



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF OLC

### Introduction

This hearing dealt with monetary applications by the landlord and the tenants. The tenants also applied for an order that the landlord comply with the Act; however, as the tenancy had already ended it was not necessary for me to consider that part of their application.

The hearing first convened on May 6, 2015. On that date the only application before me was that of the landlord. The tenants informed me that they had also filed an application. There were also some issues regarding incomplete evidence. I determined that it was appropriate to adjourn the hearing, join the tenants' application with that of the landlord and provide sufficient time for the parties to properly exchange evidence.

The hearing reconvened on June 24, 2015. At that time each party confirmed that they had received the other party's evidence. The landlord sought to amend her application to increase her claim from \$2275.59 to \$2525.62, based on increased actual costs rather than estimates. I allowed the amendment, and proceeded with the hearing.

Neither party raised any further issues regarding service of the application or the evidence. The parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?  
Are the tenants entitled to monetary compensation as claimed?

### Background and Evidence

The tenants first began occupying the rental unit on September 1, 2011, under a one year fixed term tenancy agreement. Rent in the amount of \$950.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$475.00. At the end of each fixed term the parties entered into a new one year fixed term with the same rent and the security deposit carried over.

On June 22, 2014 the male tenant gave the landlord written notice that they intended to vacate the rental unit on July 31, 2014, one month prior to the end of the fixed term. The landlord attended the rental property on August 2, 2014 and found that the tenants had left the keys and a forwarding address in writing for the male tenant. The landlord contacted the male tenant and arranged for a move-out inspection.

On August 7, 2014 the landlord and the tenant met at the rental property and carried out an inspection. They both signed a document indicating the condition of the rental unit and noting "further discussion after yard clean-up on Aug 9<sup>th</sup>/14." On August 7, 2014 the tenant also signed a document acknowledging that he was obligated to fill the oil tank, and would do so by August 15, 2014. The fuel company provided a quote of \$977.89 for 700 litres of fuel. The tenant did not agree in writing that the landlord could keep any portion of the security deposit.

The landlord applied on December 1, 2014 to keep the security deposit in partial compensation of her monetary claim.

### *Landlord's Claim*

The landlord claimed the following monetary compensation:

- 1) \$950.00 in lost revenue for August 2014 – the landlord stated that the tenants did not fulfill their lease, and they did not have all of their possessions removed from the property until August 9, 2014;
- 2) \$136.52 for repair costs:
  - a. \$31.33 for one roll of wallpaper – the landlord stated that the wallpaper was brand new at the outset of the tenancy, and was damaged by the tenant's dog scratching on the wall;
  - b. \$9.31 for a sink stopper;
  - c. \$10.81 for a drain plug – the landlord stated that this was not normal wear and tear;

- d. \$69.44 for the hall mirror – the landlord stated that the first quote she received was for \$49.27, but she was able to find another mirror that fit the space better; and
  - e. \$15.63 for screen door mesh replacement – the landlord stated that the tenant's dog caused this damage, and the tenant said that he would replace it but he did not;
- 3) \$1027.55 for furnace oil – the landlord stated that the first quote she had received, for \$977.89, was the rate that was offered to her as a long term customer, but the regular rate, for the tenants, is the amount without the loyalty discount, and the tenant did not fulfill his promise to replace the fuel by August 15, 2014;
- 4) \$177.55 for cleaning the patio cover – the landlord stated that the tenants had erected glass panels within the covered patio area to form an enclosed room where the tenant and his guests or clients would smoke. The landlord stated that this caused nicotine smoke damage to the white patio cover; and
- 5) \$234.00 to repair damage and replace carpet in the master bedroom closet – the landlord stated that the tenant had removed carpeting from the closet in the master bedroom, and after the tenancy was over she noticed a strong odour of pet urine from the closet area. The vent and closet door brackets were rusty, and the carpet outside the closet was heavily damaged as well. The landlord has claimed \$34.00 for replacing the bi-fold door brackets and a furnace vent and sealing the floor, and \$200.00 for replacing 20 percent of the carpet for the room.

The tenants' response to the landlord's claim was as follows:

- 1) lost revenue for August 2014 – the tenants stated that they had discussed twice with the landlord that they would be moving out early, and the landlord said it would be fine because she was planning to sell the house anyway;
- 2) repair costs:
  - a. roll of wallpaper –the tenants indicated that the wallpaper was peeling due to a lack of baseboards;
  - b. sink stopper – the tenants stated that this was normal wear and tear;
  - c. drain plug – the tenants stated that this was normal wear and tear;
  - d. hall mirror – the tenants indicated that the hall mirror was behind the door, in the second bedroom;
  - e. screen door mesh replacement – the tenant stated that the screen door was destroyed in the first week of the tenancy and the landlord never brought a new screen even though she said she would replace it;
- 3) furnace oil – the tenant stated that he never denied that he owed \$977.00 for the fuel;

- 4) patio cover – the tenant stated that the stains were caused by smoke from the fireplace, not from smoking; and
- 5) master bedroom closet – the tenants stated that they had not heard anything about an odour until nine months after the tenancy ended.

### *Tenants' Claim*

The tenants claimed compensation as follows:

- 1) \$174.00 for dry cleaning – the tenants stated that the fireplace did not work and smoked them out of the house on three occasions, and they had to have a lot of clothes dry cleaned because of the smoke;
- 2) \$372.00 for laundry – the tenants stated that because the landlord did not fix the hot water heater they were unable to wash items at home that had been damaged by soot from the fireplace;
- 3) \$411.71 for loss of use – the tenants indicated that for 10 days they were unable to use the kitchen cupboards or the dining room table and chairs because the landlord was replacing the kitchen cabinets. The tenants submitted that there were three days that they had to find other accommodation because the after the fireplace did not work the house was covered in smoke and soot; and
- 4) \$950.00 for double recovery of security deposit – the landlord did not return the deposit or apply for the deposit within the required time frame.

The landlord's response to the tenants' claim was as follows.

The landlord stated that she had the wood stove attended to by a professional, and she heard no further complaints from the tenants after that. The landlord indicated that she informed the tenants before they moved in that the house had two hot water tanks, but the one dedicated to the washing machine was not working. The landlord indicated that the tenants said it was not an issue because they used cold water for washing. The landlord indicated that the replacement of the cabinet doors did not impact the tenants' use of the contents of the cabinets or the living room/dining room area, and the male tenant chose to use the area adjacent to the kitchen for his home business hair salon.

### Analysis

#### *Landlord's application*

In regard to the landlord's application I find as follows.

- 1) lost revenue for August 2014 – the landlord is not entitled to this amount, as she did not provide evidence that when she received notice from the tenants she attempted to re-rent the unit.
- 2) repair costs:
  - a. roll of wallpaper – the landlord’s photographs show clear scratch marks on the wallpaper. I accept the landlord’s evidence on this point and grant the landlord **\$31.33** as claimed;
  - b. sink stopper – the landlord did not provide sufficient evidence, such as the age of the sink stopper, to show that this was not normal wear and tear;
  - c. drain plug – the landlord did not provide sufficient evidence, such as the age of the drain plug, to show that this was not normal wear and tear;
  - d. hall mirror – the landlord’s photographs show an empty space where the mirror was hung. I accept the landlord’s evidence on this point and grant the landlord **\$69.44** as claimed;
  - e. screen door mesh replacement – the tenants acknowledged that the mesh became damaged during the tenancy. As the tenants are responsible for the damage, I grant the landlord **\$15.63** as claimed;
- 3) furnace oil – I find that the landlord and the tenant had a written agreement regarding the value of the furnace oil, and I therefore grant the landlord the agreed-upon amount of **\$977.89**;
- 4) patio cover – I find that the tenant’s action of enclosing the covered patio resulted in smoke damage to the patio cover, regardless of whether the damage was from cigarette smoke or smoke from the fireplace. I therefore grant the landlord **\$177.55** as claimed; and
- 5) master bedroom closet – I accept the landlord’s evidence that the tenants’ pet or pets caused damage to the area in and around the master bedroom carpet. The tenants did not provide any reason why they removed the carpet from the closet. I grant the landlord **\$33.97**, the exact cost incurred, for replacing the bi-fold door brackets and a furnace vent and sealing the floor. The tenant did not provide sufficient evidence regarding the age and depreciated value of the carpet in the master bedroom, and I therefore do not grant her claim of \$200.00 for carpeting but in acknowledgement of the carpet damage I grant a nominal amount of **\$50.00**.

As the landlord’s application was partly successful, she is entitled to recovery of the **\$50.00** filing fee for the cost of her application.

*Tenants’ Application*

The tenants filed their application on April 28, 2015, several months after they were served with the landlord's application and too close to the original hearing date of the landlord's application, May 6, 2014, for the landlord to properly respond in time. The tenants did not submit receipts or other evidence to support their dry cleaning and laundry costs; nor did they provide sufficient evidence that they made written requests to the landlord for repairs to the fireplace or the hot water tank for the washing machine. The tenants did not explain how they calculated their claim for loss of use of the kitchen cabinets and dining table as compared to their use of the rest of the rental unit. I find that most of the tenants' claim is retaliatory and vexatious, and I decline to grant them monetary compensation for the first three items claimed.

The tenants are entitled to double recovery of the security deposit. The landlord received the male tenant's forwarding address in writing on August 2, 2014, after the tenants had vacated. The landlord did not return the security deposit or make an application to keep the deposit within 15 days of receiving the written forwarding address from either tenant. The tenants did not give the landlord written consent to keep the deposit. Therefore, under section 38 of the Act, the landlord must pay the tenants double the security deposit, in the amount of **\$950.00**.

### Conclusion

The landlord is entitled to **\$1405.81**. The tenants are entitled to **\$950.00**. I grant the landlord an order under section 67 for the balance due of **\$455.81**. This order may be filed 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: July 20, 2015

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Residential Tenancy Branch

