



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for unpaid rent or utilities; 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 landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The hearing did not conclude on the first day scheduled and was adjourned for a continuation of testimony. Both landlords and the tenant attended the hearing on both scheduled dates, and each gave affirmed testimony. The landlords also called one witness who gave affirmed testimony. The tenant was assisted by another person who also gave affirmed testimony, and called another witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses with respect to the testimony and evidence 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:

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first landlord** testified that this month-to-month tenancy began on April 1, 2004 and ended on March 8, 2015. Rent in the amount of \$1,474.00 per month was payable on the 1<sup>st</sup> day of each month. The tenant was credited \$56.00 per month for utilities used by another tenant in another suite. The tenant made payments toward the security deposit and pet damage deposit, and the landlords collected a security deposit from the tenant in the amount of \$475.00 on March 10, 2004 and \$25.00 on April 26, 2004. The landlords also collected a pet damage deposit in the amount of \$475.00 on March 10 and \$25.00 on April 26, 2004. A copy of the tenancy agreement has been provided.

The parties attended a dispute resolution hearing in January, 2015 wherein the landlords were successful in obtaining an Order of Possession and the tenant was ordered to pay \$1,400.00 in outstanding rent. The sum of \$346.68 was ordered to be kept by the landlord from the security deposit for rental arrears for December, 2014 and January, 2015, and the landlords served the Order of Possession on March 6, 2015. A copy of the Decision has been provided which is dated January 16, 2015.

Between January 16, 2015 and the end of February, the landlord approached 3 tenants in other buildings to see if they would be interested in renting, and one was, but the landlord couldn't promise when the rental unit would be available. The tenant then said she'd pay the rent on March 5, 2015, but the landlord noticed the tenant was in the process of moving and hadn't paid the rent. The rental unit was re-rented near the end of April, 2015, and the landlord claims \$1,418.00 for loss of revenue, after deducting the \$56.00 for utilities. The landlords have provided a copy of a receipt dated February 1, 2015 stating that the tenant paid the sum of \$1,418.00 being the amount agreed to, less the \$56.00 utility abatement, and states "For Use and Occupancy Only."

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy. The rental unit is a 3-bedroom suite in the upper level and partial lower level of a house that is also tenanted with another unit in the lower level. The landlords claim the following damages:

- \$395.58 to remove carpet in all bedrooms and the living room. All were stained with dog urine. The tenant had 4 dogs and sometimes 5. The tenant lived there 11 years, but paint had to be used on the wood under the carpet to prevent the odor from transferring onto new carpet. The flooring company will not guarantee carpet unless it's done. The carpet had small rips in it, but was acceptable, and the landlords are not claiming for that;
- \$78.75 to clean carpet on stairs;
- \$110.00 for labor and dump fees;
- \$178.88 for replacing keys. The tenant's daughter said she lost all her keys and the tenant gave back keys that didn't fit;
- \$82.62 to replace blinds on 5 windows and some have more than 1 blind. There were 8 blinds altogether and all were smoke smelled and one was broken. It would have cost more to have them cleaned;

- \$360.00 for the landlords' time cleaning at the end of the tenancy;
- 52.50 for painting due to smoking in rental unit. The landlord had to use an oil paint, and smoking wasn't permitted in the rental unit. The entire unit was freshly painted prior to this tenancy;
- \$67.20 for oil paint to block the urine stains, but no receipts have been provided.

The landlords' amended total claim is \$2,708.76, less the \$688.70 deposits and interest, leaves \$2,020.06 which the landlords claim as against the tenant and have provided receipts for most of the damages claimed.

**The second landlord** testified that the move-out condition inspection report was completed on March 8, 2015 and the next morning the landlord started cleaning. Every square inch had to be scrubbed except the ceiling. There was nicotine on walls, the windows and frames need to be washed and blinds were so yellow that even if washed the nicotine would remain. The landlord claims 30 hours of cleaning at \$12.00 per hour just to get it to a reasonable state. Things had to be scrubbed, not just wiped, and the landlords have provided photographs. Light fixtures were very dirty such that light couldn't shine through. They were thick with dirt and cobwebs. The bathroom and shower had to be scrubbed from what appeared to be years of not being cleaned. Soap scum remained, and the toilet was very filthy. The deck was also left very dirty, and the landlords have provided before and after photographs of the deck.

After the carpet and underlay were removed from the living room there was still some smell so the flooring contractor said that it needed a blocker applied to the wooden area or it would penetrate.

**The landlords' witness** testified that on March 8, 2015 the landlord requested the witness to attend and check the condition of the rental unit immediately after the tenant had departed and the witness also signed the move-out condition inspection report. The witness stated that the smell of nicotine and what he believed to be animal urine in the rental unit was quite overwhelming. The place inside was disgusting.

**The tenant's agent** testified that the carpet in the living room and dining room were ripped at the beginning of the tenancy.

The tenant's agent also testified that after 11 years the landlords can't expect the rental unit to look the same as it did prior to the tenancy. During tenancy the landlords did nothing to maintain except a new roof. Water stains on the downstairs entry was left as well as drooping tiles in bathroom and the rental unit was, never painted.

The rental unit also had mold issues in the bathroom and the tenant's son purchased the paint and painted it. The landlord was approached because it kept coming back, but he did nothing. The tenant's son looked in attic and saw mold in ventilation above the bathroom fan. The landlords were not willing to do any upgrading and said if the son painted for free that would be okay, however, the tenant's son, a professional painter was not willing to do it for nothing so it never got done. The tenant also requested new flooring but the landlord refused saying that the tenant intentionally cut it.

The tenant's husband passed away in December, 2011 and after that the blinds were taken down and cleaned, panelling and walls were all washed, and a No Smoking sign was put on the door and all smokers went outside. The tenant owns a carpet cleaner and cleaned them regularly, using the agent's carpet cleaner until the tenant's husband died. The tenant also rented a steam cleaner after she got a puppy.

There were 3 people helping to clean at the end of the tenancy, and windows were cleaned as well. The work that the landlords claim they did was already done by the tenant's friends before she moved out – washing walls, carpets, windows, etc. The agent agrees that the deck wasn't cleaned, but stated that this claim is going to extreme.

There was no need to remove and replace blinds; they're not that hard to wash. The vertical ones were cloth but were not replaced. They were taken off site to be washed by the landlord. The ones referred to by the landlord were vinyl venetians.

On the day of the move-out condition inspection the tenant gave the landlord keys to the rental unit. One set of keys dropped in her car under boxes, but they were located before they were finished.

The tenant's daughter signed the Security Deposit statement agreeing to deductions of \$410.00 and \$278.70 was to be returned to the tenant.

**The tenant's witness** is the tenant's daughter and testified that she was present the day her mother moved out of the rental unit. The witness did the cleaning, and she and others cleaned walls, windows, carpet and washed all floors, the witness moved boxes, and signed the landlord's form on behalf of her mother. The inspection took about 2 hours, and the witness was made to believe when she signed the form, because it states, "11 years wear and tear," and that the amount of \$278.80 would be returned to the tenant. The landlord agreed that after 11 years on a busy road there would be wear and tear. The witness and the landlord signed the Security Deposit form signing off on the fact that some money would be returned to the tenant.

The witness also testified that her mother was very stressed because she only got 2 days notice to move out.

### Analysis

Where a party makes a claim for damages, 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.

Also, certain rules exist with respect to a tenancy. The move-in and move-out condition reports are evidence of the condition of the rental unit at the beginning and end of a tenancy. A tenant is required by law to leave a rental unit reasonably clean and undamaged except for normal wear and tear. Also, any award must not put the claiming party in a better financial position than they would be if the damage or loss had not existed. In other words, the landlords cannot be successful in obtaining new carpeting if the carpeting was not new at the beginning, and I dismiss the landlords' application for removal of carpeting.

I refer to Residential Tenancy Branch Policy Guideline #40 which speaks of the useful life of common elements found in a rental unit, and states that the useful life of interior paint is 4 years. Whether or not the tenant smoked in the rental unit, after 11 years the rental unit needed painting in any event, and the landlords' claim for paint cannot succeed.

Where a tenant smokes in a rental unit or has pets that are not kept in a cage, the tenant is expected to clean carpets. The tenant's witness and agent both testified that carpets had been cleaned and the landlords testified that they weren't clean and the landlords claim \$78.75 to clean the stairs. I have reviewed the condition inspection report and I am satisfied that the landlords have established that claim. I also accept the landlords' claim for labor and dump fees totalling \$110.00, and \$178.88 for keys and \$360.00 for cleaning.

With respect to the landlords' claim for blinds, I am not satisfied that any damage done to them was beyond normal wear and tear, and the landlords' application in that regard is dismissed.

With respect to the landlords' claim for loss of rental revenue, I accept the testimony of the parties that the tenancy ended on March 8, 2015, and considering the amount of work that the landlords had to do to return the rental unit to a state of reasonable cleanliness throughout as evidenced by the condition inspection reports, I find that the landlords have established a claim for one month of rent.

In summary, I find that the landlords have established a monetary claim for \$1,418.00 for loss of revenue, \$78.75 for cleaning the carpet on the stairs, \$110.00 for labor and dump fees, \$178.88 for keys and \$360.00 for the landlord's time cleaning, for a total of \$2,145.63. The landlords currently hold \$688.70, which I order them to keep, and I grant a monetary order in favour of the

landlords for the difference in the amount of \$1,456.93. Since the landlords have been partially successful, the landlords are also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby order the landlords to keep the security deposit balance and pet damage deposit balance totalling \$688.70, including interest, and I grant a monetary order in favour of the landlords as against the tenant pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$1,506.93.

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: September 11, 2015

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Residential Tenancy Branch

