



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlords: MND, MNSD, MNDC, FF  
                             Tenants: MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

At the outset of the hearing I discussed the service of evidence by both parties. I am satisfied that both parties have received the evidence submitted by each of them to the Residential Tenancy Branch. While the landlords served their evidence later than when it became available to them they did serve it at least 5 days prior to the hearing. I confirmed with the tenants on whether or not they were prepared to proceed and they agreed to continue with the hearing as scheduled.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for compensation for damage to and cleaning of the residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlords provided a copy of a tenancy agreement signed by the parties on March 19, 2012 for a 2 year and 14 day fixed term tenancy beginning on April 15, 2012 for a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid. The tenancy ended on April 29, 2014 when the tenants returned possession of the unit the landlords.

The landlords have submitted into evidence a copy of the Condition Inspection Report recording the condition of the rental unit at the start and end of the tenancy. The landlord submits the male tenant did not sign the Report at the time of move out but rather he initialed the things that he agreed with. The tenants submit that the items that were not initialed by the male tenant were added after the male tenant left the rental unit.

The tenants submit that at the start of the tenancy the rental unit was still being lived in by the landlords and as such they could not see everything to do an adequate inspection. The female tenant also stated that if they had noted every problem with the rental unit the move in inspection would have taken too long to complete.

The landlords submit that they had moved out of the rental unit before March 24 or 25 2012 and that the move in condition inspection was completed on April 12, 2012. As such the landlords submit their belongings were not in the rental unit at the time. The landlords submit the rental unit was last painted 1 or 2 years before the tenants moved in – likely 2010. The landlords submit the baseboards had been installed just prior to the tenancy.

The landlords submit the rental unit was not rentable when possession was returned to them and as such they were unable to rent the unit until May 15, 2014. The landlords state in their written submission that on April 29, 2014, the same night of the move out condition inspection, they had a meeting with prospective tenants.

The landlords also submit that “At the meeting with the prospective tenants we had to tell them the home was in no shape to be rented and that we need to do extensive repairs before they would be able to move in. This put them in a difficult situation but we came to a mutually acceptable agreement.” The landlords seek the following amounts:

Description	Amount
Tape operator for blind	\$44.62
Replacement chandelier	\$353.92
Cabinet Repairs	\$115.50
Cleaning	\$393.75
Paint and preparation (supplies)	\$240.66
Replacement light bulbs	\$87.69
Bedroom Lamp Shade replacement	\$15.59
Baseboard replacement	\$114.24
Ceiling Tile replacement	\$37.14
Garbage Removal	\$180.00
Wages - \$10.50 per hour for 6 people for 85 hours	\$892.50
Lawn and Garden Restoration (gas and wages)	\$50.00
Lost Revenue – two weeks	\$900.00
<b>Total</b>	<b>\$3,425.61</b>

The landlords submit that despite being serviced just before the tenancy began the tape operator for the blinds no longer works. The tenants submit that it no longer works as a result of wear and tear. The landlords have submitted an invoice for the replacement at \$44.62.

The parties agree the tenants replaced the existing chandelier when the tenant's children damaged it. The landlords' however seek a replacement of equivalent value to the original. The landlords have submitted an invoice in the amount of \$353.92.

In their written submission the tenants state that they were willing to allow the landlords to deduct the replacement cost from their security deposit if the landlords returned the fixture that the tenants used to replace the original chandelier. The tenants did not provide the value of their replacement fixture into evidence.

The tenants submit that when they moved into the rental unit that because the home was older they expected some wear and tear and that is why they did not report some of the problems at the start of the tenancy such as the melted lampshade or the broken cabinet doors.

The landlords submit the tenants had installed childproofing to the cabinets without the landlords' permission and in so doing have caused damage to some drawers and that another door required repair. The landlords have submitted an invoice for work in the amount of \$115.50.

The landlords submit that a shade in the bedroom was melted and because they only come in pairs they had to purchase two. The tenants submit that they never used this light and were unaware that there had been damage right from the start of the tenancy. The landlords submitted an estimate for the replacement, by way of a home depot product print out for a value of \$15.59.

The landlords submit the rental unit required substantial cleaning including cleaning of kitchen and bathroom and all walls required washing. The landlords submitted into evidence a receipt in the amount of \$393.75. The tenants agree that some minor items were missed in cleaning such as the range hood and the freezer, however they submit the unit was cleaner than at the start of the tenancy.

The landlords submit that while they painted the entire rental unit they seek only the costs for repainting the basement section. The landlords confirmed the area was previously painted 1 or 2 years prior to the start of this tenancy likely in 2010. The landlords have submitted receipts for paint and preparation supplies totalling \$240.66.

The landlord seeks the replacement of several light bulbs throughout the rental unit and has submitted receipts totalling \$87.69. The tenants submit that there is no way that the landlord would have had to replace this many lights. No documentation submitted by

either party provides a record of whether or not the landlord had provided light bulbs at the start of the tenancy or how many or which bulbs need replacement at the end of the tenancy.

The landlords submit also that baseboards in the upstairs part of the rental unit had just been installed prior to the start of the tenancy and the tenants caused damaged to 30 feet of baseboard. The landlords did not submit any receipts or estimates to establish the value of the baseboards at \$114.24.

The male tenant acknowledged that they had caused damage to the ceiling tiles when they had some work done in the unit. The landlords submitted a receipt establishing the value of \$37.14 including tax.

The landlords submitted an estimate for the removal of a large vehicle roll bar in the amount of \$189.00. The tenants acknowledge the roll bar was left behind.

The landlords seek \$892.50 for wages for mudding/sanding/ priming and painting; touch ups on baseboards; replacing lights bulbs; and reparation to the garden and lawn. The landlords also seek another \$50.00 for gas and wages for lawn and garden restoration. The landlord did not explain why the required wages under two categories for garden and lawn restoration.

The Condition Inspection Report does not provide any comment on the condition of the garden or lawn. I note that the landlord submitted 3 photographs of the outside and all of them show only the vehicle roll bar that was left behind but does not show any evidence of an unkempt yard or lawns.

The landlords also seek the loss of two week's worth of rental income in the amount of \$900.00 because they state the rental unit was not rentable in the condition the tenants left the unit in. The landlords provided no evidence of how and when they advertised for new tenants or when they entered into a new tenancy agreement.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the

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

I note that while the female tenant submitted that the condition inspection at move in would have taken too long had they noted every defect it is incumbent on the parties of tenancy agreement to ensure they are both satisfied that the Report from a condition inspection confirms the condition at the time of move in.

Further if defects are found later after the move in inspection is completed the tenants have an obligation to report the defects to the landlord so they become a part of the record. As such, I reject the female tenant's submission that it would have taken too long to record every defect when that is in fact the purpose of the inspection to being with.

Based on the evidence of both parties including testimony, Condition Inspection Report and photographs from both the landlords and the tenants I find the landlords have established that during the tenancy damage caused to the following items required repair and/or replacement and not from wear and tear: the blind mechanism; cabinets; chandelier; cleaning; lamp shade; baseboards and ceiling tiles.

I also find the landlords have established the value of these claims with the exception of the chandelier. I accept the replacement value would be \$353.92 however, I am persuaded by the tenants' submission that the value should be reduced by the value of the replacement the tenants have already provided. As the tenants did not provide any evidence to the value of their replacement I find that a reasonable amount would be \$50.00 and I reduce the landlords' claim by this amount to \$303.92.

In regard to the replacement light bulbs I find there is no evidence before me, particularly in the Condition Inspection Report that indicates any need for the replacement of any light bulbs. As such, I find the landlords have failed to establish such a loss existed and I dismiss this portion of their claim.

I also note that in regard to garden and lawn restoration, I find the landlords have failed to provide any evidence that the garden and lawn required any work. As such, I find the landlord has failed to establish this as a valid claim and I dismiss this portion of their Application.

Residential Tenancy Policy Guideline #40 lists the useful life of an interior paint finish to be 4 years. As the landlords have testified that portions of the unit that required painting resulting from the tenancy were last painted in 2010 I find that any amount for painting would be discounted by 100% as the entire unit was due for painting at this time. I therefore dismiss the landlord's claim for painting supplies.

Further as the majority of the hours submitted by the landlords for labour were for painting, from the landlords' testimony, I dismiss the majority of the landlord's claim for wages. The balance of the claim for wages was related to the replacement of light

bulbs and garden and lawn restoration and has I have found the landlord has failed to establish the need for replacement light bulbs or garden and lawn restoration I dismiss the balance of the claim for wages.

As to the landlords' claim for garbage removal related to the roll bar I find that the estimate provided seems extremely high for the removal of one item with no indication of weight or any potential for recycling. While I accept the landlords may have had to remove the item I am not satisfied of the costs incurred. If the landlords had submitted additional estimates or a record of the actual cost for the removal it may have established this value. As a result, I dismiss this portion of the landlords' Application.

Finally, in relation to the landlords' claim for lost revenue due to the condition of the rental unit, I find the landlords have submitted evidence that as of April 29, 2014 they had not yet entered into a tenancy agreement with new tenants. I also find, based on their own testimony and submissions, that it was the landlord's who suggested to the potential tenants they were meeting on April 29, 2014 that the unit was not suitable for new tenants. As such, I find the landlords were not prepared to have the unit re-rented by May 1, 2014.

In addition, I find that as the tenants had surrendered possession of the rental unit a day earlier than was required the landlord could have prepared the rental unit in time to rent it to new tenants by May 1, 2014 with some minor repairs that could be made after the new occupants moved in. Further, if the landlords intended to paint the upstairs part of the unit after the tenants moved out, as was the landlords' testimony, I find that this intention contributed just as much to the delay in obtaining new tenants.

For these reasons, I find the tenants cannot be held responsible for the landlords' delay in renting the unit and the landlords have failed to establish the condition of the rental unit caused a delay in re-renting the unit to new tenants. I therefore dismiss this portion of the landlords' Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the testimony of both parties I find the tenancy ended on April 29, 2014 and the tenants provided the landlords with their forwarding address on the same date. As such, the landlords had until May 13, 2014 to either return the deposit or file an Application for Dispute Resolution to claim against the deposit.

The landlords' Application was received by the Residential Tenancy Branch on May 7, 2014. As such, I find the landlords have complied with the requirements under Section 38(1) of the *Act*.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,049.76** as comprised of the items outlined above plus \$25.00 of the \$50.00 fee paid by the landlords for this application as they were only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$750.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$274.76**.

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be enforced 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: September 15, 2014

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Residential Tenancy Branch