



# 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 landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for damage and loss 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 the 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, and to make submissions. The landlord testified that he served the tenants with the landlord's dispute resolution hearing package by registered mail on August 19, 2014. He submitted a receipt and tracking information with respect to this package. The tenants confirmed that they received individual copies of the landlord's dispute resolution package. I find the tenants deemed served with the landlord's dispute resolution hearing package pursuant to section 89 and 90 of the Act.

The landlord testified that he sent an evidence package to the tenants on February 18, 2015. Based on the testimony of the tenants that confirmed receipt of the evidence package, I find the tenants duly served with the landlord's subsequent evidence package. Tenant CC testified that she served the landlord with the tenant's evidence package on December 6, 2014. The landlord confirmed receipt of the materials. I find the landlord duly served with the tenants' evidence package.

I note that both parties submitted digital evidence within their evidence packages. Both parties confirmed that they received the evidence, were able to view the other party's digital evidence and that they were fully informed by the disclosure provided with those digital materials, in compliance with Rule 3.10 of the Residential Tenancy Branch Rules of Procedure.

### Issues to be Decided

Is the landlord entitled to a monetary award for damage and loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' pet damage and security deposits towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that this tenancy began on January 15, 2013 and was scheduled for a one year fixed term. The monthly rental amount was \$1050.00 payable on the first of each month. The landlord testified that he continues to hold the tenants' security deposit in the amount of \$525.00 and the tenants' pet damage deposit in the amount of \$525.00. These deposits were both paid on December 18, 2012. The tenants testified that they vacated the rental unit on July 30, 2014. The tenants submitted evidence that they served notice to end the tenancy on June 26, 2014. Tenant CC further testified that the keys to the rental unit were returned to the landlord on August 1, 2014. The landlord confirmed this testimony.

The tenants submitted a copy of the joint move-in condition inspection report signed by Tenant MC and the landlord's agent on February 1, 2013. This report also provided information with respect to move-out condition inspection however it was not signed by either party. The landlord testified that the move-out condition inspection report was completed by the tenants. The landlord testified that the condition, as described in the report was not accepted by the landlord as an accurate reflection of the condition of the rental unit at move-out. The landlord's agent, who attended both inspections, was not available to testify at this hearing. The landlord did not submit a condition inspection report within his materials.

The landlord testified that his agent arranged to conduct a joint move-out condition inspection with the tenants at August 1, 2014 and August 8, 2014. Tenant CC testified that she was not given sufficient notice when the landlord offered to inspect the premises. She testified that she had moved approximately three and a half hours away and needed to ensure she could take time off work to drive back and take part in the inspection. The landlord testified and provided correspondence showing that the landlord made attempts to re-schedule the condition inspection a third time. The tenants never attended this inspection, testifying that the landlord failed to provide sufficient notice for them to return to take part in the condition inspection. Tenant MC testified that he and a friend attended to a condition inspection with the landlord's agent and

prepared the report provided for this hearing. Tenant MC testified that the landlord's agent refused to sign the condition inspection report, stating he was instructed by the landlord not to do so.

The landlord did not conduct his own condition inspection of the premises, complete his own condition inspection report or send a copy of that report to the tenants. Rather, the property manager sent the tenants the dispute resolution hearing package advising the tenants, through his application, that the rental unit was unclean when they vacated the unit and that he sought to retain their security and pet damage deposits (the deposits) as well as a monetary award for a further amount.

The landlord seeks a monetary award of \$3000.00 including the following items:

<b>Item</b>	<b>Amount</b>
Carpet Cleaning	\$178.50
Floor Repair, refinishing	1732.50
Chimney Cleaning	189.00
Materials for Repairs	213.21
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2363.21</b>

The landlord's application indicated an overall monetary award sought in the amount of \$3000.00. He testified that the difference of \$636.79 is sought in compensation for his time and labour in making repairs and renovations to the rental unit.

The landlord submitted invoices with respect to these monetary claims. He testified that the rental premises are approximately 50 years old. He testified that the carpets are approximately 10 years old. He testified that the carpets had been cleaned professionally when the tenants moved in. The landlord testified that the floors needed to be resurfaced. He acknowledged that the floors were worn and some of that wear was caused before the current tenants resided in the unit. He testified they were last resurfaced in approximately 2003. The landlord testified that the tenants requested that the landlord clean the chimney on move-in. He testified that, on move-out, they should have cleaned the chimney. The landlord testified that receipts submitted from a hardware store were for cleaning supplies and repair materials. The invoices themselves do not specify the items purchased but only the address of the rental unit.

The tenants testified, with photographs to illustrate, that they left the rental unit in good condition. Both parties agreed that the tenants' rent had been reduced at move-in because of the condition of the residence on move-in. Tenant CC testified that the

tenants cleaned the carpets with a professional carpet cleaner on move-out. Tenant CC testified that she and her co-tenant thoroughly cleaned the unit and took photographs at that time. The tenant provided photographs that support her testimony with her documentary evidence for this hearing.

### 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 that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

It is a tenant's obligation, pursuant to section 37(2) of the *Act* to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties provided conflicting testimony regarding the condition of the rental unit when this tenancy ended. The tenants maintained that the unit was not cleaned thoroughly before they moved in but that it was cleaned thoroughly on move-out. The tenants provided photographic evidence supporting their position. The landlord also provided photographic evidence that shows some cobwebs in certain corners, some abandoned furniture and some general wear on the floors, windows, and other areas.

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. The joint move-in condition inspection report of February 1, 2013 entered into evidence by the tenants showed that some parts of the rental unit were in dirty condition at the time of move-in. The move-out portion of the inspection report is not completed in full and the landlord disputes the condition notes at the end of tenancy provided by the tenants. Contrary to the requirements under sections 23, 24, 35 and 36 of the *Act*, no joint move-out condition inspection was conducted, no report was issued by the landlord, and conflicting evidence was provided by the parties to explain why this did not occur.

The legislation establishes 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 tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Failure to act in

accordance with these requirements of a condition inspection may extinguish a landlord's claim to retain the deposits.

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.*

...

(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 provides the consequences for the tenant and the landlord if report conditions are not met.

**24** (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

*(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and*

*(b) the tenant has not participated on either occasion.*

(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...

The landlord made several attempts to meet with the tenants and conduct a condition inspection. However, when that did not occur, the landlord did not complete his own inspection or prepare his own report. Therefore, there was no copy of the move-out report sent to the tenants.

Under the Residential Tenancy Regulation, the landlord must give the tenant a signed condition inspection report in writing. It must be served in accordance with the *Act* and must be provided within the timelines below;

- (a) of an inspection made under section 23 of the *Act*, promptly and in any event within 7 days after the condition inspection is completed, and
- (b) of an inspection made under section 35 of the *Act*, promptly and in any event within 15 days after the later of
  - (i) the date the condition inspection is completed, and
  - (ii) the date the landlord receives the tenant's forwarding address in writing.

The *Act* and Regulation are very exact in their requirements with respect to condition inspection reports. The reports are considered to be the best evidence in a dispute resolution hearing. Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out condition inspection and inspection report, I find that the landlord's right to claim against the deposits for damage arising out of the tenancy is extinguished.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenants did comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean". I find that any damage claimed by the landlord was as a result of normal wear and tear.

I find that the cleaning costs, including bills and materials related to cleaning claimed by the landlord are not as a result of the tenants failing to meet their obligations to leave a reasonably clean rental unit. I also find that the landlord did not specify the nature of the costs that he incurred or the details of his labour and time sufficiently that they could be

reviewed. I find that the landlord is not entitled to recover for materials for repairs and cleaning purchased.

I find that the photographs supplied by the landlord provide insufficient evidence of damage beyond normal wear and tear to the floors of the rental unit. The evidence of the landlord is that the most recent refinishing of the floors occurred in 2003. Based on the age of the floors and the testimony of the landlord regarding wear prior to this tenancy, I find the landlord is also not entitled to compensation for refinishing the floors.

Residential Policy Guideline No. 1 provides the residential maintenance requirements for tenants and landlords at the rental unit. That guideline clearly states that the landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals. Based on this guideline, I find that the landlord is not entitled to recover costs of cleaning the chimney.

Residential Tenancy Policy Guideline No. 40 provides the “useful life” of items within a residential premise with regard to a tenancy. The life of a carpet is estimated to be 10 years. The landlord testified that the carpet in the premises was 10 years old. Based on this testimony, it would appear that the carpets were due for replacement by the end of this tenancy. I accept the testimony of the tenants that they cleaned the carpets. Based on the age of the carpet and the testimony of the tenants, I find the landlord is not entitled to compensation for carpet cleaning.

For these reasons, I find that the landlord is not entitled to a monetary award as requested in this application. As the landlord’s request to retain the deposits has been dismissed, I order the landlord to return these deposits and any interest payable to the tenants. There is no interest payable for this period. Therefore, I order the landlord to return these deposits totalling \$1050.00 ( $\$525.00 + \$ 525.00 = \$1050.00$ ) to the tenants forthwith.

As the landlord has been unsuccessful in this application, I find the landlord is not entitled to recovery of his filing fee.

### Conclusion

I find the landlord is not entitled to a monetary award for damages, authorization to retain the security or pet deposit or for recovery of his filing fee. I dismiss the landlord’s application in its entirety without leave to reapply.

I order the landlord to return the tenants' deposits totalling \$1050.00. I issue a monetary Order in the tenants' favour in the amount of \$1050.00 to be used in the event that the landlord does not return the tenants' deposits as ordered. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 24, 2015

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Residential Tenancy Branch

