



# 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 dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for damage or loss pursuant to section 67; authorization to retain the tenants' security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties (two tenants and two landlords) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Landlord SW testified that she served the tenants with individual copies of the landlords' dispute resolution hearing package by registered mail on January 29, 2015. She testified that it was returned undelivered on that date. She testified that she sent the package again to both tenants on February 20, 2015. The tenants confirmed receipt of the package. Based on the sworn testimony of the parties and pursuant to section 89 and 90 of the *Act*, I find that the tenants both received the landlords' dispute resolution hearing package on February 25, 2015, 5 days after its mailing.

### Issues to be Decided

Are the landlords entitled to a monetary award for damage and losses arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This fixed term tenancy began on January 1, 2011. The tenants vacated the premises on July 31, 2014. The rental amount was \$2,000.00 payable on the first of each month. Landlord SW testified she continues to hold the tenants' \$1,000.00 security deposit paid December 1, 2010. The landlords applied for a \$25,000.00 monetary order.

Landlord SW testified that the tenants left a substantial amount of damage to the rental unit when they ended the tenancy. Landlord SW testified that she and Landlord HW conducted a condition inspection of the premises and prepared a report without the tenants. She testified that, when the tenants left, the landlords gave several opportunities to allow the tenants to attend the condition inspection. Documentary materials submitted by the landlords indicated that they provided both August 1, 2014 at 9:00 a.m. and August 2, 2014 at 9:00 a.m. to meet for the joint condition inspection. Those dates were offered on July 25, 2014. When the tenants advised they could not attend at that time, the parties agreed to meet for this inspection on August 2, 2014 at 3:00 p.m. The landlord submitted a copy of a text message sent to the tenants at 3:15 p.m. on August 2, 2014 asking if they were going to attend the condition inspection. They did not attend.

The landlords submitted photographs taken in 2009, prior to this tenancy. Those photographs were taken for the purposes of a sale of the residence and were prepared by a realtor. The landlord also submitted photographs that they took of the condition of the residence during the tenancy as well as photographs immediately after the end of the tenancy.

The landlord's list of damage to the rental unit, illustrated in the photographs submitted, includes;

- Exterior
  - Overgrowth of bushes and grass, injury to trees, plants not cared for
  - Damage to entranceway brick stand where light was situated
- Interior:
  - Carpeting damaged with stains
  - Kitchen cabinets damaged by facing peeling off and 1 cabinet door removed/broken off
  - Kitchen sink sprayer nozzle broken
  - Plumbing issues including clogged sinks and toilets
  - Floors scuffed and marked
  - Duct work clogged and overly dirty
  - Soup bones and other household items found in vents
  - Basement stained, soiled and smelly (it was where the dog urinated and defecated most of the time)

The landlords submitted invoices, appraisals and letters from several parties. Letters included neighbour complaints over the course of the tenancy as well as letters in support of the landlords' application. Two different neighbours provided information that

the tenants' children would often kick soccer balls and hit hockey sticks at various parts of the house or fixtures on the outside of the house. The appraisals included information to verify that certain steps had to be taken as a result of neglect of the rental unit and its yard. Information was provided by contractors who had attended the residence before and after the tenancy, indicating how severely the residence had deteriorated.

Tenant CG testified that the residential premises that his family rented is over 20 years old. He further testified that he believed many of the items in the home were past their useful life and were due for either repair or replacement, in many cases. Tenant CG testified that there were "lots of things we wrecked while we were there" but the damage was not done maliciously – "it was just normal wear and tear".

The tenants do not dispute the following damage to the rental unit but provided explanations and claimed they are not responsible for;

<b>Damage claimed by LL</b>	<b>Tenant</b>	<b>Tenant explanation</b>
Stained, smelling basement	Admits	Dog defecated and urinated in the basement but it's just a basement
Stained, smelling carpet	Admits	Dog urinated on carpet but there were already some stains
Broken window	Admits	It was already cracked – wouldn't have broken otherwise
Broken exterior light	Admits	It was broken/vandalized while we were away on holidays
Holes on entry door	Admits	We put a secure lock on and took it off when we left
Cabinet doors facing	Admits	The facing just fell off – don't know why. I was going to fix the door that came off
Kitchen sink spray nozzle	Admits	It just broke one day from use

With respect to other damages listed by the landlords, Tenant CG testified that there were no holes in walls or broken handles anywhere in the rental unit. He also testified that while the sinks may have been plugged, "sinks do plug".

Both tenants testified that, when they moved in, and signed the condition inspection report, Tenant CG was present. Tenant CG testified that everything seemed fine within the residence at the time of the condition inspection. He testified that a person doesn't notice the damage or imperfections in a unit until they move in. Tenant MM testified

that, while she signed the move-in condition inspection report and other tenancy documents, she was not present for the walk through at the beginning of the tenancy. Tenant CG testified that, as repairs came up, he planned to take care of them himself and that he didn't want to bother the landlords with repairs he could do. He testified that he did not have the opportunity to complete many of the repairs before he and his family vacated the rental unit.

The landlord applied for a \$25,000.00 monetary order, the statutory maximum amount that can be claimed under the *Act*, claiming the following damaged items;

<b>Items</b>	<b>Description</b>	<b>Amount</b>
Floors, carpets	50% Replacement	\$8077.14
Kitchen cabinets	50% replacement	6528.46
Front entry door	50% replacement	750.00
Interior doors	50% replacement	727.22
Gutter and soffits	Replacement	700.00
Vacuum head	Replacement	111.99
Ceiling fan	Replacement	94.49
Kitchen tap sprayer	Replacement	199.49
Sink and toilets	Replacement	444.56
Floor vents	Replacement	101.85
Track light	Replacement	88.19
Track light 2	Replacement	134.40
Kitchen lighting	Replacement	79.32
Kitchen lighting	Replacement	79.32
Kitchen lighting	Replacement	530.71
Bath exhaust fans	Replacements	157.29
Plumbing	Repairs	421.85
Plumbing	Repairs	297.15
Dumpster	Remove refuse	203.00
Landscaping	Remove yard waste, excavate (\$1338.75) Irrigation system replaced (\$2000) Shrubs replaced (\$5000)	8338.75
Exterior lights	Replacement	250.89
Lock	Replacement	125.44
Repair brick post and fountain	NOT Being replaced/ sought money for repair	1800.00

Account balance from utilities owed		99.13
Registered mail fees		46.35
Loss of rental income	3.5 months @ \$2500.00 month	7000.00
<b>Total of Above Items</b>		<b>\$37,386.99</b>
<i>Maximum Monetary Order Allowed under the Act</i>		<i>\$25,000.00</i>

### Analysis

Section 67 of the *Act* allows an arbitrator to determine the amount of damage or loss results from one party failing to comply with the *Act*, the regulations or a tenancy agreement and order that party to pay compensation to the other party.

In this application, the landlords have submitted evidence to support the claim that damage was caused to the rental unit by the tenants' neglect. The landlords have also provided evidence of the cost they incurred in repairing that damage. The testimony of both landlords is that the tenants did not report any damage or problems with the condition of the rental unit at the start of their tenancy or during their tenancy. The undisputed testimony of Landlord SW is that the tenants did not clean the unit on move-out. The condition inspection report supports this testimony.

Section 32 of the *Act* provides the obligations of both a landlord and a tenant. A tenant is responsible to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. The tenant is responsible to repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. I find that the landlord provided sworn testimony, supported by documentary evidence, including comprehensive condition inspection reports that indicate a level of damage far beyond the normal wear and tear of a tenancy. I find the damage is not merely normal wear and tear as claimed by Tenant CG.

The landlord has shown, on a balance of probabilities, that the tenants were responsible or at least negligent with respect to their tenant obligations. I find the landlord has shown that the tenants failed to comply with their tenancy agreement and the *Act*. Tenant CG's testimony is that they had caused at least some of the damage but that the tenants' family were not responsible for that damage. The landlords' evidence submitted, including the condition inspection report, shows that the tenants were aware of the issues at the end of tenancy and took no steps to address them. The tenants are

required under the *Act* to leave the rental unit reasonably clean. I find, based on the evidence provided, this was not done.

Residential Tenancy Policy Guideline No. 40 provides that,

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The undisputed testimony of Tenant CG is that this residence was at least 20 years old. In fact, the testimony of both landlords suggested that they believed the residence was likely older than that. Under Policy Guideline No. 40, carpet has a useful life of approximately 10 years. Landlord HW testified that this carpet had been cleaned before the tenancy but never replaced. Tenant CG testified that the tenants had cleaned the carpet during the tenancy. Both landlord testimony supported by their documentary evidence is that the carpet was in far better condition before this tenancy. However, given that that the carpeting in question was past its useful life, I find the landlord is entitled to a amount towards replacement of the carpet that reflects the care that had been given to the carpets prior to this tenancy, that the carpet still had some value and that, after the lack of regard for this carpet during the tenancy, it required immediate replacing. I find the landlord is entitled to recover \$1000.00 towards replacement of the carpet and flooring as documented by the landlords.

The evidence from Tenant CG is that the rental unit kitchen cabinets were not very sturdy cabinets but they were damaged during the course of his tenancy. It appears that whatever issues existed with these cabinets, they were exacerbated by the tenants' style of use. The useful life of cabinets is 15 years. The landlords testified that these cabinets were not original to the home and had been updated in the last 10 years. I find that the tenant inflicted damage beyond normal wear and tear and that, while the cabinets were aged, there is some responsibility to compensate towards a repair. However, the landlord chose to replace the kitchen cabinetry and sought to have the tenant pay 50% of the replacement of the entire kitchen cabinetry. It is not equitable that

the tenants pay 50% of a full kitchen renovation when they resided in the rental unit for a fraction of those cabinets' life. I find the tenant should pay an appropriate amount to compensate for repair of well-aged cabinets. For these reasons, I find the landlord entitled to \$300.00 for repair of the cabinets and replacement of one cabinet door.

The landlords provided evidence that there were holes in the front entrance door. The door was not rendered useless in any manner. It just became less attractive. The landlords are entitled to compensation for repair to this door and not the replacement cost they chose to incur. I find the landlord entitled to \$200.00 towards repair of the front entrance door.

I find the landlords provided insufficient evidence to show that the tenants damaged any inside doors and so find the landlords are not entitled to any compensation with respect to the inside doors.

The landlords' evidence, in photographs and submissions by neighbours proves on a balance of probabilities that the soffits and gutter were damaged by the tenants or, more accurately the tenants' children. The lifetime of these items is approximately 20 years. As this residential premise is approximately 20 years old, the landlords would have replaced this item soon. However, the tenants are responsible for the need to replace these items immediately when the pre-tenancy condition is documented as good in the condition inspection report. I find the landlord is entitled to 40% of the \$700.00 for the cost of replacing the gutters and soffits, an amount of \$280.00.

With respect to the landlords' evidence that the built-in vacuum was damaged and required replacing, I find that this minimal damage as described by Tenant HW is normal wear and tear in a rental scenario. I find that the landlord should receive nominal compensation towards the cost of this vacuum repair in the amount of \$25.00.

The landlords provided photographic evidence of a broken ceiling fan. However, the tenant did not admit to damaging this item. Given the testimony with respect to other items damaged and given that the tenants' family were the only people in the residence, I find on a balance of probabilities, that the need to replace this fan is as a result of the tenants' actions. I find the tenants are responsible to compensate the landlords for the cost of the ceiling fan in the amount of \$94.49.

The tenants admitted breaking the spray nozzle in the kitchen. Tenant CG testified that the nozzle just wore out one day. Tenant CG did not fix this item or contact the landlords to repair it. Plumbing items and fixtures should last 15-20 years, according to the Useful Life Guidelines and, yet the landlord testified that this nozzle had not been in

the unit more than 5 years. I find the landlords are entitled to \$199.49 to replace the kitchen tap assembly that was broken over the course of the tenancy.

The landlord has provided evidence in the form of written submissions by a contractor, an invoice and sufficient photographic evidence to show that the sinks and toilets were plugged. Tenant CG's response to this evidence was to state, "sinks plug". The photographic evidence and the submissions of the contractor illustrates that there were inappropriate items placed in the sink and toilet. The contractor submitted that the work was very difficult because of the scale of the problem. The useful life of plumbing is approximately 20 years, the same as the age of this residence. I accept the evidence submitted by the landlords that shows plumbing work was needed. However, I decline to award the landlords for replacement of the sinks and toilets as I was not provided evidence that this was necessary. I find the landlords entitled to the total of two invoices for plumbing work totalling \$719.00.

The tenants did not dispute the landlords' evidence that a variety of household items were found in the vents. The photographic evidence provided by the landlords supports their testimony that these vents were beyond repair, particularly considering organic items like soup bones had been discovered inside. While this misuse and neglect of the vents by the tenants is severe enough and far beyond normal wear and tear, the *Act* provides that the landlord is responsible for the upkeep of vents in a residential tenancy premises. The Policy Guidelines suggest a 15 year useful life for ventilation systems and parts. These vents are beyond that useful life and would need to be replaced soon in any event. I find that the landlords are entitled to a nominal amount based on the level of disregard by the tenants resulting in the landlord needing to act immediately to replace the vents. I find the landlord entitled to \$50.00 towards replacement of these vents.

The landlord sought the replacement cost of several lighting items throughout the rental unit, in the kitchen, the exterior of the home and the bathroom as well as general track lighting. The total cost for the replacements by the landlord totals \$777.54. Tenant CG testified that there was no damage to lights, though some may have been burnt out. The photographic evidence shows some damage to some lights but does not clearly demonstrate extensive damage requiring replacement of the fixtures in many cases. A tenant does have an obligation to repair and maintain lights and provided them. I find the landlords are entitled to \$125.00 towards the cost of replacement bulbs and one fixture.

The evidence provided by the landlord shows that the bathroom exhaust fans were filthy and a letter from a contractor stated that these fans were not functioning because of the



level of filth. The contractor also provided submissions that the fans were not going to return to full operational status as a result of their misuse and neglect. Based on this evidence, I find the landlord entitled to \$157.29 to replace bathroom fans.

The landlord sought to recover the cost of renting a dumpster to remove all of the damage items and refuse abandoned by the tenant. Based on the documentary evidence, photographs and testimony, I find the landlord is entitled to the cost of refuse removal in the amount of \$203.00.

As well as removal of items within the rental unit, the landlords sought to remove yard waste as well as excavation of the yard, irrigation work and replacement of shrubs, trees, and other landscaping items. I note that while a tenant's property should be removed on vacating the rental unit and that the tenant has some responsibility when a tenant in a house to maintain basic yard works. The landlord chose, based on the recommendation of a contractor, to excavate the property and to replace the irrigation system on the property. The landlord must take some responsibility for maintaining the exterior of the house if that landlord requires a certain standard of care. Despite the evidence to suggest that the tenants did not appropriately care for the yard, I find the landlords are not entitled to compensation for excavation, irrigation work and replacement of trees and shrubs but are entitled to recover \$500.00 for yard waste removal.

The evidence also shows that the tenants and their children damaged the brick structures, fountain and other outdoor fixtures. Landlord HW testified that the landlords will likely not replace these items during the current renovations. He also testified that the lighting for the exterior will be replaced as part of the exterior renovations, a cost that would have been incurred regardless of the tenants' use or misuse of the fixtures. Given that brick and these types of fixtures have a useful life between 15 and 20 years, and the testimony of the landlords that the property is 20 years old, I find the landlords are not entitled to recover for any damage that may have been caused by the tenants.

Landlord SW's undisputed testimony is that the landlords were forced to replace the locks to the residence as the tenants did not return the keys. This is a cost to be absorbed by the landlord under the *Act*.

In determining the appropriate amounts for compensation to the landlords, I also note that the tenants testified the landlords had intended on renovating for some time. The landlords did not dispute the fact that they were making renovation plans.

The landlord also sought an amount of \$7000.00 for loss of rental income. The circumstances of the end of this tenancy were that the tenants were provided with a notice to end tenancy. The landlords claim that the tenants left the rental unit in condition that did not allow the premises to be re-rented. As above, the landlords are entitled to recover from the tenants for the damage that they caused beyond normal wear and tear. However, the landlords were candid that it was their intention to renovate the premises. Therefore, I find that the landlords would not have re-rented the premises immediately in any event. Based on all the evidence, I find the landlords are not entitled to recover loss of rental income.

Finally, the landlords sought to recover the cost of the registered mailings as part of the process in applying for a dispute resolution hearing and serving the tenant with notice of same. The landlords are not entitled to recover this cost; however, as the landlords were successful in their application for a monetary award, they are entitled to recovery of the filing fee for this application. I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary awards issued in this decision.

### Conclusion

I issue a monetary Order in the landlords' favour under the following terms:

<b>Items</b>	<b>Amount</b>
Floors, carpets	\$1000.00
Kitchen cabinets	300.00
Front entry door	200.00
Gutter and soffits	280.00
Vacuum head	25.00
Lighting	125.00
Ceiling fan	94.49
Kitchen tap sprayer	199.49
Floor vents	50.00
Bath exhaust fans	157.29
Plumbing	719.00
Dumpster	203.00
Landscaping Remove yard waste only	500.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$3903.27</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: March 27, 2015

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Residential Tenancy Branch

