



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant MNDC, MNSD, FF  
Landlord MND, MNR, 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 a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, to retain unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenants' security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on July 24, 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 November 24, 2015 in accordance with section 89 of the Act.

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

### 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 the damages and if so how much?
3. Are there damages or losses to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?
6. Is the Landlord entitled to unpaid rent and if so how much?
7. Is the Landlord entitled to retain all or part of the Tenants' security deposit?

Tenant:

1. Are there damages or losses 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 the return of the security deposit?

### Background and Evidence

This tenancy started on September 1, 2014 as a fixed term tenancy for 1 year with an expiry date of August 31, 2015. Rent was \$1,800.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$900.00 on July 5, 2014. The Landlord said a move in condition inspection report was completed but no move out condition inspection reports was completed for this tenancy. The Tenant said there was walk through at the start and end of the tenancy but no reports were completed. No reports were submitted in the evidence.

The Landlord said the Tenant moved out of the rental unit on July 6, 2015 by mutual agreement of the parties due to an ant issue in the rental unit. The Landlord said the Tenants contacted her in February, 2015 about the ant issue although she did not think it was serious the Landlord said she kept in touch with the Tenants by email. The Landlord said by May, 2015 the ant issue had become a problem and the Landlord hired a pest control company to control or eliminate the ants. The Landlord continued to say the pest control company sprayed the outside of the building but the Tenants did not want the inside sprayed so the pest control company was told to spray the outside only. The Landlord said the pest control company told her this would not control the ants and as the ants were carpenter ants they should be controlled. The Landlord said that she then hired a different pest control company to deal with the ants. The Landlord said the company was prepared to spray on June 29, 2015 but the Tenants did not want the spray inside the rental unit so the Landlord and Tenants agreed to end the tenancy on July 6, 2015. The Landlord said the pest control company come in after the tenancy was ended.

The Landlord said she believes the Tenants delayed the control of the ants and therefore the Tenants should be partially responsible for the pest control company's bill. The Landlord said the Tenants voiced concerns about spraying pesticide inside the rental unit and as a result the Landlord stopped the pest control company from spraying inside the rental unit. The Landlord said the bill was for \$1,470.00 and the Landlord is requesting the Tenants pay half in the amount of \$735.00.

Further the Landlord said that the Tenants agreed to the following deduction from their security deposit when the Landlord and the Tenants did the walk through and ended of the tenancy. The Landlord said the \$50.00 deduction for Hydro has been removed from the original agreement so the total deduction of \$763.61 is now changed to \$713.61.

1. Rent for 6 days in July, 2015

\$ 348.36

2. Carpet cleaning	\$ 215.25
3. Damage to walls	\$ 100.00
4. Cleaning costs	\$ 50.00
Total agreed to deduction	\$ 713.61

The Landlord said the deduction are support by an email dated July 14, 2015 and she returned the original balance of the security deposit in the amount of (\$900.00 - \$713.61 = \$186.39) \$186.39 by cheque dated July 22, 2015. The Landlord said the Tenants did not dispute this at the time it was done.

The Landlord said she is requesting to retain the \$713.61 of the security deposit and to be awarded the additional amount of \$735.00 for the pest control bill and \$50.00 for the filing fee. As the filing fee offsets the Hydro deduction the Landlord is requesting an addition \$735.00 in compensation.

The Tenant said they original agreed to the deduction from the security deposit but now they have changed their minds and would like their full security deposit of \$900.00 returned. The Tenant said they did not receive any proof that the carpets were cleaned and the walls were drilled into by the pest control company so the holes they made were not important. As well the Tenant said they cleaned everything except the stove and \$50.00 to clean a stove is too much. The Tenant continued to say that because of the poor living conditions they also believe they should not have to pay rent for 6 days in July, 2015 in the amount of \$348.36.

In addition the Tenants said that because of the poor conditions in the rental unit including the dryer being vented into the house, the furnace not work correctly, cleaning they had to do at the start of the tenancy and the ants from February, 2015 to July, 2015 the Tenants are requesting \$2,250.00 of rent to be returned to them. The Tenant said she did not know how to calculate this so she took 1/8 of the total rent paid as the amount they are requesting to be returned.

The Tenants said they are also asking for \$50.00 for cleaning the area behind the washer and dryer which was very dirty and grimy. The Tenants said their total claim is \$3,136.61 which is \$50.00 more than the amount on their application of \$2,963.61 due to the additional \$50.00 cleaning cost request.

The Tenants continued to say that the Landlord did not inspect the rental unit when they told her about the ant problem and the Landlord was slow to take action to resolve the ant problem which resulted in the tenancy ending early.

The Landlord said the Tenants hindered her and the pest control company's ability to control the ants as the Tenants did not want the company to spray insecticide inside the rental unit. The Landlord said the only way to resolve the situation was to let the Tenants out of the fixed term tenancy agreement early and then control the ant problem.

The Landlord said in closing that the Tenants agreed to the deductions from the security deposit at the end of the tenancy and she emailed them as well as sending them the balance of the deposit after the deductions. The Landlord said she was surprised by the Tenants application and their change in mind. As well the Landlord said she believes the Tenants are responsible for part of the ant control bill as they delayed treatment which resulted on a bigger problem.

The Tenants said in closing they did not cause the ant problem and this is completely the responsibility of the Landlord as it is her house. As well the Tenants said they did not stop the pest control company or the Landlord from controlling the ants, but they did express their concerns about pesticides.

### Analysis

It is apparent that the ant issue at the rental unit is the cause of this tenancy ending and is the main cause of the dispute between the Landlord and the Tenants. Although there is no written mutual agreement to end the fixed term tenancy early or a written agreement about the security deposit and the deductions that the Landlord took; both parties testified that they agreed to end the tenancy early and that the Landlord could make the deductions from the security deposit. The deductions from the security deposit that were agreed to are; the payment of rent for 6 days in July in the amount of \$348.36, carpet cleaning of \$215.25, cleaning for \$50.00 and wall repairs for \$100.00 for a total of \$713.61. This agreement is supported by an email from the Landlord to the Tenants dated July 14, 2015 and that the Tenants accepted the balance of the security deposit in the amount of \$186.39 by the Landlord's cheque dated July 22, 2015. As a result I find that the Landlord has established grounds to prove that the deductions from the security deposit were agreed to by the Tenants. I find for the Landlord and order the Landlord to retain \$713.39 of the Tenants security deposit for rent and damages.

Further Section 32 of the act says that a Landlord must maintain a rental unit to a standard that complies with health and safety. Pest control in a rental unit is the responsibility of the landlord unless the tenant has solely caused the pest infestation. In this situation although the Tenants voiced concerns about pesticides they did not stop the Landlord from taking action to control the ant infestation. As well the Landlord did not inspect the ant issue or take action to resolve the ant problem in February, 2015 when she was first advised of it. Consequently because of this inaction; I find the Landlord has not established grounds to prove the Tenants are partially responsible for the ant issue and the cost to correct the ant problem. I dismiss without leave to reapply the Landlord's request for the Tenants to pay \$735.00 of the pest control company's invoice.

As the Landlord has only been partially successful in this matter I order the Landlord to bear the cost of the filing fee of \$50.00 which has already been paid.

With regard to the Tenants application for the return of their full security deposit I have already found that the Tenants agreed to the security deposit deductions and therefore I dismiss without leave to reapply the Tenants request for \$713.39 of the security deposit to be returned.

Further the Tenants have requested \$2,250.00 of compensation for poor living conditions in the rental unit because of issues with the unit and the ant infestation. With respect to the ant infestation; I find that although the Tenants informed the Landlord of the ant issue the Tenants did not work with the Landlord to solve the problem. I accept the Landlord's testimony that the Landlord stopped the pest control company from spraying the inside of the unit because of the concerns expressed by the Tenants about pesticides. These concerns may be valid but the concerns did influence the Landlord to stop the company from spraying inside the rental unit. In regard to the other issues in the rental unit; I find these issues do not meet the level of seriousness to warrant a rent reduction or rent rebate. Consequently I find the Tenants have

not established grounds to prove the rental unit was substandard because of the actions of the Landlord. I dismiss the Tenants' request for a rent rebate of \$2,250.00.

As the Tenants were unsuccessful in this matter I order the Tenants to bear the cost of the application of \$50.00 which they have already paid.

Conclusion

The Landlord is order to retain \$713.39 of the Tenants' security deposit which the Landlord has in her possession.

The Tenant's application is dismissed without leave to reapply.

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: January 06, 2016

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Residential Tenancy Branch

