



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security and pet deposits; 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 tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to an Order permitting the landlord to keep all or part of the security and pet deposits?

### Background and Evidence

The parties agreed that this tenancy started on November 16, 2013 for a fixed term tenancy of one year. Rent for this unit was \$810.00 per month and this was reduced to \$720.00 on October 01, 2014. There were two tenants residing in the rental unit although only one tenant has been

named on the landlord's application. The tenants vacated the unit on November 15, 2014. The tenants paid a security deposit of \$405.00 on November 16, 2013 and a pet deposit of \$405.00 on December 01, 2013. The tenants provided a forwarding address in writing on October 14, 2014 when they gave Notice to End Tenancy.

A previous hearing was held on December 18, 2014 and a decision rendered on December 22, 2014. At that hearing the landlord was ordered to recover \$410.00 and ordered to retain that amount from the security and pet deposits. This left the amount of \$400.00 for the combined security and pet deposits held in trust by the landlord.

The landlord testified that the tenants failed to leave the carpets clean at the end of the tenancy. The carpets were left stained and the landlord engaged the services of a carpet cleaning company to clean the carpets in an environmental friendly manner without the use of chemicals. The landlord testified that the carpets had been professional cleaned at the start of the tenancy by the previous tenant. The landlord has provided the previous tenant's carpet cleaning invoice, the carpet cleaning invoice from the landlord's carpet cleaner and photographic evidence of the carpets. The landlord seeks to recover \$177.00 for this work.

The landlord testified that during the tenancy the female tenant complained that the stove was not working correctly. The landlord sent out a stove repair man who reported back that there was nothing wrong with the stove. The landlords were charged \$68.20 for this call out and seek to recover this charge from the tenant. The landlord has provided the invoice for this charge in documentary evidence.

The landlord testified that the tenant called the landlord to inform him that the washer was not working and the tenant admitted that he had manually spun the drum and it had slipped off the pulley. The landlord sent a repair man to the unit and the drum had to be put back on the pulley and realigned. The tenant should not have manually spun the drum and consequently the landlord seeks to recover the cost of the repair of \$47.25. The landlord has provided the repair invoice in documentary evidence.

The landlord testified that there are two units in this house. The tenants resided in the lower unit and shared the washer and dryer with the upper tenant. The power to these appliances was connected to the lower tenant's hydro. The upper tenant had the hotwater tank connected to her

hydro. The landlord agreed that the tenancy agreement states that hotwater is included in the lower tenants' rent along with laundry facilities. The landlord testified that the upper tenant complained that the lower tenants were using too much hot water by doing excessive amounts of laundry as there had been a spike in her hydro costs. The landlord provided copies of some of the hydro bills for the upper tenant's unit. The first bill for the period of October 23, 2013 to November 21, 2013 was for \$124.22. This also showed the previous balance prior to the tenants moving in as \$199.02. The bill for the period from November 22, 2013 to December, 20, 2013 was \$170.61. The upper tenant was paying by monthly installments of \$62.93 and was notified on that bill that her monthly installments will charge to \$73.00 based on the current price of energy and the most recent year's usage at the premises. The next bill for the period from December 21, 2013 to January 22, 2014 was \$190.06. The next bill for the period between January 23, 2014 and February 21, 2014 was \$177.35. The landlord did not provide any further bills for the consecutive months until the bill for the period from June 21, 2014 to July 22, 2014 for \$64.56. At this time the upper tenant was also informed that the annual adjustment for her hydro would be \$471.25 and her annual installment would be increasing to \$107.00 due to the current price of energy and the most recent year's usage.

The landlord testified that they gave the upper tenant a cheque for \$250.00 to cover the additional hydro costs used by the lower tenants and the landlord seeks to recover this from the tenant.

The landlord testified that due to the increased usage of the laundry facilities the landlord sent the tenants a Notice to Terminate or Restrict a Service or Facility. The landlords decided to withdraw both tenants usage of the laundry facilities from October 01, 2014 and reduced their rent for the upper and lower unit by \$90.00 a month. The landlord seeks to recover \$90.00 as a loss of rent for October and \$45.00 for November from the tenants for their unit and the same amounts as a loss of rent for the upper unit. The landlord testified that as they took this measure to withdraw the laundry facilities from both units due to these tenants over use of the laundry facilities, the landlord seek to recover the loss of rent for both units from these tenants. Laundry facilities were reinstated after these tenants vacated on November 15, 2014.

The landlord seeks an Order to be permitted to keep all or part of the security and pet deposit in partial satisfaction of their claim and to recover the filing fee of \$50.00.

The tenant disputed the landlord's claim. The tenant testified that with regard to the landlord's claim for carpet cleaning. The landlord has not mentioned staining on the move out inspection report with the exception of a circular stain in the living room. The staining shown in the landlord's photographic evidence is not noted on the move out report. The tenant referred to the move out report and the section in which the tenant has disagreed that the report fairly shows the condition of the rental unit at the end of the tenancy. The tenant testified that he had shampooed the carpets prior to the inspection report with his own carpet cleaning machine. The tenant testified that the floors were not left dirty or stained.

The tenant asked the landlord why the previous carpet cleaning invoice is for \$99.00 yet this one is for \$177.00. The landlord responded that the previous invoice was paid for and arranged by the previous tenant and this one was arranged by the landlord using an environmental aware cleaning company.

The tenant disputed the landlord's claim to recover the cost to repair the stove and the washer. The tenant testified that they had only mentioned in passing to the landlord that the stove did not bring water to a rolling boil. As the tenants had a new baby they needed to ensure they could boil water sufficiently. They did not request a repairman and should not be responsible for the upkeep of the landlord's appliances. With regard to the washer the tenant agreed he had turned the drum manually to retrieve a sock but this should not have caused the drum to come off unless there was another underlying issue. The tenant testified that the washer is also a shared appliances and he cannot be held responsible for a repair when they have used the machine in a normal manner. The tenant referred to the comments made on the invoice from the repair man who has written that he had to reinstall the belt on the pulley. The tenant asked if the belt was on the pulley properly when they moved into the unit. The landlord responded that the washer was in a good working order at the start of the tenancy.

The tenant testified that appliances do break down from time to time and the landlord must be prepared to perform regular maintenance on appliances, particularly when it is a shared facility. The landlord cannot say with any certainty that the tenants are responsible for damaging the washer.

The tenant disputed the landlord's claim for additional hydro used. The tenant testified that his tenancy agreement clearly stated that hotwater is paid for by the upper tenant and laundry facilities are included in the lower tenant's rent. If the landlord did not isolate the two unit's hydro correctly then the landlord must be responsible for the hydro. The tenant understood that they were responsible for any hydro used to operate the washer and dryer and the upper tenant was responsible for hydro used for the hotwater. The tenant disputed that they used the laundry facilities excessively as they are only a family of three and use the laundry facilities as any normal family would.

The tenant disputed the landlord's claims to recover a loss of rent for both units when the landlord removed the laundry facilities and reduced the rent; this was done by the landlords and was not in control of the tenants. The landlord cannot now charge the tenants for any loss of rent when it was the landlord decision to withdraw the laundry facilities and reduce the rent accordingly.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for carpet cleaning; I refer the parties to s. 32 of the *Act* which says that a tenant must maintain reasonable health, cleanliness and sanitary standards in a rental unit. The Residential Tenancy Policy Guidelines #1 provides further guidance on the matter of carpet cleaning and states: The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The tenant argued that the landlord only documented one stain on the carpet in the living room on the move out inspection report and therefore as the tenants did shampoo the carpets at the end of the tenancy they should not be held responsible to have the carpets cleaned again. The landlord has provided photographic evidence showing that the carpets are dirty in areas of the

rental unit particularly in the door ways. I am therefore satisfied from the evidence before me that the carpets were not left reasonably clean at the end of the tenancy that the landlord is entitled to recover costs to clean the carpets. As the landlord has shown the actual costs incurred I find the landlord is entitled to a Monetary Order to recover **\$177.00**.

With regard to the landlord's claim to recover the call out cost to look at the stove; I find the landlord must regularly maintain the appliances in the rental unit. If a tenant has complained to a landlord about a stove top not heating properly then the landlord has an obligation to determine what the issue with the stove top is. If the landlord subsequently finds out there is no problem the landlord may not recover the cost from the tenant unless the landlord has forewarned the tenant that they will be liable for any costs if a repair is not required. As the landlord has insufficient evidence to show that the tenants were forewarned that the landlord will recover costs if it was found the stove top was not faulty I find I must dismiss this section of the landlord's claim.

With regard to the repair to the washer, the landlord has insufficient evidence to show that the tenants' actions or neglect had damaged the washer. This is a shared appliance and when one or more tenants are using the appliances unless the landlord has direct proof that one of the tenants has deliberately caused damage then the landlord has not met the burden of proof that the washer was damaged by these tenants. It is normal for a drum to be spun manually to retrieve small items of washing caught inside the drum and unless there was an underlying problem with the drum then through normal use this should not have caused the drum to come off its pulley. Consequently, the landlord's claim for the washer repair is dismissed.

With regard to the landlord's claim to recover \$250.00 for the alleged use of additional hydro; the landlord has the burden of proof to show that the tenants used excessive hydro and that there was a limit on how much they were entitled to use. The parties agreed that each unit paid for different aspects of the hydro and the parties agreed that the tenancy agreement shows that the hotwater is paid for by the upper tenant and the hydro for the washer and dryer is paid for by the lower tenants. The landlord has not specified that any additional hydro will be charged to either of the tenants. The landlord has testified that the upper tenant complained that her hydro bills were much higher since these tenants moved in; however, from the hydro bills presented in documentary evidence they show that the hydro bills for the proceeding months after the

tenants took possession of the rental unit are actually lower than the preceding month of hydro prior to the tenants taking possession of the rental unit. If the landlords felt they wanted to reimburse the upper tenants an amount for hydro then that is their decision. The landlords are not entitled to recover hydro costs from these tenants. This section of the landlord's claim is dismissed.

With regard to the landlord's claim to recover the loss of rent incurred to both the upper and lower units after the laundry facilities were removed. If the landlord decides to withdraw a service or facility and reduce the rent to both affected units; then this is the landlord's choice. Any loss of rent reflects the loss of the facility to the units and is not then recoverable by the landlords from one of the affected tenants as they actually lost the use of their laundry facilities from October until mid-November. This section of the landlord's claim is dismissed.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

I Order the landlord to retain the amount of **\$227.00** from the security deposit comprised of the carpet cleaning charge and the filing fee; pursuant to s. 38(4)(b) of the *Act*. The landlord holds \$400.00 in trust for the combined security and pet deposit. Therefore the balance of \$173.00 must be returned to the tenant pursuant to s. 38(6)(b) of the *Act*.

### Conclusion

For the reasons set out above, I grant the landlord a monetary award of **\$227.00** and Order that the landlord retain this amount from the security and pet deposit held in trust by the landlord. For the reasons set out above, I grant the tenant a Monetary Order in the amount of **\$173.00**. This Order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord fails to comply with the Order.

**NOTE: THIS DECISION CORRECTS AND REPLACES THE DECISION I ISSUED ON JUNE 16, 2015, WHICH HAD AN ERROR.**

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 23, 2015

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Residential Tenancy Branch



