



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF  
                                 MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by one of the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on May 1, 2014 and ended on February 27, 2015. Rent in the amount of \$1,200.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No written tenancy agreement was prepared. The rental unit is the lower level of the landlord's house and the landlord resides in the upper level.

The landlord further testified that the landlord received the tenants' forwarding address in a letter on February 28, 2015. On Friday, March 6, 2015 the landlord had suggested that the tenants return for a move-out condition inspection, and one of the tenants replied the same day that he was going to be out of town, so the landlord suggested the following week. On March 7, 2015 the tenant suggested March 13, 2015, and the landlord asked if the other tenant could do it on the 9<sup>th</sup>. Text messages went back and forth.

No move-in condition inspection report was completed, however the landlord has provided a copy of a move-out condition inspection report which was completed by the landlord alone and is not dated or signed and contains no name of a tenant.

On March 15, 2015, one of the tenants arrived at the rental unit with a friend. The landlord had also suggested that date for a move-out condition inspection but the tenant didn't confirm. When the tenant arrived on March 15, 2015 the landlord was in the shower and didn't allow him in saying that since he hadn't confirmed the date, everything had already been cleaned and there was no point in conducting an inspection.

The landlord claims the cost of replacing blinds in the rental unit and testified that all were shredded by the tenants' cats. A receipt in the amount of \$3,991.68 has been provided and the landlord testified that the blinds were 6 years old at the commencement of the tenancy. At the end of the tenancy the master bedroom and, living room blinds were shredded by the cats and the spare bedroom blinds were torn horizontally.

The landlord also claims \$125.00 to clean the rental unit and stated that the fridge, oven and rental unit generally had cat hair left all over. Numerous photographs have been provided. The previous tenant was a cleaner by occupation and left the rental unit

spotless, and the landlord hired that person to clean after this tenancy ended. The cleaning was done on March 4, 2015 and a receipt has been provided.

The landlord further testified that the tenants' cats tore the paper off the gyprock in the laundry room in 2 places. The landlord had to have someone repair and repaint at a cost of \$273.00 and a receipt has been provided.

The landlord claims \$3,991.68 for new blinds, \$125.00 for cleaning the rental unit, \$273.00 for repair to the gyprock, for a total claim of \$4,389.68 and recovery of the \$50.00 filing fee.

**The first tenant** testified that the landlord's son acted as agent for the landlord and the parties talked about damage to the blinds prior to the end of the tenancy. The agent said it had been a problem to match them, and the tenant who was out of town at the time didn't see it as an emergency. On January 23, 2015 the agent asked the tenant for \$3,300.00 and said it had to be paid within 48 hours or to consider it a 10 day notice to evict. The tenant gave the landlord a notice to end the tenancy the following day.

The tenant further testified that the damage caused to the blinds in the master bedroom was not caused by the tenants' cats. The cats were not allowed in the bedroom and the door was kept closed. The previous tenants had cats, and the damage is 5 or 6 feet in the air. They are seam rips in accordion style blinds that retract.

The tenant also testified that they cleaned the rental unit entirely, and has provided a USB stick with photographs.

With respect to wall damage, the tenant testified that the photographs on the USB show minimal damage to the gyprock and there were unfinished portions directly above where the electrical lines run from the kitchen, which hadn't been finished prior to the tenancy. The landlord's receipt is a vague quote. The whole unit needed painting; various walls in the living room and master bedroom had patches that had not been painted by the landlord prior or during the tenancy.

The tenant further testified that the tenants gave the landlords a forwarding address in a letter on February 28, 2015.

**The second tenant** testified that they were not planning to move out until they received the demand for \$3,300.00 from the landlord or the landlord's agent and son. That also made it an uncomfortable environment since her husband was away and she was alone. The tenants offered an amount for blinds, but the demand in 48 hours was wrong, so the tenants followed the proper procedures and gave notice to end the tenancy.

The tenant also testified that she works for a cleaning company and she did the majority of the cleaning at the end of the tenancy. The rental unit was not a brand new suite at the beginning of the tenancy. The oven has a self-cleaning feature; the tenants turned it on and then wiped it clean. The tenant testified that she would have been happy to move into it.

The tenants didn't think they needed to confirm the move-out inspection date with the landlord, and her husband went there on March 15, 2015 ready to do it. The tenants were not given the opportunity to inspect with the landlord.

The house was listed for sale, and it's not the tenants' responsibility to upgrade for selling purposes.

The tenants claim double the amount of the security deposit, or \$1,200.00.

### Analysis

The *Residential Tenancy Act* puts the onus on the landlord to ensure that the move-in and move-out condition inspection reports are completed with the tenant, and the regulations go into great detail of how that is to happen. If the landlord fails to do so, or fails to give the tenant at least 2 opportunities in the manner prescribed, the landlord's right to claim against the security deposit for damages is extinguished. The landlord has not complied with that, and therefore, I find that the landlord's right is extinguished.

However, the landlord's right to make a claim for damages is not extinguished. Where a party makes a claim for damages, any award must not put the claiming party in a better financial position than that party would be if the damage hadn't occurred, and the *Residential Tenancy Act* states that at the end of a tenancy a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear.

Also, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss, and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, I am satisfied that the blinds required replacing, and the tenants admit that their cats caused damage to the living room blinds. There is no evidence to satisfy me that the tenants' cats damaged the bedroom blinds. The tenant testified that they were

ripping at the seams, which is normal wear and tear, and there's nothing to corroborate the landlord's testimony. I have reviewed the invoice, which does not break down how much each blind is, only that the entire cost is for 3 sets of blinds for \$3,564.00, plus GST and PST. The landlord testified that they were 6 years old at the commencement of the tenancy, which was about a year ago. If I were to break down the bill by 1/3, the total cost for 1 set of blinds is \$1,188.00. The useful life of blinds is 10 years, according to Policy Guideline #40, and dividing that amount by 7 years of normal wear and tear, shows a cost to the tenants of \$169.71, plus \$8.49 GST and \$11.88 PST, for a total of \$190.08. I find that the landlord has established a claim in that amount for one set of blinds.

With respect to the landlord's claim for cleaning the rental unit, I have reviewed the photographs, and note that none provided by the landlord are dated. The tenants' USB stick photographs show dates, and comparing the oven photographs, I find them to be similar, but a much closer view in the landlord's photograph. The tenant is correct that it is not the tenants' responsibility to ensure that the rental unit is in the pristine condition that a landlord may want for future tenancies or for the sale of the home, but reasonably clean except for normal wear and tear. I am not certain whether or not it is possible to get the oven any cleaner, and I have no evidence of the condition of the oven at the beginning of the tenancy. With respect to other cleaning, I am not satisfied that the landlord has established that the tenants left the rental unit in a state that was not reasonably clean, and the landlord's application is dismissed.

With respect to the landlord's claim for repairing and painting the gyprock in the laundry room, because the wall hadn't been finished or painted prior or during the tenancy, any award to do so would put the landlord in a better financial position than the landlord was at the beginning of the tenancy and the landlord's application is dismissed.

The *Act* states that a landlord must return deposits in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must repay the tenant double the amount. Having found that the landlord's right to claim against the security deposit for damages is extinguished, and the parties agree that the landlord received the tenants' forwarding address in writing on February 28, 2015, I also find that the landlord had no legal right to retain the security deposit and must be ordered to repay double.

Having found that the landlord is owed \$190.08 and the tenants are owed \$1,200.00, I find it prudent to set the amounts off, and I grant the tenants a monetary order for the difference in the amount of \$1,009.92.

Since both parties have been partially successful I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,009.92.

This order is final and binding and may be enforced.

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 31, 2015

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Residential Tenancy Branch

