



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet damage deposit. Only the landlords appeared at the hearing. The landlords provided registered mail receipts, including tracking numbers, as proof the hearing documents were sent to the tenants on February 13, 2015. The hearing package mailed to the male tenant was successfully delivered on February 17, 2015. I was satisfied the male tenant was sufficiently served based upon his signature for the registered mail package.

The hearing package addressed to the female tenant was returned to the landlords as unclaimed or refused. Section 89(1) provides that an Application for Dispute Resolution sent to a tenant via registered mail must be sent to the tenant's forwarding address or address of residence. The landlord testified that the address he used for service was the tenant's address of residence at the time of mailing. The landlord had been serving the tenants with documents to enforce a previously issued Monetary Order at that address and the landlord confirmed with the tenants' current property manager that both tenants reside at that address. The landlord also stated that the male and female tenants are husband and wife with children. Considering the undisputed evidence before me, and considering the male tenant received his package at the same address, I was satisfied the landlord used the female tenant's address of residence to send the registered mail package to her.

Section 90 of the Act deems a person to have received documents five days after mailing, even if the person refuses to accept or pick up their mail, so that a party cannot avoid service provided the correct address is used for service. Accordingly, I found the female tenant deemed to be served with the hearing documents.

In light of the above, I continued to hear from the landlords without the tenants present.

Issue(s) to be Decided

1. Did the landlords establish an entitlement under the Act, regulations or tenancy agreement to recover the amounts claimed from the tenants?
2. Are the landlords authorized to retain the security deposit and pet damage deposit?

Background and Evidence

The parties executed a written tenancy agreement on September 23, 2012 for a tenancy set to commence September 26, 2012. The tenants paid a security deposit of \$675.00 and a pet damage deposit of \$100.00. The tenants vacated the rental unit on February 20, 2013.

The parties participated in a previous dispute resolution proceeding on March 14, 2013 to deal with the landlord's claims for unpaid and/or loss of rent up to and including the month of March 2013, plus four months of late fees. The parties reached a settlement agreement with respect to those claims that the tenants would pay the landlords \$4,275.00. The previous dispute resolution proceeding file number is provided on the cover of this decision for reference.

By way of this Application, which was filed on February 10, 2015, the landlords seek to recover the following amounts from the tenants.

**Late fees**

The landlords seek to recover late fees for the months of December 2012, January 2013 and February 2013. The landlords were asked whether those late fees were included in the previous Application. The landlords responded that was the case but that the Arbitrator failed to include them in the monetary order so the landlords included them again in making this claim.

**Garage space**

The landlords seek compensation of \$100.00 for each of the months of October 2012 through February 2013. The landlords submitted that pursuant to the term 21 in the addendum of the tenancy agreement the tenants were provided garage space "in exchange for gardening and grass cutting once a week or as needed". The landlords submitted that when they attended the rental unit on February 20, 2013 they found the grass to be very long and the garden unkempt. The landlords surmise that no gardening or lawn cutting was done during the tenancy based upon how it looked on February 20, 2013 since they had not been at the rental unit since the tenancy started.

**Water bills**

The landlords seek recovery of two water bills they paid for water consumption that took place during the tenancy. The landlords pointed out that the tenancy agreement provides that water was not included in rent. The landlords received notices from the water district advising of an outstanding bill that was about to be transferred to their property tax account. The landlords paid that bill in the amount of \$56.62. The landlords subsequently received another water bill for the period of November 29, 2012 through February 1, 2013 in the amount of \$46.19 which they paid as well.

**Filing fees, registered mail costs, photocopying costs**

The landlords had filed multiple Applications for Dispute Resolution and incurred several costs to send the Applications and other documents to the tenants with respect to this tenancy. The landlords seek to recover the registered mail costs and filing fees paid for the previous Applications and the Application before me.

**Food and travel costs**

The landlords seek recovery of food and travel costs incurred to travel from their home in another city to the rental unit when the landlords regained possession of the rental unit on February 20, 2013 and other dates thereafter while they cleaned and repaired the property.

**Theft of step ladder**

The landlords seek to recover \$44.79 for the theft of a step ladder from the rental unit that the landlords left in the hot water tank room at the property for purposes of performing certain maintenance tasks. The landlords testified that the step ladder was there when the tenancy commenced and missing at the end of the tenancy. The landlord testified that the ladder was almost new at the start of the tenancy and \$44.79 is the amount they paid to purchase it.

**Patio screen door repair**

The landlords submitted that the screen on the patio door was in good condition at the start of the tenancy and badly torn at the end of the tenancy. The landlords initially obtained a quote of \$128.00 to have a company repair it; however, the landlords proceeded to take it in for repair which cost \$28.00 to be re-screened. The landlords' time for doing so is included in another part of the landlord's claim as described later in this decision. The landlords seek recovery of \$28.00 for this item.

**House cleaning**

The landlords submitted that they cleaned up the debris and garbage left strewn about the rental unit and then called in house cleaners to clean the rental unit. The landlords described the rental unit as being left in a filthy and “pig-sty” like condition. The landlords are seeking recovery of the \$265.00 they paid to the house cleaners. The landlords also purchased cleaning supplies at a cost of \$7.68 that they seek to recover from the tenants.

**Carpet cleaning**

The landlords submitted that the carpets were left stained with cat urine, among other things, and they had the carpets cleaned at a cost of \$273.22 which they seek to recover from the tenants.

**Carpet replacement**

The landlords submitted that the carpeting on the stairs and landing was so stained and shredded by the tenants and their cat that it had to be replaced. The landlords had the carpeting replaced for a cost of \$601.81 that they seek to recover from the tenants. The landlords testified that they were uncertain as to the age of the carpeting but that it was in very good condition at the start of the tenancy. The landlords testified that they purchased the house in February 2008 and the carpeting was in place at that time.

**Storage of abandoned property**

The landlords submitted that the tenants had abandoned some of their personal property at the rental unit when they vacated. The landlords estimated that the cumulative value of the abandoned property exceeded \$500.00 so the landlords stored the property as required by the Residential Tenancy Regulations. The landlords submitted that they stored the items in the garage for 60 days before the tenant retrieved them. The landlords seek storage fees of \$180.00 from the tenants.

**Garbage disposal**

The landlords incurred a cost of \$26.50 to dispose of garbage and damaged property that they seek to recover from the tenants.

**Landlords' labour**

The landlords submit that they spent numerous hours of their time to clean up the garbage and debris left at the property, perform yard work, and make repairs to the property, including filling numerous dents in the hardwood flooring.

The landlords also sought compensation for other items such as taking photographs, fulfilling documentation requirements of the Act, burning DVD's for evidence, preparing the spreadsheet used to make claim, making photocopies, and serving documents.

The landlords determined that they spent 153 hours to perform all of the above described tasks for which they seek compensation at the rate of \$25.00 per hour for a claim of \$3,825.00.

The landlords were requested to provide the number of hours they spent performing repairs, garbage and debris removal, and cleaning. The landlords estimated that they spent 100 to 113 hours to do these tasks.

As evidence, the landlords provided a copy of the tenancy agreement including the addendum; 10 Day Notices issues to the tenants for unpaid rent; receipts and invoices for water bills, cleaning costs and repairs; and photographs taken on February 20, 2013.

### Analysis

The Act provides that an Application may be made within two years of the date the tenancy ended. The last 10 Day Notice to End Tenancy issued to the tenants has a stated effective date of February 20, 2013 which is also the date the tenants vacated the rental unit, as recorded in the previous dispute resolution decision. Accordingly, I find the tenancy ended February 20, 2013 and I am satisfied the landlords filed this Application within two years of the tenancy ending. Therefore, I proceed to consider the landlords' claims against the tenants.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

At the end of every tenancy a tenant is required to leave a rental unit reasonably clean, undamaged and vacant, which includes removal of all of their garbage and personal property.

Awards for damages are intended to be restorative. Accordingly, where an item is so damaged that it must be replaced it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of any item that was replaced I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Upon consideration of everything before me, I provide the following findings and reasons.

### **Late fees**

The landlords seek to recover late fees for the months of December 2012, January 2013 and February 2013. The landlords had included late fees in making their previous Application. A decision has been issued with respect to the previous Application that reflected a settlement agreement with respect to the landlords' claims for unpaid rent and late fees.

Decisions issued under the Act and are final and binding. A party may not reapply and make the same claim against another party unless the party has been given leave to reapply. This is a rule of law known as *res judicata*.

Although the landlords were of the position that the Arbitrator hearing the previous Application failed to include the late fees in ordering the tenant to pay \$4,275.00, if the Arbitrator erred in recording the settlement agreement, the landlords' remedy would have been to seek a correction of that decision. The landlords' remedy was not to reapply for late fees that were already claimed by way of the previous Application. Therefore, I find the claim for late fees to be *res judicata* and I have not considered the claim further.

### **Garage space**

I accept the undisputed evidence before me that garage space was provided to the tenants and the tenants were required to perform grass cutting and gardening tasks, as needed, pursuant to the tenancy agreement. I also accept the undisputed evidence before me that when the landlord attended the property on February 20, 2013 the landlord found that the gardening and grass cutting had not been performed in some time, if ever, during the tenancy. Therefore, I find the tenants violated their obligation to cut the grass and perform gardening tasks under the tenancy agreement.

Having found the tenants violated the above described term, the landlords are entitled to recover losses related to the violation. The landlord has measured the loss as the amount of rent they could have garnered for the garage space had it not been provided to the tenants. However, the landlords were not entitled to garage rental income from the tenants and I find the loss suffered by the landlords more accurately measured by the time and expense they incurred to cut the grass and perform the gardening tasks that the tenants failed to do.

The landlords had requested compensation for the time they spent to clean up the property in another part of their claim. Unfortunately, their claim for their time was not very detailed and I presume that that portion of their claim includes time spent grass cutting and gardening. Therefore, to award the landlords loss of garage rental income and compensation for their time to clean up the property, including the yard, would amount to a double award for the same violation.

In light of the above, I deny the landlords' request to recover loss of garage rental income of \$500.00 as the landlords were not entitled to collect garage rental income from the tenants and I find it more appropriate to award the landlords for their time and effort to clean up the yard that has been claimed and awarded further below in this decision.

### **Water bills**

Upon review of the tenancy agreement, I find the tenants were obligated to pay for water consumed during their tenancy. I accept the evidence before me that the tenants failed to pay two water bills for consumption during their tenancy and the landlords paid the bills. Therefore, I grant the landlords' request to recover \$56.62 and \$46.19 from the tenants for water bills for an award of \$102.81.

### **Food and travel costs**

I deny the landlords' request to recover food and travel costs as the landlords' decision to do business as landlords from another city was their choice and the landlords' costs to travel to the rental unit is their cost of doing business as landlords.

### **Theft of step ladder**

I accept the landlords' undisputed submissions that a step ladder was in the hot water tank room at the start of the tenancy and missing from the property after the tenants vacated. Therefore, I accept that the tenants or a person permitted on the property by the tenants is responsible for taking the landlords' maintenance equipment and I grant the landlords' request to recover \$44.79 from the tenants as requested.

**Patio screen door repair**

I accept the landlords' undisputed testimony that the screen of the patio door was in good condition at the start of the tenancy and the landlords' demonstrated to my satisfaction that the screen was badly torn at the end of the tenancy. Therefore, I find the tenants responsible for this damage and the landlords are entitled to the cost to repair the screen.

The landlords provided a receipt to demonstrate that they paid \$28.00 to have it re-screened. I find the landlords entitled to recover the cost of this repair from the tenants and I award the landlords \$28.00 as claimed.

**House cleaning**

I accept the landlords' undisputed evidence that the rental unit was left in a very dirty condition including a large assortment of debris, garbage and abandoned property left behind. I accept the landlords' undisputed evidence that they cleaned up the debris, for which they have claimed elsewhere in this decision for their labour, and that they paid \$265.00 to house cleaners to have the house cleaned. I find the landlords entitled to recover the amount paid to the house cleaners and I award the landlords the sum of \$265.00 as claimed. I further award the landlords the cost of the cleaning supplies they purchased in the amount of \$7.68.

**Carpet cleaning**

The landlords submitted that the carpets were left stained, and soiled with cat urine, and they had the carpets cleaned at a cost of \$273.22 which they seek to recover from the tenants. I find the tenants obligated to pay for carpet cleaning as they failed to leave the carpets clean at the end of the tenancy. Therefore, I award the landlords \$273.22 as requested.

**Carpet replacement**

The landlords submitted that the carpeting on the stairs and landing was so stained and shredded by the tenants and/or their cat that it had to be replaced. The landlords submitted a copy of the sales agreement for replacement of the carpeting for \$601.81. I accept this undisputed evidence.

Residential Tenancy Policy Guideline 40 provides that carpeting has an average useful life of 10 years. The carpeting in the house was at least 5 years old at the end of the tenancy based upon the landlords' testimony. Therefore, I find it appropriate to award the landlords 50% of the replacement cost or \$300.90.



### **Storage of abandoned property**

I was provided undisputed evidence that the landlords stored the tenants' abandoned property for 60 days because the cumulative value of the abandoned property appeared to be at least \$500.00. I accept the undisputed evidence before me that when the tenant retrieved the abandoned property the landlords were not compensated for the amounts owed to the landlords for storage.

As the tenants failed to take all of the personal property when they vacated the property and the landlords suffered a loss of space for storing the tenants' property, I find the landlords entitled to compensation for storing the tenants' property. I find the request to recover \$180.00 for two months of storage in the garage to be within reason. Therefore, I grant this amount to the landlords.

### **Garbage disposal**

I accept the undisputed evidence before me that the landlords incurred a cost of \$26.50 to dispose of garbage and damaged property left by the tenants and I award that amount to the landlords.

### **Landlords' labour**

The landlords submit that they spent numerous hours of their time to clean up the garbage, debris and abandoned possessions left at the property, perform yard work, and make repairs to the property, including filling numerous dents in the hardwood flooring.

The landlords also included time for other tasks such as taking photographs, fulfilling documentation requirements of the Act, burning DVD's for evidence, preparing the spreadsheet used to make claim, making photocopies and serving documents which are not recoverable under the Act.

The landlords determined that they spent 153 hours to perform all of the above described tasks above but that 100 – 113 hours were spent to perform the clean-up, yard work, repairs, and handling of abandoned property. I accept the undisputed evidence before me that the tenants failed to leave the rental unit reasonably clean, devoid of garbage and debris; did not take all of their abandoned property, did not perform the yard work as required under their tenancy agreement; and, damaged the property. Accordingly, I find the landlords entitled to recover the loss of time related to these tasks. Therefore, I award the landlords compensation of \$25.00 per hour for 100 hours, or \$2,500.00.

**Filing fees, registered mail costs, photocopying costs**

The Act provides that the filing fee paid for an Application may be awarded to the party making the Application. Such an award is at the discretion of the Arbitrator, as a delegated authority of the Director. The Arbitrator hearing a particular Application has the discretion to make an award for recovery of the filing fee paid for that Application. Given the level of success in the Application before me, I award the landlords recovery of \$50.00 of the filing fee they paid for this Application. However, I make no award for filing fees paid for any previous Application filed by the landlords as the decision to award filing fees for those Applications was before the Arbitrator deciding those cases.

Other costs associated to a filing an Application, such as preparing evidence, serving documents and photocopying costs are not recoverable by either party under the Act and I do not further consider the landlords' request to recover those costs.

**Security deposit and pet damage deposit**

The tenants' security deposit and pet damage deposit were not used to offset or satisfy any previous award or debt owed to the landlords by the tenants. As the deposits have remained in the landlords' possession I find it appropriate to use the deposits to partially offset the amounts awarded to the landlords by way of this decision in calculating the Monetary Order. Accordingly, I grant the landlords' request for authorization to retain the tenants' security deposit and pet damage deposit.

**Monetary Order**

In light of all of the above findings and awards, I provide the landlords with a Monetary Order calculated as follows:

Water bills	\$ 102.81
Theft of step ladder	44.79
Re-screen patio door	28.00
House cleaning	265.00
Cleaning supplies	7.68
Carpet cleaning	300.90
Storage of abandoned property	180.00
Garbage disposal	26.50
Labour to clean and repair	2,500.00
Filing fee	50.00
Less: security deposit and pet deposit	<u>(775.00)</u>
Monetary Order	\$3,003.90

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The landlords have been authorized to retain the tenants' security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlords in this decision and I have been provided a Monetary Order for the balance of \$3,003.90 to serve and enforce.

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: August 28, 2015

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Residential Tenancy Branch

