



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC, MNSD, MND, FF

### Introduction

This hearing was convened on July 09, 2015 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit and pet damage deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 05, 2014 the Application for Dispute Resolution, the Notice of Hearing, two pages of evidence, and eleven photographs were mailed to each Tenant. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings. The male Tenant stated that he cannot recall if one or two packages were mailed to the Tenants, however he stated that the female Tenant has seen these documents and his is representing her at these proceedings.

On February 17, 2015 the Tenants submitted four pages of evidence to the Residential Tenancy Branch. The male Tenant stated that these documents were served to the Landlord by registered mail on February 17, 2015 and they were returned to him by Canada Post as "unclaimed".

The Landlord stated that he did not receive any evidence from the Tenants, although he recalls receiving two notices that he had registered mail earlier this year. He stated that his mail is checked on a daily basis but due to his work schedule and the unusual business hours of the post office, he was unable to pick up this mail in a timely manner. He stated that by the time he attended the post office to retrieve this mail the mail had been returned to the sender and that he presumes this package contained the Tenants' evidence.

On the basis of the undisputed evidence, I find that the Tenants' evidence was served in accordance with section 88 of the *Residential Tenancy Act (Act)* and that the Landlord did not receive this evidence due to circumstances that were within the control of the Landlord. The male Tenant requested an adjournment for the purposes of providing the Tenants with the opportunity to re-serve these four documents. The Landlord stated that he wished to view these documents before they were considered as evidence for the proceedings.

I find that the four documents submitted by the Tenants are directly relevant to these proceedings and that it would be unfair to consider those documents at the hearing on July 09,

2015, as they were not available to the Landlord. I therefore adjourned the proceedings pursuant to section 6.3 of the Residential Tenancy Branch Rules of Procedure.

At the reconvened hearing on September 16, 2015 the Landlord stated that he received the aforementioned four documents sometime in July of 2015 and they were accepted as evidence for these proceedings.

No additional evidence was submitted after the hearing commenced on July 09, 2015.

The Tenants were not represented at the reconvened hearing on September 16, 2015 and the hearing proceeded in the absence of the Tenants.

#### Preliminary Matter

In the documents submitted in evidence by the Tenants, the Tenants refer to a dispute resolution hearing that was held on December 02, 2014. They provided the Residential Tenancy Branch file number relating to that hearing, which appears on the bottom of the first page of this decision.

Residential Tenancy Branch records show that this file relates to an application by the Tenants for the return of the security deposit and pet damage deposit and that on December 02, 2014 a Residential Tenancy Branch Arbitrator Ordered the Landlord to return double the Tenants' security deposit of \$1,000.00 and pet damage deposit of \$1,000.00.

As the Landlord has already been ordered to return double the security deposit/pet damage deposit, I am unable to consider the Landlord's claim to retain the security/pet damage deposit.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

#### Background and Evidence

The Landlord stated that:

- this tenancy began on September 01, 2013;
- a condition inspection report was completed on August 27, 2013;
- this tenancy ended on June 30, 2014;
- the Tenants agreed to pay monthly rent of \$2,000.00;
- the Tenants paid a security deposit of \$1,000.00;
- the Tenants paid a pet damage deposit of \$1,000.00; and
- he did receive a forwarding address for the Tenants, in writing, although he does not recall when/how that was received.

The Landlord stated that he does not know whether a condition inspection report was completed at the end of the tenancy as he was represented by a property management company during this tenancy.

The Landlord is seeking compensation, in the amount of \$500.00, for replacing two cords of firewood. He stated that the Tenant used two cords of wood during the tenancy without his consent.

In the Tenants' written submission they declared that the Landlord told them they could use the firewood in exchange for storing some of the Landlord's property on the residential property.

The Landlord is seeking compensation, in the amount of \$325.00, for repairing the hot tub. He stated that the Tenants turned off the hot tub sometime in February of 2014 without properly draining the lines; that the water froze in the lines; and that the Landlord paid \$325.00 to repair the subsequent damage. The Landlord submitted no documentary evidence to show that it cost \$325.00 to repair the hot tub.

In the Tenants' written submission they declared that "a few weeks after" their trip to Hawaii a neighbor "fixed the piece that they claimed we had damaged".

The Landlord is seeking compensation, in the amount of \$750.00, for replacing a window sill. He stated that the sill was damaged by a battery during the tenancy. The Landlord submitted a photograph of the damaged sill. He stated that the sill has not been replaced; that the damage is too deep to repair with sanding; and that he estimates it will cost \$750.00 to replace the sill.

In the Tenants' written submission the Tenants acknowledged damaging the window sill; that they are willing to pay to repair the sill; and that they do not believe the entire sill needs to be replaced.

The Landlord is seeking compensation, in the amount of \$5,000.00, for refinishing the hardwood floor. He stated that the floor was not damaged at the start of the tenancy and that it was scratched by the Tenants' dog during the tenancy and that it was stained by bleach during the tenancy. The Landlord submitted photographs of the damaged floor.

The Landlord stated that the floor has not yet been repaired. The Landlord submitted no documentary evidence to show that it will cost \$5,000.00 to repair the floor however he stated that is a home improvement contractor and he knows it will cost approximately that much to refinish 750 square feet of flooring.

In the Tenants' written submission they declared that the floors were stained and scratched at the start of the tenancy, which they contend was noted in the inspection report that was completed at the start of the tenancy. The Tenants stated that the floor was scratched by their couch in one location, which they contend is "normal wear and tear" because the scratch is very small.

The Tenants submitted a copy of the condition inspection report that was completed on August 27, 2013. Although it is difficult to read the report, it appears to indicate there were scratches on the wood floor in the master bedroom at the start of the tenancy and that the floor in the living room was stained.

The Landlord is seeking compensation, in the amount of \$1,500.00, for replacing the front door frame. He stated that the frame was not damaged at the start of the tenancy and that it was damaged during the tenancy. The Landlord submitted a photograph of a door frame with a large chip out of it.

In the Tenants' written submission they declared that the door was not damaged at the end of the tenancy; that it was inspected at the end of the tenancy by both the Tenant and the Agent for the Landlord; and that no damage to the door was noted on the condition inspection report that was completed at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$400.00, for sanitizing the carpets. He stated that the carpets smelled of dog urine at the end of the tenancy.

In the Tenants' written submission they declared that the carpets had been steam cleaned at the end of the tenancy and that it was inspected at the end of the tenancy by both the Tenant and the Agent for the Landlord, at which time they may have had a faint odour of cleaning supplies.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37 of the *Act* requires a tenant to leave a rental unit in good condition at the end of a tenancy. In my view this includes leaving items, such as firewood, on the property that were on the property at the beginning of the tenancy unless the tenant has explicit consent to use those items. The burden of proving that they had consent to use property belonging to the landlord typically rests with the tenant.

I find that the Tenants submitted insufficient evidence to establish that they had consent to use the firewood left on the property by the Landlord in exchange for storing property belonging to the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants submission that the Landlord authorized them to use the firewood or that refutes the Landlord's testimony that they did not have his consent to use the firewood.

On the basis of the testimony of the Landlord, I find that the hot tub was damaged by the Tenants in February of 2014 when they turned off the hot tub without properly draining the lines. I find the Tenants' written submission regarding the claim for damaging the hot tub is of little value, as it merely acknowledges that the hot tub was broken after they returned from a holiday in February of 2014, without disputing the Landlord's claim that the damage was the result of the Tenants' turning off the hot tub without properly draining the lines.

On the basis of the undisputed evidence, I find that the Tenants damaged a window sill during the tenancy.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of repairing the hot tub; repairing/replacing the window sill; and replacing the firewood used by the Tenants. In reaching this conclusion, I was strongly influenced by the

absence of any documentary evidence that corroborates the Landlord's statement that it cost \$325.00 to repair the hot tub; that it will cost \$750.00 to replace the window sill; or that it will cost \$500.00 to replace two cords of firewood. When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts/estimates.

As the Landlord has failed to establish the true cost of repairing the hot tub; repairing the window sill; and replacing firewood, I dismiss the Landlord's claim for compensation for those repairs/costs.

On the basis of the testimony of the Landlord and the photographs submitted in evidence, I find that the floor in the rental unit was stained and scratched at the end of the tenancy.

I find, however, that the Landlord has submitted insufficient evidence to establish that the damage to the floor occurred during the tenancy. In reaching this conclusion I was influenced, in part, by the Tenants' written submission in which they declared that the floor was damaged at the start of the tenancy and that they were responsible for only one small scratch on the floor.

In determining that the Landlord has submitted insufficient evidence to establish that the floor was significantly damaged during the tenancy I was influenced, in part, by the condition inspection report that was completed at the start of the tenancy. Although it is difficult to read the report it appears to indicate the floor was damaged at the start of the tenancy, which contradicts the Landlord's testimony that the floor was in good condition at the start of the tenancy.

In determining that the Landlord has submitted insufficient evidence to establish that the floor was significantly damaged during the tenancy I have placed no weight on the entries on the condition inspection report that appear to have been made at the end of the tenancy, as it is unclear who added those entries.

As the Landlord has submitted insufficient evidence to establish that the floor was significantly damaged during the tenancy, I dismiss the Landlord's claim for repairing the floor.

On the basis of the photographs submitted in evidence, I accept that the door frame was damaged however I find that the Landlord has submitted insufficient evidence to establish that this damage was present at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that it was damaged at the end of the tenancy or that refutes the Tenants' written submission that it was not damaged at the end of the tenancy. As the Landlord has submitted insufficient evidence to establish that the door was damaged during the tenancy, I dismiss the Landlord's claim for repairing the door.

Completing a condition inspection report at the end of the tenancy in the presence of both parties is the best method of establishing the condition of a rental unit at the end of a tenancy. In these circumstances, the Landlord has failed to meet the burden of proof, in part, because he does not know if a report was completed at the end of the tenancy. As previously stated, I have placed no weight on the entries on the condition inspection report that appear to have been made at the end of the tenancy, as it is unclear who added those entries.

I find that the Landlord has submitted insufficient evidence to establish that the carpets required sanitizing at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's testimony that it required cleaning at the end of the tenancy or that refutes the Tenants' written submission that it did not require cleaning at the end of the tenancy. As the Landlord has submitted insufficient evidence to establish that the carpet required cleaning at the end of the tenancy, I dismiss the Landlord's claim for cleaning the carpet.

I find that the Landlord has failed to establish the merits of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord had failed to establish that he is entitled to a monetary Order.

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: September 28, 2015

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Residential Tenancy Branch

