



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: OPR, MND, MNSD  
TENANT: MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, a monetary order for damage to the unit, site or property and to retain the Tenants' security deposit.

The Tenants filed for the compensation for loss or damage under the Act, regulations or tenancy agreement, return of the security deposit and to recover the filing fee.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on August 20, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on June 26, 2015, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

At the start of the conference call the Landlord said the tenancy has ended and she has possession of the rental unit therefore the Landlord withdrew her request for an Order of Possession.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is the Landlord entitled to retain the Tenants' deposits?

Tenant:

1. Is there a loss of damage to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to recover the security deposit?

### Background and Evidence

This tenancy started on September 3, 2014 as a fixed term tenancy with an expiry date of March 30, 2015 and then continued on a month to month basis. Rent was \$1,600.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$800.00 on September 3, 2014. No condition inspection reports were completed in accordance to the Act. The Tenant said the tenancy ended on May 1, 2015 and they gave the Landlord their forwarding mailing address on May 6, 2015 by posting it on the Landlord's door.

The Tenant said they gave written notice to end the tenancy on April 2, 2015 by posting it on the Landlord's door. The Tenant said they moved out of the rental unit on May 1, 2015. The Tenant continued to say the Landlord did not return their security deposit of \$800.00 and she has filed for compensation for work the Tenants did on the rental unit in the amount of \$3,750.00. The Tenant said most of this work was cleaning and repairing the rental unit and the yard. The Tenant said they had no agreement with the Landlord to do this work or to get paid for the work. As well the Tenant said the Tenants paid to have the furnace ducts cleaned at the start of the tenancy for \$708.75 as the ducts had rodent droppings and nests in them and the ducts were very dirty. The Tenant requested the recovery of the \$708.75 that they spent. The Tenant said the paid receipt for the duct cleaning is in her evidence package. As well the Tenant said they contacted the Landlord prior to doing the duct cleaning but the Landlord did not return their calls before the work was done. The Tenant said their total claim is for \$5,258.75.

The Landlord said the Tenants cause damage to her chimney and stove because they used them incorrectly by burning the wood fire too hot. The Landlord said she had to repair the chimney at a cost of \$1,571.08 and the stove had to be replaced at a cost of \$3,080.00. The Landlord said she has purchased the stove but has not installed the stove as of yet. The Landlord indicated the stove and chimney were approximately 30 years old but they were maintained each year. As well the Landlord said the Tenants left garbage in the yard that she had to pay to haul away. The Landlord said she paid \$300.00 in total to clean up the yard. The Landlord said that she kept the Tenants' security deposit of \$800.00 because of the damage the Tenants caused.

The Tenant said the garbage in the yard was the Landlord's and it was in the yard at the start of the tenancy. The Landlord agreed it was her garbage and said the Tenants just piled it up in a corner of the yard.

The Tenant continued to say the chimney was cleaned during the prior tenancy approximately 8 months earlier so the chimney issues could have happened during that tenancy. The Tenant said they did not have any chimney fires or chimney issues during the tenancy. Further the Tenant said the door on the stove was broken so she could not shut it completely and if that cause damage to the stove it is not her responsibility.

The Landlord said she had lived in the house for 33 years and she never had the problems with the stove and chimney and now she has incurred \$1,571.08 in chimney repairs and she had to buy a new stove for \$3,080.00. The Tenant said the Landlord replaced an economy stove with a high end stove and that is not right.

The Landlord said she had agreed to pay half the duct cleaning bill and she paid it by forgiving the Tenants money the Tenants owed her for a truck, plow and sander she sold to them. The Tenant said they paid the Landlord \$700.00 cash for the items and they did not owe the Landlord anything for those items.

The Landlord said in closing that the Tenants damaged her stove and chimney and cost her money to clean up the garbage on the property. The Landlord said she submitted photographs and receipts to support her claims and application.

The Tenant said in closing that the Landlord has not returned their security deposit as she should have and they incurred costs both financially and by doing work in cleaning up the property that they have not been paid for. The Tenant said they submitted receipts and photographs to support their claim and application.

### Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has not established a base line to determine if any damage was caused by this tenancy. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.

3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has shown by photographic evidence there was damage to the stove this item is 30 years old; therefore the stove is passed its economic life as defined by the policy guideline #40 which says stoves have an economic life of 15 years. As well if the stove door was broken as the Tenant said then this may be the cause for both the damage to the stove and the chimney. Consequently I dismiss the Landlord claim for the cost of a replacement stove as its age or state of repair may have been the cause of the damage which resulted in the stoves replacement. The Landlord has not proven the Tenants damaged the stove.

With respect to the chimney repair this is part of the building structure and as a result is the responsibility of the Landlord. As well the chimney was cleaned during the previous tenancy approximately 8 months prior so it is unclear that the Tenants are responsible for the chimney damage. I find the chimney is solely the Landlord's responsibility and the Landlord did not prove the Tenants did anything to damage the chimney; therefore I dismiss the Landlord's claim of \$1,571.08 for chimney repairs.

Further as both parties agreed the garbage in the yard was the Landlord's and the garbage was in the yard at the start of the tenancy; I find the Landlord has not established any grounds to be awarded the \$300.00 of cleaning costs. The Landlord was removing the Landlord's garbage and the Tenant is not responsible for the Landlord's garbage.

Consequently I dismiss the Landlord's application without leave to reapply.

With regards to the Tenants' application the Tenants' claim for \$3,750.00 for work done for the Landlord by cleaning and repairing the rental unit is not supported by the tenancy agreement or any written arrangement; therefore I find the Tenant has not established grounds to be successful on this claim. Consequently I dismiss the Tenants' claim for \$3,750.00 for work done due to lack of evidence.

Further as the Landlord testified that she agreed to pay half the duct cleaning costs and the Landlord has presented no evidence to prove that the Tenants owed her money for the sale of the truck, plow and sander; I accept that the Landlord is responsible for half of the duct cleaning costs and that cost have not been paid. I also accept the Tenant's testimony that she talked to the Landlord about getting the ducts cleaned at the start of the tenancy. Consequently I find from the Landlord's is responsible for \$354.38 of the duct cleaning costs. I award the Tenants \$354.38 as compensation for the cost of duct cleaning.

Further section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and**
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on May 6, 2015 and again in the application mailed June 26, 2015. The Landlord did not repay security deposit to the Tenant within 15 days of

the end of the tenancy or after receiving a forwarding address in writing from the Tenants, nor did the Landlord apply for dispute resolution by May 21, 2015. Consequently I find for the Tenants and grant an order for double the security deposit of \$800.00 in the amount of \$1,600.00 (2 X \$800.00).

As well as the Tenants have been partially successful so I order the Tenants to recover the filing fee of \$100.00 from the Landlord

A monetary order has been issues to the Tenants for the following:

Double Security deposit	\$ 1,600.00	
Duct cleaning costs	\$ 354.38	
Filing fee	\$ 100.00	
Balance owing		\$ 2,054.38

### Conclusion

The Landlord's application for damages and to retain the Tenants' security deposit is dismissed without leave to reapply.

A monetary order has been issued to the Tenants' for \$2,054.38.

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: December 08, 2015

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Residential Tenancy Branch

