



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid utilities, for damages to the unit and for an order to retain the security deposit in full satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid utilities?  
Are the landlords entitled to monetary compensation for damages?  
Are the landlords entitled to retain the security deposit in full satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began September 2013. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenants paid a security deposit of \$625.00. The tenancy ended on March 30, 2015.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlords claim as follows:

a.	Utility heating oil	\$ 506.16
b.	Damages – floor and towel rack	\$ 28.52
c.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 584.68</b>

#### Utility heating oil

The landlord testified that the tenants were provided with 30" of oil in the tank at the start of the tenancy, which equals 684 litres. The landlord stated that during the tenancy they changed the heat source from oil to gas and when the oil tank was removed there was only 2" of oil. The landlord stated that although the tenants can no longer replace the oil, as the tank no longer exists they are still required to pay for the oil that they used during their tenancy.

Filed in evidence is a copy of the move-in condition inspection report. Filed in evidence is a letter from the contractor who removed the tank confirming 2 inches of oil remained.

The landlord testified that they are not seeking to recover the cost of the full 30" as they are allowing a 20% reduced for residue and waste. The landlord stated that equals 20" of oil, which equals 456 liters and the current cost per litre is \$1.11. The landlord seeks to recover the cost of the fuel in the amount of \$506.16.

The tenants testified that when the tank was removed there was no conversation with the landlord about replacing the amount of oil until five months after the fact. The tenants testified that they told the landlord that it had been leaking oil and that they stopped using it for heat and used spaced heater until the tank was removed.

#### Damages – Floor and towel rack

The landlord testified that the tenants caused minor damage to the wood floors in the entry way and front bedroom. The landlord stated that they were able to make the repair but had to buy a brush and varathane. The landlords seek to recover the cost of the repair in the amount of \$22.91. Filed in evidence is a photograph of the floors.

The landlord testified that the tenants broke the towel rack which had to be repaired. The landlords seek to recover the cost of the repair in the amount of \$5.61. Filed in evidence is a photograph.

The tenants testified that the scratches were caused by the bed which went unnoticed until it was removed. The tenants stated that they asked the landlord for a list of repairs, but none was provided. The tenants stated that they could have had the minor repair fixed for free.

The tenants testified that the towel rack fell off the wall as it was not properly fastened into the wall. The tenants stated that all the parts to the towel rack were left for the landlord to refasten.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case landlords have the burden of proof to prove their claim

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Utility heating oil

The move-in condition inspection report showed that the tenants were provided with 30" of furnace oil, which equals 684 litres. During the tenancy the oil tank was removed and replaced with gas. When the tank was emptied there was 2" of oil. This is supported by the letter from the landlord's contractor.

In this case, the landlord is seeking to recover 20" of the 30" of fuel, which equals the amount of 456 litres. While I accept the tenants' photograph of staining which appears could be from oil, I find it is reasonable to conclude that the leak did not equal the difference between 30" and 20" of fuels, as that amount would equal 228 litres, which is a significant amount of oil.

While I accept the tenants testimony that there was no discussion with the landlord about compensation for the fuel for a period of time, it is still the tenants responsibility under the Residential Tenancy Branch Policy Guidelines #1, to leave the tank at the end of the tenancy in the same condition as it was at the start of the tenancy, as an example half full.

While I accept the tenants could not leave the tank it in the same condition as it was at the start of the tenancy as the tank no longer exists, I find it reasonable that the tenants compensated the landlord for the amount of oil used. I find the landlords' claim of 20" or 456 litres is reasonable. Therefore, I find the landlords are entitled to recover the cost of heating oil in the amount of **\$506.16**.

Damages – Floor and towel rack

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

**Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I have reviewed the move-in and move-out condition inspection report. The report indicated that the floor in the entry was unscratched at the start of the tenancy and scratched at the end of the tenancy by the dogs. The front bedroom indicated scratched at the start of the tenancy and new deep scratches at the end of the tenancy.

Although the tenants indicated they asked the landlords for a repair list and none was provided, it was still their responsible to ensure any damage caused by their pets or furniture was repaired. Therefore, I find the tenants breached the Act, when they failed to make the repair.

However, and I am not satisfied on the amount claimed, as the landlords seek to recover the cost of \$22.91, and I am unable to determine based on the evidence on how the landlord arrived at that estimated amount, as no receipts were provided. Therefore, I grant the landlords a nominal amount of **\$1.00**.

In this case the towel bracket became unfastened from the wall. The evidence of the tenants was that the bracket was not properly secured into the wall and the towel rack fell off. The evidence of the tenants was that all parts were left for the landlords. The landlord did not deny the tenants' testimony. I find the landlords have failed to prove the towel rack fell of the wall due to the tenants' actions, rather than an installation default. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$557.16** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the amount of **\$557.16** from the tenants' security deposit of \$625.00 full satisfaction of the claim and I grant the tenants an order under section 67 of the Act for the balance due of their security deposit in the amount of **\$67.84**.

Should the landlords failed to return the balance due. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim.

The tenants are granted a monetary order for the balance due of the security deposit in the above stated amount.

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 24, 2015

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Residential Tenancy Branch

