



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, MND, FF

### Introduction

In the first application the tenants seek a monetary award for the cost of emergency repairs, for compensation for damage or loss under the law or the tenancy agreement and for return of the security deposit.

The Monetary Order Worksheet filed by the tenants claims \$800.00 for a water heater, \$500.00 for a door bar/keys/lock/window bar, \$1000.00 for “fence/rat traps,” \$1500.00 for drywall patching, cleaning and “mold on windows”, \$55.00 for a title search and \$120.00 for legal counsel.

In the second, application the landlords seek a monetary award for damage to the premises, unpaid rent and for compensation for damage or loss under the law or the tenancy agreement, and to keep the security deposit.

Their Monetary Order Worksheet discloses claims for \$4875.00 for painting, flooring and insulation, \$350.00 for electrical work and \$2400.00 for loss of two months of rental income.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either side is entitled to any of the claims made?

### Background and Evidence

The rental unit is a two bedroom, single floor house. The tenants moved in in September 2009. And moved out April 14, 2015 after a series of fixed term and month to month agreements.

The final rent was \$1150.00, due on the first of each month. The landlords hold a \$580.00 security deposit paid August 25, 2009.

The tenancy agreements show that the landlord is Ms. L.Z. and that Ms. S.G., her daughter is not the landlord.

Ms. S.G. testified that the small home including flooring, was completely renovated in 2004. She notes that the tenancy agreement provides in its addendum that the tenants were responsible for yard maintenance.

She says that during the tenancy the landlord Ms. L.Z. never went inside the premises. She says the tenants appeared to be good tenants and neither they nor the landlord ever complained to the other.

She says that her mother attended the premises on April 11, 2015 to check on its condition. Her mother saw nothing of consequence, just some painting being done. She says her mother returned on April 14<sup>th</sup> and gave the tenants their \$580.00 security deposit back.

The tenants brought their application for dispute resolution on April 17, 2015. Three days later.

Ms. S.G. says that a few days later her mother returned and noted a very strong urine smell. She called the tenant J.G. but J.G. refused to return and clean.

Ms. S.G. says her mother tried to bleach the laminate flooring but the smell persisted. Ms. S.G. was there as well and confirms the strong smell. It was at that time that a neighbour informed her that the tenants had been raising animals at the property, referring to birds, guinea pigs, rabbits and dogs. The tenants had constructed an enclosure around the back deck, she says, to hide the activity. She testifies that the back yard was covered with animal droppings that had gone unseen by her mother on April 11<sup>th</sup> due to the high grass.

As a result, the landlord had a new laminate floor installed, repaired drywall and painted the interior.

Ms. S.G. says that electrical work was required because rats had eaten away at the wiring and insulation work was required because there had been rats in the attic.

She says she tried to find the tenants in May but the address they'd given in their application was the address of a United Parcel Service (UPS) store.

She says her mother has spent over \$10,000.00 to bring the premises into order and was not able to re-rent it until June 15, 2015.

She says that the tenants refused to let her mother into the premises to show prospective tenants.

Ms. S.G. adduced photographs of the premises showing small pebbles of animal droppings covering areas of the ground.

Mr. J.R., the new tenant, testifies that he started his tenancy June 1, 2015. He says he viewed the premises in early May, after the new flooring had been put in. He says there was still a "nasty" smell and so the landlord replaced additional flooring by the time he moved in. He says the paint job done by the tenants was very poor, "a mess." They had painted over hinges and other hardware, mouldings and glass.

Mr. J.R. says that there were mounds of rabbit waste at the end of the deck. He determined that there had been a rabbit hutch on the deck and that it caused him to have a significant black fly problem until he bleached the deck, twice. He says that a municipal officer showed up because of the smell and the grounds and directed him to cut some bushes and brambles.

On being questioned by Mr. L., Mr. J.R. says he did not smell anything on first viewing because all the doors and windows were open and the paint was fresh. He says the premises no longer smells bad.

In response, the tenant Ms. X, testifying through the interpreter, says the landlord did visit the premises regarding a broken water heater and that she was aware of the tenants' dogs. She notes the tenancy agreement indicates "pets welcome."

She complains that the hot water tank failed but gives no details about how quickly it was repaired or by whom.

She testifies that the roof leaked but that the tenants never told the landlord about it because the landlord had told them they could do repairs themselves and deduct it from the rent.

Ms. X. says that the smell in the home was from mould. She referred to photos of the interior of the rental unit taken in March 2015, before the tenants painted it. The photos show significant mould in the ceilings and in the corners and along the bottom of walls. The damage is extensive and, in my view, consistent with drywall being wetted from beneath, by moisture in the structure of the home.

She says that the tenants had cleaners come work in the home before they left.

The tenants painted over the mould shown in their photos on April 11.

The tenant Mr. Y. testified that the tenants were providing foster care for rabbits, but no more than two or three at a time. They also had three dogs.

He says the landlord was reluctant to attend the property and told him to do repairs and deduct it from the rent.

It appears that the tenants obtained a quote for the roof repair, in the range of \$6000.00 to \$7000.00 but could not afford to advance that much money. They attempted to repair the roof at various times but it continued to leak. They did not inform the landlord about it.

He attributes the ceiling mould to poor ventilation in the home. He says that the tenants painted over the mould every year.

The tenants never did report any repairs to the landlord, though they were in email contact. They never deducted any money from the rent over the five and one half years they were there.

Despite prompting from their counsel, neither tenant chose to give evidence regarding their own monetary claim.

### Analysis

The landlord fell far below the duty required of her by the *Residential Tenancy Act* (the "Act"). She was required by law to perform a move in and move out inspection with her tenants and to prepare an inspection report on both occasions.

A landlord without such a report after the end of the tenancy puts herself at a distinct disadvantage when trying to prove that damage to the premises occurred during a tenancy.

In this case the landlord has doubly hobbled her claim by the fact that she attended at the premises on April 11 and decided to return the security deposit money in full to the tenants.

However, despite these facts, I find that the tenants did significantly damage the premises during their tenancy. The photographs of rabbit droppings riddling the yard, the tenants' own photos of a seriously mould and water damaged interior, their neglect to either attend to the roof repair or apprise the landlord of continued leaking, and the evidence given by the new tenant all combine to show that the tenants paid little attention to maintaining the premises in reasonably clean state or to report damage or problems to their landlord.

I consider it very likely, and I find, that the tenants' dogs urinated inside the rental unit and, over the five and one half years of this tenancy, rendered the flooring unsuitable for reasonable use.

The landlord's invoice shows that she paid a contractor \$2025.00 for flooring. Having regard to Residential Tenancy Policy Guideline 40, "Useful Life of Building Elements," I consider laminate flooring to have a useful life of twenty years. The floor in question had been laid in 2004. To award the landlord the cost of a new floor to replace a floor already half way through its expected life would cause a betterment and so I award the landlord \$1012.50 of the floor replacement cost.

I find that because of the tenants' poor paint job, the landlord was required to repaint the interior. I award the landlord the full \$2000.00 cost for her to do so, as shown by the contractor's invoice.

I find that the rental unit was not reasonably rentable when the tenants vacated and that as a result the landlord lost a likely rental income from the month of May as a result. The new tenant testified that he rented the premises commencing June 1. I award the landlord \$1150.00 in that regard.

I dismiss the landlord's claim for an attic insulation upgrade. The evidence presented does not show with any detail what that damage was nor, on a balance of probabilities, that the tenants were somehow the cause of damage to the insulation.

I dismiss the landlord's claim for an electrical service charge. Again, the evidence presented does not show that the tenants were the likely cause of damage to the electrical service.

I dismiss the tenants' claim for money in its entirety. They declined to give evidence in support of any of the items in their Monetary Order Worksheet. In any event, the admitted fact that they did not draw the landlord's attention, even by email, to any alleged defect or required repair would mitigate heavily against any award.

### Conclusion

The tenants' claim is dismissed.

The landlord's claim is allowed in part. She is entitled to a monetary award of \$4162.50 plus recovery of the \$100.00 filing fee.

There will be a monetary order against the tenants for the total of \$4262.50.

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 22, 2015

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Residential Tenancy Branch

