



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for damage to the units, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords and both tenants attended the hearing, and the parties provided evidentiary material in advance of the hearing. Both landlords and both tenants gave affirmed testimony and the parties were given the opportunity to question each other respecting the evidence and testimony given, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for cleaning, painting and bulb replacement?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first landlord** testified that this fixed term tenancy began on September 1, 2011, was renewed from time-to-time and expired on June 30, 2015 thereafter reverting to a month-to-month tenancy. The tenants vacated the rental unit on May 31, 2015, however one of the tenants actually moved out sometime in January, 2015. Rent in the amount of \$1,045.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears to the end of May, 2015. The parties also had an agreement that during the summer months rent was \$2,750.00 per month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 and no pet damage deposit was collected. The parties had an agreement with respect to an amount of the security deposit that would be applied to unpaid utilities, and the balance was returned to the tenants. The rental unit is a lake-front home, single family dwelling, and a copy of the tenancy agreement has been provided.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$336.00 for the cost of repairing a bathroom floor tile;
- \$5.98 for purchase of the new bathroom floor tile;
- \$40.00 for carpet and floor cleaning at 2 hours;
- \$20.00 for window cover cleaning at 1 hour;
- \$260.00 for window cleaning at 13 hours;
- \$70.00 for appliance cleaning at 3 hours;
- \$30.00 for nail hole repairs at 1.5 hours;
- \$200.00 for ceiling re-painting at 10 hours;
- \$80.00 for baseboard and door trim cleaning at 4 hours;
- \$62.17 for light cleaning and replacement at 1.5 hours, including \$32.47 for bulbs;
- \$60.00 for kitchen cabinet cleaning at 3 hours;
- \$20.00 for property maintenance at 1 hour;
- for a total claim of \$1,174.45. The landlord testified that the \$20.00 claim for property maintenance is withdrawn.

No move-in condition inspection report was completed by the parties at the beginning of the tenancy and a move-out condition inspection report was not completed at the end of the tenancy. However the landlords gave the tenant who remained in the rental unit at the end of the tenancy opportunities to discuss an inspection. Before the tenant left she advised she wouldn't be available except for a couple of days near the end of the month. When the parties went to do the final inspection, the tenant became very upset, angry, resentful and accusatory so the landlords didn't pursue it. Then the landlords did some cleaning and discovered while wiping white trim that the upper level was covered with a black film throughout. The lower level of the house has a wood stove. The landlords claim the time it took to clean the rental unit as set out in the Monetary Order Worksheet. Substantial time and effort was spent by the landlords cleaning significant amount of soot/smoke/film damage on all walls, trim, ceilings, and appliances throughout upper level. The

tenant suggested to the landlords that the film came from the stove because the landlords didn't have the chimney cleaned, however the wood stove was a new EPA Approved advanced combustion stove which burns very clean, and the tenant was given instructions on how to light it to ensure no smoke would enter back into the house. The tenants didn't mention smoke damage at any time during the tenancy, and there was no smoke damage in the stove area.

With respect to the bathroom floor tile, the landlords obtained a quote for the labor to repair the broken tile which was between \$250.00 and \$350.00, plus tax. The landlords did the work themselves and claim the mid-quote range of \$300.00 for the labor involved as well as \$5.98 for the cost of purchasing the replacement tile.

The landlord also acknowledged that the tenants advised during the tenancy that the windows were leaking.

**The second landlord** testified that the landlords were away for a few months in the winter returning in April, 2015 and didn't know anything about the broken tile. On May 23, 2015 the landlord was in lower level of the house changing filters and noticed mold and mildew starting in the shower and mentioned it to one of the tenants, and followed up with an email warning the tenants to keep an eye on it. On May 26 the tenant responded saying she accidentally broke a tile trying to clean up mold. The landlords were left with the task of trying to get it repaired at the 11<sup>th</sup> hour for new a new tenant who was arriving June 1. The tenant gave the landlords permission to go in and do it, which turned into major job requiring drilling out the broken tile without damaging other tiles. Had the tenant told the landlords earlier, it would have been done prior.

**The first tenant** testified that between September, 2011 and January, 2015 the tenants lived at the rental unit together, then separated and the other tenant moved out.

On move-in day the parties walked through the rental unit together, but no report was made and no issues were reported. On May 29, 2015 the tenant completed a final walk-through with both landlords. The tenant did a thorough cleaning of the fridge, bathroom, floors, dusting and took time to ensure the condition of the rental unit was good. During that walk-through there was no mention by the landlords of any issues.

On June 3, 2015 the tenant received an email from the landlord saying that the security deposit would be withheld due to concerns and a condition inspection report was attached. The tenant disagrees with the report and testified that at the walk-through the parties didn't check for mold or mildew, nor is there any proof that anything wasn't there at the beginning of the tenancy. The tenants didn't smoke and never had guests in the rental unit who smoked. The tenant lived there for 4 years and cleaned regularly, and feels the landlords are trying to claim a house in a new and pristine condition.

**The second tenant** testified that there were pictures hanging on the walls when the tenants moved in, so there were already nail holes in the walls. Further, there is no such thing as “forever silicone” and the silicone in the shower would have been 8 or 9 years old and needs to be replaced as part of maintenance and part of owning a house. The shower is not due to neglect by the tenants.

The tenants have also provided a print-out of a reference from a website entitled “How to Remove Creosote From Drywall” which states that the cleaning is not impossible, but depending on how long the stains have been there, it could take some scrubbing. The reference also states that creosote is a dark, greasy and highly flammable by product of wood-burning appliances which can be removed from inside the chimney as part of a yearly maintenance call.

The tenants’ evidentiary material also suggests that the landlords did not afford the tenants with an opportunity to have the tile repaired.

### Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party’s failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate, or reduce such damage or loss.

The *Residential Tenancy Act* requires a landlord to ensure that move-in and move-out condition inspection reports are completed and the regulations go into great detail of how that is to happen. The *Act* also states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In the absence of any such evidence, the claim for damages is difficult to prove. Further, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of a tenancy except for normal wear and tear. A tenant is not required to leave a rental unit in a pristine condition that a landlord would prefer for future tenancies; that is the landlords’ responsibility.

The landlord testified that during the move-out condition inspection the tenant became agitated and refused to continue to participate. The tenant didn’t dispute that, and I find that had the tenant participated, a number of issues could have been resolved.

I have reviewed the evidentiary material provided by the parties, including the photographs, and note that the wood burning stove is included in the rent with some fire-wood included, and states that the wood used must be appropriately seasoned (dry firewood). The tenants resided

in the rental unit for nearly 4 years, and I refer to Residential Tenancy Branch Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises which states that a landlord's responsibility is to clean and maintain the chimney at regular intervals and the tenant's responsibility is to clean the fireplace at the end of the tenancy if it has been used. In this case, there is no evidence that the landlords had the chimney maintained at any time in 4 years or that the tenants failed to clean the fireplace. The landlord testified that the wood stove was an approved low smoke emitting stove, however I do not accept that neglecting to have the chimney cleaned in 4 years is acceptable.

I also refer to Residential Tenancy Branch Policy Guideline #40. Useful Life of Building Elements which sets out a standard for the useful life of certain elements commonly found in a rental unit. That document sets the useful life of interior painting at 4 years. Any award for damages must not put the landlords in a better financial situation than they would be if the damage hadn't occurred, and I find that the landlords are responsible for painting at any rate, and the landlords' claim for painting cannot succeed. Therefore I dismiss the landlords' claims for \$30.00 for nail-hole repairs, \$200.00 for ceiling repainting and \$80.00 for baseboard and trim cleaning.

With respect to the landlords' claim for cleaning window coverings, windows, and appliances, I find that those are items that are the responsibility of the tenant. The photographs clearly show a lack of reasonable cleanliness. Similarly, a tenant is expected to have carpets cleaned at the end of a tenancy if the tenancy lasted more than a year. The landlords have claimed \$20.00 per hour and have provided an estimate of the time spent doing the work themselves. I accept that the landlords should be permitted to do so, and I find that the hours claimed for each of those items except for window cleaning is reasonable. A tenant is not expected to clean outside windows at the end of a tenancy and I find that the 13 hours claimed is excessive and may also include outside windows. The landlord also agreed that the windows leaked, however the tenant ought to have wiped down the frames from time to time, which is not evident in the photographs. I accept \$130.00 for window cleaning, as well as the claims of \$40.00 for carpet cleaning, \$20.00 for window cover cleaning, \$70.00 for appliance cleaning, \$60.00 for kitchen and cabinet cleaning. A tenant is also expected to replace burned out bulbs and clean light fixtures, and I accept the landlords' claim of \$62.17.

With respect to the landlords' claim for the repair and purchase of new bathroom tile, the tenant claimed that it broke while cleaning mold and mildew. Policy Guideline #40 puts the useful life of such tile at 10 years. I accept that the tile wasn't broken at the beginning of the tenancy, and considering the quote received by the landlord of \$341.98 (\$336.00 + \$5.98), I reduce that amount by a pro-rated amount of years remaining on the life of the tile:  $\$341.98 / 10 = \$34.20 \times 6 = \$205.19$ .

The landlord testified that the \$20.00 claim for property maintenance is withdrawn.

With respect to the landlords' application for an order permitting the landlords to keep the security deposit, the parties agree that the utilities were paid out of that money by consent and

the landlords returned the balance to the tenants. Therefore, I dismiss that portion of the application.

In summary, I find that the landlords have established the claims of \$40.00 for carpet cleaning, \$20.00 for window cover cleaning, \$70.00 for appliance cleaning, \$60.00 for kitchen and cabinet cleaning, \$130.00 for window cleaning, \$62.17 for bulbs and cleaning light fixtures, and \$205.19 for the broken tile, for a total of \$587.36. Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$637.36.

This order is final and binding and may be enforced.

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: February 05, 2016

---

Residential Tenancy Branch

