is mowing lawns/bank/trees  
-water lawn/plants/trees...”

[reproduced as written]

The landlords referred to ten photos submitted in evidence to support this portion of their claim and the outgoing condition inspection report which indicates that yard maintenance was not completed in accordance with the tenancy agreement. The landlords are claiming for raking costs and debris removal which are not listed in the tenancy agreement addendum. Furthermore, the landlords failed to sign the tenancy agreement addendum. Based on the above, I find the landlords have failed to prove part one and part two of the four-part test for damages or loss for this portion of their claim. Therefore, **I dismiss** this portion of the landlords' claim, due to insufficient evidence, **without leave to reapply**.

As a majority of the landlords' application had merit, **I grant** the landlords the recovery of the filing fee in the amount of **\$50.00**.

**I find** the landlords have established a total monetary claim in the amount of **\$2,184.44**, comprised of \$1,937.25 for item 1, \$197.19 for item 2, plus the \$50.00 filing fee. The landlords continue to hold the tenant's security deposit of \$550.00 which has not accrued interest to date.

**I ORDER** the landlords to retain the tenant's full security deposit of \$550.00 in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$1,634.44**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlords have established a total monetary claim of \$2,184.44. The landlords have been ordered to retain the tenant's full security deposit of \$550.00 in partial satisfaction of the landlords' monetary claim.

The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$1,634.44. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 9, 2014

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Residential Tenancy Branch

