



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The female tenant and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on July 15, 2013 for an initial fixed term of six months. The tenancy reverted to a month to month tenancy on January 16, 2014. The tenancy ended on July 31, 2014. Rent for this unit was \$900.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$450.00 on July 15, 2013. Both parties attended a move in and move out condition inspection of the unit and the tenants forwarding address was provided in writing on July 31, 2014.

The landlord has claimed \$2,196.78 comprised of the following:

Item 1. Reno's and repairs	\$1,011.78
Item 2. Other repairs	\$615.00
Item 3. Cleaning	\$60.00
Item 4. Half a month's rent	\$450.00
Item 5. Garbage removal	\$10.00
Item 6. Filing fee	\$50.00
<b>TOTAL</b>	<b>\$2,196.78</b>

The landlord testified that they found damage in the rental unit and additional cleaning was required. This is documented on the move out inspection report provided in documentary evidence. In the living room there were two fist sized holes in the wall; in the stairwell and hall there was a cracked wall and part of the dry wall had been pushed in around the light switch; the main bathroom had a broken sink top, the base of the cabinet was broken and there were holes in the door approximately three to four inches in diameter. In the master bedroom the ceiling tile had a large hole in it, the tenants had attempted to patch a hole in the wall but it was a poor job and had to be redone, there were scratches on the laminate floor, as the tenants had not put felt pads under the bed legs, the closet door track was bent and had to be replaced and the bedroom door was

smashed with holes and cracks. The second bedroom had unclean walls and another door had a hole in it and it had been ripped off its hinges. The exterior of the basement unit has the windows and frames documented as fair to poor at the start of the tenancy, however at the end of the tenancy the rest of the exterior was fair to poor and a large Christmas tree had to be disposed of. The landlord testified that the materials claimed for were all a year old as the unit had been renovated prior to the start of the tenancy

The landlord testified that they could not replace the ceiling tile as that size is no longer made so the ceiling had to be dry walled instead. The landlord therefore deducts \$65.00 from his claim for the ceiling tile. The landlord testified that his company prepared an estimate for some of the work and another company also prepared an estimate for labour costs. The landlord testified that the work he undertook through his own company would have been double the amount had the landlord used another company. The landlord testified that they tried to mitigate the loss as the tenants were young and the landlord wanted to help them. The landlord testified that his witness for this hearing came and did the cleaning of the unit. The landlord seeks to recover \$60.00 for cleaning the stove, fridge, freezer and kitchen cupboards along with the floors.

The landlord testified that the repairs took two weeks to complete once the tenants had vacated the rental unit. The landlord therefore seeks to recover a loss of rental income for the first two weeks of August, 2014 to an amount of \$450.00.

The landlord seeks a further amount of \$10.00 for removing items belonging to the tenants to the dump.

The landlord seeks an Order to keep the security deposit of \$450 in partial satisfaction of this claim.

The landlords witness testified that she cleaned the whole unit but only noted and charged the landlord for the areas which were really bad. The witness testified that she also had to clean the unit after some of the repair work was done. The landlord was only

charged \$60.00 for the work required to clean the stove, the floors, the fridge and freezer and the kitchen cupboards. The witness testified that there was juice stains under the fridge but no mice droppings as suggested by the tenant.

The tenant testified that the closet track in the entry way was not properly installed. The tenants had purchased a new one but it still would not work. The tenant testified that the holes in the living room wall were not fist sized but rather the size of a toonie; the main bathroom door did not have a hole in it; the second bedroom door was not fitted by the landlord and was left leaning against the wall. One day this door fell and hit the futon which caused damage to the door. Had the landlord hung the door it would not have fallen over. The tenant testified that with regard to the exterior of the property there were two other units with tenants who shared this area and therefore the landlord cannot hold the tenants responsible for this area. The tenant testified that the landlord knew they had mice as the landlord brought over a homemade mouse trap

The tenant agreed that the following areas were damaged by the tenants; the master bedroom door, the vanity sink top, two holes in the living room wall, and the ceiling tile. The tenant testified that the male tenant did not attend the move out inspection with the female tenant and landlord. The female tenant did not sign the report as she did not agree with it but the male tenant later signed off on the report. The landlord said he had made an arrangement with the male tenant to pay the cost of the damages. The tenant asked the landlord if the male tenant has made any payments to the landlord. The landlord testified that a payment arrangement was not reached with the male tenant and no money has been paid for any of the damages.

The tenant argued that the scratches on the bedroom floor were very small and there was a gap between two boards due to improper installation. The landlord argues that six boards had to be replaced, the floor had to be taken up to this point including the baseboards, the damaged boards were then replaced and the floor and baseboards then had to be reinstalled.

The tenant argued that the damage estimates are just estimates and not invoices. The landlord testified that his company estimate is the same as an invoice and the work was done cheaply to help the tenants.

The tenant asked the landlord why the work took two weeks when the estimate states it will take two days. The landlord responded that extra time is needed to engage contractors, get estimates, order materials and do the work. The work did take two weeks and the unit was re-rented on August 15, 2014. The tenant asked the landlord why they could not have started the work sooner as the other contractor came in to look at the beginning of July. The landlord responded that the other contractor came in on July 20, 2014 when they did the estimate. Some of the work would have been difficult to do while the tenants still had possession of the rental unit. The tenant asked the landlord why it took so long to replace the vanity top when they notified the landlord in June that it was broken. The landlord responded that it took a long time to find the vanity top as normally it comes as a complete unit and the landlord wanted to keep the costs lower for the tenants.

The tenant agreed at the hearing that the landlord can keep the security deposit to cover the damages caused by their actions or neglect.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section 21 of the Residential Tenancy Regulations states: In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord has provided the condition inspection report showing the rental unit was in a good condition at the start of the tenancy. The move out report highlights areas that are damaged and required cleaning. The tenant has not provided any corroborating evidence to dispute the finds of this report. The tenant has verbally disputed some of the findings of the report; however, without further corroborating evidence to support these claims I must find the report provides an accurate picture of the condition of the rental unit at the end of the tenancy. The landlord has supported this evidence with photographic evidence and estimates for the cost of the repairs. I further find the landlord's company did some of the repairs which has kept the costs lower than if the landlord had all the work completed by another contractor. I am therefore satisfied with the evidence before me that the tenants caused damage to the rental unit which was

not repaired at the end of the tenancy. I therefore uphold the landlord's amended claim for **\$1,561.78**.

Further to this I find the tenants did not leave all areas of the rental unit reasonably clean at the end of the tenancy as is required under s. 32 of the *Act*. I find the landlords claim of **\$60.00** to be reasonable for cleaning these areas and I award this amount to the landlord.

With regard to the landlord's claim for a loss of rental income for two weeks; I refer the parties to the Residential Tenancy Policy Guidelines #3 which contains guidelines concerning situations where a landlord can hold a tenant liable for loss of rent after the end of a tenancy agreement. It states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I am satisfied from the evidence before me that the extent of the repairs could not be completed any quicker than two weeks. Repairs of this nature involve planning, ordering of material, and even painting can take more than two days when coats have to dry. I find the landlord acted in a timely manner completing the repairs and getting the unit re-rented for August 15, 2014; I therefore find in favor of the landlord's claim to recover a loss of rental income of \$450.00. With regard to the landlord's claim to recover dump fees of \$10.00. I am satisfied that the landlord had to remove some items let at the unit by the tenants. The amount of **\$10.00** is a standard fee charged by local dumps for the dumping of garbage and other items. I therefore find in favor of the landlord's claim to recover this cost.

The tenant has agreed at the hearing that the landlord may retain the security deposit of **\$450.00**. I have therefore offset this amount from the landlord's monetary claim. I further find as the landlord's claim has merit, the landlord is entitled to recover the filing fee of **\$50.00** from the tenants, pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Reno's and repairs	\$1561.78
Cleaning	\$60.00
Dump fees	\$10.00
Two weeks rent	\$450.00
Filing fee	\$50.00
Less security deposit	(-\$450.00)
Total amount due to the landlord	\$1,681.78

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,681.78..** This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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 19, 2015

---

Residential Tenancy Branch



