



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order as requested?

### Background, Evidence and Analysis

The parties agreed that the tenancy began on December 23, 2014 and ended on April 30, 2015. They further agreed that monthly rent was set at \$1,200.00 per month and that the tenants paid a \$600.00 security deposit and a \$100.00 pet deposit.

I address the landlord's claims and my findings around each as follows.

*Utility bills.* The parties agreed that the tenants owe \$160.60 for utilities. As this amount is not in dispute, I award the landlord \$160.60.

*Toilet handle.* The landlord seeks to recover \$8.29 as the cost of replacing a broken toilet handle at the end of the tenancy. The landlord claimed that the handle on the outside of the toilet was broken at the end of the tenancy and required replacement. She provided an invoice showing that she paid \$8.20 for a new tank lever. The tenants provided a photograph of the toilet tank lever which is on the interior of the toilet and testified that this was the piece that was broken during the tenancy. Their photographs show that the handle on the outside of the toilet was intact and not broken.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;

3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 37(2) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear.

The landlord has alleged that the exterior handle was broken, but she has provided no proof other than her testimony that this handle was broken and the invoice on which she based her claim is for an entirely different part. The tenants provided evidence showing that the internal lever was broken, which is consistent with the landlord's photograph. I cannot grant the landlord an award for the toilet handle as it is clear to me that this part was not broken and as she has provided no evidence to corroborate her claim that this part was replaced. If it is for the internal lever that the landlord intended to claim, although she repeatedly protested at the hearing that the internal lever was *not* the broken piece, I am not persuaded that the breakage occurred as a result of the tenants' misuse or neglect as opposed to reasonable wear and tear. Parts in bathroom fixtures occasionally wear out, particularly when they are used on a daily basis. I find that the landlord has not proven her claim for replacement of the toilet handle and I find that if she intended to claim the cost of replacing the lever, she has not proven that the tenants in any way breached the Act. I dismiss the claim.

*Kitchen sink stopper.* The landlord seeks to recover \$11.09 as the cost of replacing one of the stoppers in the kitchen sink. She claimed that at the outset of the tenancy, the sink had 2 stoppers and one was missing at the end of the tenancy. She noted the missing stopper in the condition inspection report. The tenants claimed that the sink had just one stopper at the beginning of the tenancy and claimed that they had a conversation with the landlord in which they noted that the stopper was missing, offered to purchase a second stopper and said she responded by telling them that they should not do so because it was a custom stopper. The landlord denied having engaged in such a conversation. The difficulty with this claim is that a missing sink stopper is something very easily overlooked on an inspection of the unit and might not be noticed by tenants until they first attempted to wash dishes. The tenants testified that they did not require more than one stopper as they kept their dish drainer in one side of the sink and I find it unlikely that a stopper is something that they would discard or accidentally pack to take with them when they moved. The positions of both parties are equally plausible and I am not persuaded that the sink had 2 stoppers at the outset of the tenancy. The landlord has the burden of proving her claim on the balance of probabilities and I find that on this issue, she has not provided more evidence that there were 2 stoppers at the beginning of the tenancy than the tenants have provided that there was just one stopper, so I therefore dismiss the claim.

*Drape.* The landlord seeks to recover \$33.59 as the cost of replacing the window covering on the French door in the unit. The parties agreed that the drape was in place at the outset of the tenancy and the landlord testified that it was in place at the end of the tenancy, but had several holes in it. The tenants testified that they took down the drape during their tenancy and replaced it with one which matched their décor, providing a photograph of the drape in place on the door. They testified that they replaced the drape at the end of the tenancy and were

surprised when the landlord pointed out the holes in the drape. The tenants insisted that they could not have damaged the drape as they did not use it during the tenancy. The landlord theorized that their cat damaged the drape, an allegation which the tenants strenuously denied.

Section 21 of the Residential Tenancy Regulations provides as follows:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The purpose of completing a condition inspection report is to record the condition of the unit with as much precision as possible in order to give an accurate picture in the event of a dispute. The condition inspection report does not note damage to the drape at the outset of the tenancy and as the tenants have provided no persuasive evidence that the drape was indeed damaged at that time, I find that it is more likely than not that the holes were not in place at the beginning of the tenancy. Residential Tenancy Policy Guideline #40 lists the useful life of building elements and identifies the useful life of drapes as 10 years. I estimate the drape to be approximately 5 years old and find that the tenants breached their obligation under section 37 of the Act and deprived the landlord of half the life of the drape. I therefore award the landlord 50% of the value of the replacement, which is \$16.80.

*Bathroom sink top.* The landlord seeks to recover \$100.79 as the cost of replacing the sink top in the bathroom (a one piece basin and counter) and \$40.00 as the value of the labour involved. The landlord testified that at the beginning of the tenancy, the sink was in good condition and at the end of the tenancy, it had a crack in the basin. The landlord testified that the sink was approximately 5 years old. The portion of the move-in condition inspection report addressing the condition of the bathroom does not show any damage to the sink. The tenants testified that the crack was in the sink at the beginning and they pointed it out to the landlord, but she told them not to worry about it because it was normal wear and tear and it shouldn't be recorded on the report. The landlord denied that the sink was cracked when the tenants moved in and denied having made the statement the tenants attributed to her.

As outlined above, I must accept that the condition inspection report reflects the condition of the unit at the outset of the tenancy unless the tenants can prove that it is inaccurate on that point. The tenants provided no evidence such as a photograph to corroborate their claim that the sink was already cracked.

Residential Tenancy Policy Guideline #40 identifies the useful life of a sink as 20 years. I find that the tenants breached their obligation under section 37 of the Act thereby depriving the landlord of  $\frac{3}{4}$  of the useful life of the sink and I therefore find that the landlord should recover 75% of the materials and labour to replace the sink. I award the landlord \$105.59.

*Planter moving.* The landlord seeks to recover \$20.00 as the cost of moving heavy planters from the yard to the walkway near the entrance of the rental unit. The landlord claimed that the

tenants moved 10 planters from the walkway to her yard and the tenants claim that 6 of the planters were already in her yard and that they moved only 4 of the planters. The landlord testified that she paid her son \$20.00 to move the planters as she was unable to lift them. Residential Tenancy Policy Guideline #1 provides that if tenants make any changes to the rental unit and/or residential property which is not explicitly consented to by the landlord, those things changed must be returned to their original condition at the end of the tenancy. Regardless of how many planters were moved or the reason they were moved, the tenants bore the obligation of moving the planters back to their original position at the end of the tenancy and failed to do so. I find that the tenants breached their obligation and that the landlord suffered a loss as a result. I award the landlord \$20.00.

*Liquidated damages.* The landlord seeks an award of \$500.00 in liquidated damages as the tenants ended the fixed term tenancy early. The tenancy agreement contains the following provision:

If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above, the landlord may treat this Agreement as being at an end. In such event, the sum of \$500 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages covers the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The parties agreed that the tenants ended the tenancy early, but the tenants claimed that they had cause to end the tenancy and that the landlord did not spend any money to advertise the unit as she placed a free advertisement on the internet and therefore should not be entitled to liquidated damages. The landlord testified that she was forced to spend time re-renting the property as a result of the tenants ending the tenancy early.

If the tenants had legally ended the tenancy prior to the end of the fixed term, they would have been excused from paying liquidated damages. However, the tenants did not legally end the tenancy. In order to end a fixed term tenancy prior to the end of the fixed term, the tenants would have had to have given the landlord written notice that she had breached a material term of the tenancy agreement, given her an opportunity to remedy the situation and then, if the landlord failed to remedy the breach, the tenants could then have provided written notice to end the tenancy early. Rather than advising the landlord in writing that they considered the actions of her dogs to be a breach of a material term of the agreement, the tenants arbitrarily and abruptly ended the tenancy without giving her an opportunity to correct the issue. I note that upon receiving their notice, the landlord offered to remedy the situation, but the tenants refused to consider continuing the tenancy. I find that the tenants did not legally end the fixed term early.

Liquidated damages are an amount which the parties agree prior to the commencement of the contract that will represent the amount lost if one of the parties is in breach. The landlord does not need to prove that she actually suffered a loss equalling the amount of liquidated damages;

rather, she must simply prove that at the beginning of the tenancy, she pre-estimated that she would likely suffer that amount of loss should the tenants breach the fixed term. The landlord acknowledged that she paid no money for advertising, but testified that she had to spend her own time advertising the rental unit, showing the unit to prospective tenants and vetting their applications for tenancy before accepting them and entering into an agreement with them. I accept that this process takes some time, I accept that the landlord's time has value and I accept that the landlord did not expect to lose this valuable time just 4 months into a 15 month tenancy. The tenants agreed at the beginning of the tenancy that the landlord would suffer this loss if they ended the fixed term early and I find that they are now liable to pay the landlord this amount. I award the landlord \$500.00.

*Rent credit.* The landlord seeks to recover prorated rent for the period from December 23-31, 2014. The landlord testified that the tenancy was scheduled to begin on January 1, 2015 but she allowed the tenants to move in early without paying rent on the condition that they sign a 15 month fixed term lease. Because the tenants ended the tenancy early, she seeks to recover rent for that period. The tenancy agreement provides as follows:

Tenants are taking possession on Dec. 23/14, no pro-rated rent is charged, just utilities.

The tenants denied that the rent-free period was contingent upon their having signed a fixed term lease.

The landlord has no evidence to corroborate her claim that the rent-free period was conditional upon the tenants agreeing to a fixed term. The aforementioned provision in the tenancy agreement is in the landlord's handwriting and does not support the landlord's contention and the tenants denied that they took possession early on the condition that they sign a lease. I find insufficient evidence to prove the landlord's claim and the claim is dismissed.

*Filing fee.* The landlord seeks to recover the \$50.00 filing fee paid to bring her application. As she has enjoyed some success in her claim, I find she should recover this fee and I award her \$50.00.

In summary, the landlord has been successful as follows:

Utilities	\$160.60
Drape	\$ 16.80
Bathroom sink top	\$105.59
Planter moving	\$ 20.00
Liquidated damages	\$500.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$852.99</b>

The landlord has been awarded a total of \$852.99. I order the landlord to retain the \$600.00 security deposit and the \$100.00 pet deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$152.99 which I order the tenants to pay forthwith. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$152.99 and will retain the security deposit.

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: October 23, 2015

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Residential Tenancy Branch

