



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF, MNDC, MNSD, FF

### Introduction

This was a hearing with respect to applications by the tenant and by the landlords. The hearing was conducted by conference call. The Tenants and the landlords called in and participated in the hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of the security deposit, including double the amount?

Are the landlords entitled to a monetary award for the cost to repair damage to the rental unit and if so in what amount?

Are the landlords entitled to retain all or part of the security deposit?

### Background and Evidence

The rental unit is a house on the landlords' property. The tenancy began October 29, 2012 on a month to month basis with rent in the amount of \$1,200.00, payable on the first of each month. The tenants paid a security deposit of \$600.00 at the start of the tenancy.

The female tenant testified that she lived in the rental unit with her husband until they separated and she moved out of the rental unit. She said that she gave notice to the landlord on May 31, 2014 that she would move out on June 30<sup>th</sup>. The tenant claimed that the landlord then continued to rent to her husband and did not return the security deposit. On August 12, 2014 the female tenant filed an application to claim a monetary award in the amount of her security deposit, including double the amount. In support of her claim the tenant submitted a copy of a text message that she received from the landlord. The message given May 31<sup>st</sup>, 2014 said that it was an acknowledgement of a

one month verbal notice given by the female tenant. The female tenant said that she moved out of the rental unit on June 20, 2014.

The male tenant moved out of the rental unit on August 1, 2014.

The tenant did not submit evidence of any written notice to the landlord and she did not submit any documentary evidence that she gave the landlord her forwarding address in writing before she filed her application for dispute resolution. The landlord submitted some evidence on a DVD. The evidence included an exchange of text messages with the female tenant on August 1, 2014 in one of the messages the tenant stated her forwarding address, but there was no form of written notice to the landlord from the tenant setting out her forwarding address.

The landlords testified that the tenancy was supposed to end on July 31, 2014. They said that an inspection took place with the female tenant on July 31, 2014 and there was a second inspection with the male tenant on August 1, 2014 before he moved out. According to the landlords, the tenant requested the return of half the damage deposit and the tenants refused to sign a condition inspection report. The landlord testified that the female tenant returned keys on August 1, 2014, but the male tenant did not move out until late in the day on August 1<sup>st</sup>.

The landlords claimed a monetary award of \$1,556.93 for damage to the rental unit. The landlords made the following claims:

• Dining room screen	\$39.19
• New carpet for the stairs, damaged by the cat	\$592.38
• Replacement of fireplace trim labour and materials	\$133.83
• Fireplace tile damaged by tenant labour and materials	\$100.00
• Oven handle broken, labour and material to replace	\$70.00
• Claim for cleaning the property, 21 hours X \$25	\$525.00
• Light bulbs	\$62.24
• Cleaning supplies	\$4.29
• Estimate for cleaning supplies, (no receipts)	\$30.00

Total:	\$1,556.93
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The landlords alleged that the tenants caused rust stains to the outside deck, but they did not submit a quotation or a claim with respect to the alleged damage.

The landlords submitted photographs of the rental unit that they said showed damage to the unit and the need for cleaning. The landlord said that the tenants' cat caused

extensive damage to the stairway carpet. The said it was in excellent condition at the beginning of the tenancy and it had to be replaced.

The male tenant testified at the hearing. He acknowledged that he broke a tile by the fireplace caused by chopping pieces of firewood on the tile. He also acknowledged damage to the fireplace trim caused by the sofa, but he said that the landlord chose to replace the entire trim and not just the damaged piece.

The tenants strongly disagreed with the landlord's claim for carpet replacement. They said that the carpet was not new when the tenancy began and the carpet did not have to be replaced. The tenants regarded the condition of the carpet to amount to normal wear and tear after a two year tenancy.

The tenants disputed the landlords' cleaning charges. They each said that the rental unit was properly cleaned at the end of the tenancy.

### Analysis

Both tenants signed the tenancy agreement and occupied the rental unit together until the female tenant gave verbal notice to the landlord and moved out in June. I do not accept the tenant's argument that her verbal notice caused the landlord to be responsible for the return to her of some or all of the security deposit within 15 days of her moving out, particularly when she did not return possession of the rental unit to the landlords and her co-tenant continued to occupy the unit until August 1<sup>st</sup>.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The female tenant did not give the landlord her forwarding address in writing and even if I were consider a text message as delivery of her forwarding address, that did not occur until August 1<sup>st</sup> and the landlords commenced their application for a monetary award and for an order to retain the deposit on August 15<sup>th</sup>, within the time required by the *Residential Tenancy Act*. I therefore find that there is no basis for the tenant's claim for an award of her deposit, including double the amount of the deposit and the tenant's application is therefore dismissed.

Turning to the landlords' claims, the tenants acknowledged responsibility for the damaged tile and fireplace trim. I allow the claim for tile repair in the amount claimed, namely: the sum of \$100.00. With respect to the repair/replacement of trim damaged by the sofa, I accept the tenant's evidence and find that the landlord replaced more trim than may have been necessary; I allow this claim in the reduced amount of \$75.00.

With respect to the claim for replacement of the stairway carpet, I do not have any photographic evidence to show the condition of the carpet at the start of the tenancy. The landlords submit that it was in excellent condition, while the tenants maintained that it was not new and said that it did not need to be replaced at the end of the tenancy; they characterized the damage to the carpet as normal wear and tear. I have looked at the landlords' pictures of the carpet, taken at the end of the tenancy and based on those photographs, I accept the landlords' testimony that the tenants' cat did cause significant damage by clawing the carpet, but I do not accept the landlords' position that they should be reimbursed for the entire cost of a replacement carpet. I accept the tenants' evidence that the carpet was not new and not in pristine condition at the start of the tenancy. The landlords elected to replace the carpet. The tenants dispute that it was necessary to do so; but if the carpet had not been replaced it is my view that the landlord would still be entitled to an award for the diminution in value and loss of useful life of the carpet. The landlord chose to replace the carpet and I find that they are entitled to recover some, but not all of the cost of the replacement carpet, having regard to the fact that the original carpet was not new and based on my finding that it still had some period of useful life when it was removed. I find that the landlord is entitled to recover half of the replacement cost of the carpet and I award the landlord the sum of \$296.00 for the cost of the carpet.

With respect to the broken oven handle, I allow the claim for the cost of the handle in the amount of \$25.00. The actual replacement is a trivial task and I do not award any amount for labour for replacement.

The landlord claimed \$525.00 for cleaning, calculated at 21 hours of cleaning at \$25.00 per hour. They claimed a further amount of \$4.29 for cleaning supplies and an additional \$62.24 for lightbulbs. The landlords also claimed an additional \$30.00 for supplies for which no receipts were provided. I find that the photographs submitted by the landlord do show that the rental unit was not satisfactorily cleaned at the end of the tenancy and that some cleaning was required. I do not agree, however, that the claim is justified in the amount sought by the landlords. I find that some of the items claimed by the landlords are overstated and that there was cleaning performed that falls outside of the tenants' obligations to clean and maintain the rental property, for example the landlord has claimed to hand clean each deck picket so as to remove mildew and pollen; the landlord also claimed for extensive amounts of pressure washing the driveway and the deck railing. I do not accept that the pressure washing tasks claimed

by the landlord form part of the tenants' expected cleaning duties at the end of the tenancy and I do not allow the landlords' claims for this work; I find that it is more akin to the kind of work expected to be performed periodically by the landlord, such as repainting. The landlord has not apportioned the hours spent on the various cleaning tasks listed in the claim. The award for the work allowed done by the landlord is not susceptible to precise calculation and must necessarily be somewhat arbitrary. I find that the landlord should be compensation for 10 hours of cleaning and the claimed rate of \$250.00 for a total award of \$250.00. I allow the landlords' claim for cleaning supplies in the amount of \$4.29 and for lightbulbs in the amount of 62.24. I do not allow any additional amounts for which receipts were not provided. The total amount awarded to the landlords is the sum of \$812.53.

### Conclusion

The tenant's application for the return of the security deposit, including double the amount of the deposit has been dismissed without leave to reapply. I have awarded the landlords the sum of \$812.53. They are entitled to recover the \$50.00 filing fee for their application, for a total award of \$862.53. I order that the landlords retain the \$600.00 security deposit in partial satisfaction of the award and I grant the landlord an order under section 67 for the balance of \$262.53. This order may be registered in the Small Claims Court and 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: April 13, 2015

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Residential Tenancy Branch

