



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND MNDC MNSD FF – Landlords' Application  
MNSD FF – Tenant's Application

### Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed on July 12, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; for money owed or compensation for damage or loss under the Act, Regulation and/or tenancy agreement; to keep the security and/or pet deposits; and to recover the cost of their filing fee.

The Tenant filed on July 17, 2015 seeking a Monetary Order for the return of double her security and pet deposits and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlords, the Landlords' witness, the Tenant, and the Tenant's two witnesses. Each person gave affirmed testimony. The female Landlord provided the majority of the Landlords' submissions. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords submitted three packages of evidence to the Residential Tenancy Branch (RTB) as follows: 54 pages of documents and photographs received on July 23, 2015; 10 pages of documents received on July 28, 2015; and 3 pages of documents and a photograph were received on August 17, 2015. Some of the documents were duplicates of previously submitted documents. The Landlords affirmed that they served the Tenant with copies of the same documents that they had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlords' submissions as evidence for these proceedings.

The Tenant submitted three packages of evidence to the RTB as follows: 53 pages of documents and photographs received on August 21, 2015; 2 pages of documents received on January 6, 2016; and a one page document which was received on January 8, 2016. The Tenant affirmed that she served the Landlords with copies of the same documents that she had served the RTB. The Landlords acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's submission as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Have the Landlords proven entitlement to monetary compensation?
2. Has the Tenant proven entitlement to the return of double her security and pet deposits?

#### Background and Evidence

The parties entered into three subsequent written one year fixed term tenancy agreements which began on July 1, 2012. The latest tenancy agreement began on July 1, 2014 and was scheduled to end on June 30, 2015. Rent began at \$1,450.00 and was raised to \$1,475.00 as of August 1, 2014. On July 1, 2012 the Tenant paid \$725.00 as the security deposit plus \$725.00 as the pet deposit.

A move in condition inspection report form was completed in the presence of both parties and signed by both parties on July 2, 2012. The move out condition report form was not completed or signed in the presence of the Tenant.

On May 26, 2015 the Tenant served the Landlords with her notice to end tenancy listing an effective date of June 30, 2015. The Tenant's notice to end tenancy included the Tenant's forwarding address.

The rental unit was described as a townhouse which has been owned by the Landlords since 2006. The town house was new when purchased by the Landlords who occupied the townhouse until June 2012, just prior to this tenancy. The Landlords had painted the townhouse in 2010.

The Landlords testified that they had originally scheduled the move out inspection to be completed on June 30, 2015 at 1:00 p.m. The Landlords received messages from the

Tenant stating that she needed more time to finish cleaning so they mutually agreed to move the inspection to July 1, 2015 at 1:00 p.m.

The Landlords arrived at the rental unit on July 1, 2015 at 1:00 p.m. At that time the Tenant's friend was cleaning behind the fridge. The Landlords stated they noticed that the Tenant had not completed the repair work as previously agreed, such as completing the touch up painting to the walls. The walls still had putty on them which was not sanded. The Landlords alleged that the Tenant went overboard in putting putty on every wall making the house so it would not show well to prospective buyers.

The Landlord stated the Tenant had asked her if she wanted the Tenant to show her the minor repairs that still needed to be done. They walked around the rental unit as the Tenant pointed out the laundry room door, the damaged weather stripping, and the pieces that needed to be put back on the fireplace. The Landlords submitted that after the quick walk around they went outside and waited until 1:50 p.m. which is when the Tenant took her remaining items and left.

The Landlords submitted that they had listed their house for sale and had arranged for several showings to prospective buyers on July 1, 2015 starting at 2:00 p.m. They said that is why they were not happy that the Tenant had not completed the repairs and painting. They accepted an offer on the house sometime in mid-August 2015.

The Landlords stated that at around 3:00 p.m. on July 1, 2015 they asked the Tenant to come back to the rental unit later that day to conduct the move out inspection together. They said they received an email from the Tenant at 4:30 p.m. stating she did not have time to return to the rental unit to do the move out.

The Landlords' Witness (the Witness) testified that on June 23, 2015 at 5:00 p.m. he met with the Landlords at the rental unit to conduct an inspection. The Tenants were present while they walked through the rental unit. The Witness stated that he said the unit was in good condition so as not to upset the Tenants.

The Witness stated that he had found deficiencies such as cosmetic things like: the laundry door was off; the fire place knobs were not on; paint chips; and markings where the Tenants had patched or put putty on the walls. The putty was not sanded and was not painted.

The Witness submitted that he had heard from the Landlords that the Tenants had agreed to fix the deficiencies. The Witness said that on July 1, 2015 shortly after 1:00 p.m. the Landlord called him to advise that the Tenant had not fixed the damages.

The Tenant questioned the Witness as to who was present during his visit on June 23, 2015. The Witness then clarified his submission stating the Tenant's teenage children were present on June 23, 2015 and not the Tenant.

The Landlords claimed for monetary compensation of \$1,841.50 which was comprised of the following items:

- 1) \$157.50 for damage to the carpet
- 2) \$1,200.00 to sand the putty and paint the walls. The Landlords testified that the painters told them that they could not paint only the patchwork areas as it would leave visible marks because the paint on the walls was older so the entire walls needed to be painted.
- 3) \$200.00 for cleaning costs as it took the Landlords 8 hours to clean the blinds, windows, and door tracks on July 4, 2015.
- 4) \$70.55 for the purchase of a new laundry room bi-fold door
- 5) \$54.45 for the Landlords' labour costs to paint and install the new bi-fold door. The Landlords argued that their time to repair the damage caused by the Tenant should be paid by the Tenant.
- 6) \$15.61 to purchase new weather stripping for the garage door and the front door
- 7) \$18.39 for the Landlord's labour costs to install the weather stripping; again the Landlords argued the repairs were required due to the Tenant's pets so their time should be compensated.
- 8) \$25.00 for the Landlord's labour costs to install the parts to the fireplace which had fallen off during the tenancy. The Landlord did the work so they time should be paid for.
- 9) \$100.00 for the cost to replace damaged window screens.

Upon review of the aforementioned items being claimed, the Tenant testified that she agreed to pay for the following items and amounts as claimed: item (1) \$157.50 + item (4) \$70.55 + item (6) \$15.61 + item (9) \$100.00 for a total amount of **\$343.66**.

The Tenant also agreed to pay for cleaning costs claimed in item (3) above; however, she did not agree to the amount of \$200.00. Rather, she agreed to pay for \$70.00 worth of cleaning based on 2 hours charged at \$35.00 per hour. The Tenant argued that she had been cleaning the rental unit on July 1, 2015 when the Landlords appeared and told her to stop cleaning and leave. She argued that she did not want to leave before finishing the cleaning and they told her it was fine, just leave. She submitted that there was only about two hours of cleaning that was left to be done.

The Tenant confirmed that she had originally agreed to paint the walls; however, she ran out of time. She argued that she found out that painting was not a tenant's responsibility and that she had done what was required by putting putty on the holes.

She asserted that there was not an excessive amount of putty on the walls. Rather, she simply put putty on the nail holes from hanging pictures and marks which resulted from normal wear and tear after a 3 year tenancy; as shown in the photographs.

The Tenant testified that prior to leaving on July 1, 2015 she asked the Landlord if she wanted the Tenant to walk around and show her what needed to be done. She argued that they did a quick walk through and she showed the Landlord several items such as the weather stripping and the laundry door. Then they went to the fire place where the Tenant said she had several items placed on top of the fireplace for the Landlords. The Tenant stated that she had left the receipt for carpet cleaning; receipts for the putty; her front door keys; the mailbox key; and the pieces that had fallen off the fireplace. The Tenant submitted that the only thing that she had previously agreed to do that did not get done was the touch up painting of the walls. The Tenant argued that the Landlords knew she had returned her keys, as left on the fireplace, and that she had not intended on returning to the rental unit.

The Tenant argued that she should not have to pay for the Landlords' labour costs in repairing their own property. The Tenant asserted that when things broke during the tenancy the Landlords would attend the rental unit and repair the item without charging her for their labour.

The Tenant's Witness #1 testified that she was at the rental unit on the day the Tenant was moving out. She stated that the male Landlord assisted her in loading some furniture and when they went out of the house the male Landlord told her that he was "so bleeping angry he just wanted [Tenant's name] out of the house".

The Tenant's Witness # 2 testified that she was assisting the Tenant with cleaning the rental unit on July 1, 2015 and she also took photos of the rental unit on that day. She submitted that she had answered the door and let a real estate agent into the unit who walked through the rental unit. She said that real estate agent told her he thought the rental unit looked really clean and even offered her a job to clean for him.

Witness # 2 submitted that when the Landlords attended the rental unit they had a clipboard with them that she saw when she was putting things in the car. She stated that shortly after she put stuff in her car the Tenant told her that she was asked to leave before they finished cleaning. She confirmed that most of the rental unit had been cleaned except for the bathroom in the master bedroom. She also confirmed that the Tenant had patched the walls with putty.

The Landlords stated that they had requested that the Tenant stop cleaning and leave. They confirmed that the Tenant had voiced concerns about leaving prior to finishing the cleaning and they did tell her it would be fine. They argued that they had to request that she leave because they had scheduled three real estate showings starting from 2:00 p.m. that day.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the Tenant ended her tenancy in accordance with section 45(1) of the *Act* when she served the Landlords on May 26, 2015 with her notice to end her tenancy effective June 30, 2015. It was undisputed that the Tenant also served the Landlords with her forwarding address in writing on May 26, 2015.

### **Landlords' Application**

Section 35(1) of the *Act* stipulates the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

In this case the parties mutually agreed to conduct the inspection on June 30, 2015 at 1:00 p.m. When the Tenant was not finished the cleaning the parties mutually agreed to post pone the inspection until July 1, 2015 at 1:00 p.m.

Section 35(3) of the *Act* provides that the landlord must complete a condition inspection report in accordance with the regulations.

Section 36(2)(c) of the *Act* provides that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

After careful consideration of the evidence before me I find that the Landlords complied with section 35 of the *Act* by first scheduling the move out inspection on June 30, 2015 at 1:00 p.m. and then mutually agreed to conduct the inspection on July 1, 2015 at 1:00 p.m. after the Tenant requested the extension.

The undisputed evidence was the Landlords attended the rental unit on July 1, 2015 at 1:00 p.m. as scheduled. However, the Landlords did not complete the move out condition report form as scheduled. Rather, they left the Tenant inside the rental unit to continue cleaning until approximately 1:50 p.m., while they waited outside. The Landlords did however, walk around the unit quickly, at the Tenant's request, while the Tenant showed them the repairs that remained incomplete and showed them where she had left her keys and receipts for cleaning and materials. The Tenant then left the rental unit at the Landlords' insistence.

Notwithstanding the Landlords' submission that they had scheduled real estate showings of the rental unit beginning at 2:00 p.m. on July 1, 2015, there was insufficient evidence to prove the Landlords were prevented from completing the move out condition report form at the scheduled time of 1:00 p.m. Rather, the undisputed evidence was the Landlords simply did not complete the form at the scheduled time and left the Tenant in the unit for another 45 to 50 minutes while they stood outside.

I do not accept the Landlords' submission that it was the Tenant who failed to complete the inspection when the Tenant refused to return to the rental unit to conduct the inspection after several real estate agents and prospective buyers had unlimited access to the rental unit. Rather, I find that the Landlords regained full possession of the rental unit at approximately 1:50 p.m. once the Tenant left the rental unit at the Landlords' insistence.

Based on the above, I find the Landlords breached section 35(3) of the *Act* when they failed to complete the move out condition form in the presence of the Tenant as scheduled for 1:00 p.m. on July 1, 2015.

Therefore, the Landlords extinguished their rights to file a claim against the security and pet deposits, pursuant to section 36(2)(c) of the *Act*. Accordingly, the Landlords were required to return both the security and pet deposits to the Tenant, in full, no later than July 15, 2015, 15 days after the tenancy ended.

Although I found the Landlords extinguished their right to retain the deposits and file a claim against them; that does not prevent the Landlords from filing an application for damage or loss in accordance with section 7 of the *Act*.

The Landlord's sought \$1,841.50 which was comprised of nine items. The Tenant agreed to compensate the Landlords for the following damages: damage to the carpet \$157.50; a new bi-fold door \$70.55; new weather stripping \$15.61; and windows screens for \$100.00 for a total amount of **\$343.66**.

Residential Tenancy Policy Guideline 1 provides, in part, that most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

Policy Guideline 1 further states that the tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

I agree with Policy Guideline 1 and find based on the photographic evidence before me that the Tenant did not have an excessive amount of nail holes in the walls for a 3 year tenancy. I further accept that there was not excessive or intentional damage caused to the walls. Rather, I accept the Tenant's submission that the walls suffered nicks due to normal wear and tear in a home that had been occupied by a family for over three years.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

Policy Guideline 40 provides that the normal useful life of interior paint is 4 years, which I agree with. The paint in this rental unit was over five years old as the evidence indicated the walls were last painted in 2010. In addition, the Landlords provided adverse evidence that the painters told them that the paint on the walls was too old to be able to do touch up painting and required every wall to be fully repainted.

Based on the above, I find the Landlords submitted insufficient evidence to prove the Tenant was required to pay \$1,200.00 to prepare and repaint all of the walls. I make this finding in part because the paint on the wall had exceeded its normal useful life and the depreciate value was nil. Furthermore, it was not the Tenant's responsibility to repaint the walls; rather, she exceeded her responsibility pursuant to Policy Guideline 1. Accordingly, I dismiss the claim for painting, without leave to reapply.



Regarding the claim for \$200.00 in cleaning costs; I favored the Tenant's submission that there was only two hours of regular end of tenancy cleaning remaining at the time the Tenant was asked to leave, based on the photographic evidence that was before me. Accordingly, I grant the claim for cleaning costs in the amount of **\$70.00**, pursuant to section 67 of the *Act*.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline 1 provides that normal wear and tear or reasonable wear and tear means the reasonable use of the rental unit by the tenant and the ordinary operation of natural forces. An example of normal wear and tear would be gradual deterioration of the paint finish on a wall that would occur from reasonable washing or a minor deterioration of the finish on wood flooring caused by normal walking or cleaning. A scratch or dent caused by something being dragged across a floor or counter is not considered normal wear and tear as this is not the intended or reasonable use of the item.

I accept the Landlords' evidence that the laundry room door and the weather stripping were damaged due to actions of the Tenant, her pets, or by other occupants during the tenancy and were not repaired as required by section 37 of the *Act*. I do not accept the Tenant's submissions that the aforementioned damages were normal wear and tear. I find the Landlords' request for labour costs to repair those items to be reasonable given my experiences. Therefore, I grant the requests for labour costs of \$54.45 to paint and install the laundry room door plus \$18.39 to install the weather stripping for a total award of **\$72.84**, pursuant to section 67 of the *Act*.

Upon review of the evidence regarding the parts which fell off the fireplace and needed to be re-installed, I accept the Tenant's submission that those items simply fell off during normal repeated use of the fireplace. Therefore, I find the fire replace repairs to be considered normal wear and tear. Accordingly, I dismiss the Landlords' request for \$25.00 labour costs to re-install the parts to the fireplace, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have partially succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Based on the above, the Landlords have been granted monetary compensation for a total amount of **\$536.50** (\$343.66 + \$70.00 + \$72.84 + \$50.00).

### **Tenant's Application**

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

As indicated above, the Landlords were served the Tenant's forwarding address on May 26, 2015 and the tenancy ended June 30, 2015. In addition, I found that the Landlords extinguished their rights to file a claim against the security and pet deposits, pursuant to section 36(2)(c) of the *Act* and the Landlords were required to return both the security and pet deposits to the Tenant, in full, no later than July 15, 2015.

The Landlords did not return the \$725.00 security deposit or the \$725.00 pet deposit.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenant has succeeded in proving the merits of her application. Accordingly, grant her claim for the return of double her security and pet deposits plus interest in the amount of **\$2,900.00** (2 x \$725.00 + 2 x \$725.00 + \$0.00 interest), **pursuant to section 67 of the Act.**

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

The Tenant has been granted monetary compensation for a total amount of **\$2,950.00** (\$2,900.00 + \$50.00).

## Monetary Order

I find that these monetary claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Tenant's Monetary Award	\$2,950.00
<b>LESS: Landlords' Monetary Award</b>	<u>-536.50</u>
<b>Offset amount due to the Tenant</b>	<b><u>\$2,413.50</u></b>

The Tenant has been issued a Monetary Order for **\$2,413.50** which must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

## Conclusion

The Landlords were partially successful with their application and were granted monetary compensation of \$536.50. The Tenant was successful with her application and was granted monetary compensation of \$2,950.00. The monetary awards were offset against each other which left a balance owed to the Tenant of **\$2,413.50**.

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: January 22, 2016

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Residential Tenancy Branch

