



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SCOTT & JAS RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1123 in order to enable the tenants to connect with this teleconference hearing scheduled for 1100. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent RL (the agent) provided testimony in support of the landlord's application.

### Preliminary Issue – Service

The agent testified that the landlord served the tenants with the dispute resolution package on 23 March 2016 by registered mail. The landlord provided me with Canada Post tracking numbers that showed the same. The mailing to the tenant XS was delivered to XS. The mailing to the tenant AT was returned as AT failed to collect it.

The agent testified that the landlord served the landlord's additional evidence and amendment to the tenants by registered mail on 6 April 2016. The agent testified that these mailings were sent to the forwarding address provided by the tenants. The

landlord provided me with Canada Post tracking numbers that set out the same. These mailings were returned to the landlord as they went unclaimed by the tenants.

*Residential Tenancy Policy Guideline, “12. Service Provisions”* sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 88, 89(1) and 90 of the Act, the tenants were deemed served with the dispute resolution package on 28 March 2016 and the additional evidence and amendment on 11 April 2016.

#### Preliminary Issue – Amendments

The landlord submitted an amendment to its application on 6 April 2016. The amendment sought to add additional amounts to the monetary order sought to cover damages and losses incurred by the landlord that were discovered when the tenants vacated the rental unit.

The agent inadvertently included his own name as an applicant when it was his intent to act as an agent only. The agent asked to amend the application to remove his name as an applicant and leave only the corporate landlord.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

The landlord duly served the tenants with the amendment. On this basis, I find that there is no undue prejudice to the tenants in permitting the landlord's amendment as the tenants were provided with adequate notice of the amendment.

As there is no prejudice to the tenants in removing the agent's name from the style of cause, that amendment is allowed. The amendment is reflected in the style of cause to this decision.

### Preliminary Issue – Evidence After Hearing

The landlord neglected to send the addendum rules to the tenancy agreement.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. As the tenants were provided with a copy of these rules in the course of the tenancy, there is no undue prejudice to the tenants by my acceptance of the agreement after the hearing. I ordered that the landlord submit the tenancy agreement by fax. I received the addendum.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 October 2015. The tenancy ended 28 March 2016 when the tenant vacated the rental unit. Monthly rent in the amount of \$850.00 was due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$425.00, which was collected at the beginning of the tenancy.

The tenants did not pay rent due 1 March 2016. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice). The tenants paid \$425.00 towards March's rent on 12 March 2016. The agent testified that he was not aware of any reason that would entitle the tenants to deduct any amount from rent. The agent testified that there are no prior orders of this Branch in respect of this tenancy. The agent testified that the tenants did not provide any receipts for emergency repairs.

The agent testified that the tenants did not do a thorough cleaning at the end of the tenancy. The agent testified that the rental unit was not filthy, but that it did not look like a real effort had been made to clean it. The agent testified that the landlord cleaned the rental unit to prepare it for occupancy by the next tenants. The landlord provided an invoice for its work. The invoice documents 5.5 hours of cleaning were completed. The landlord charges an hourly rate of \$18.00. The total charge for this cleaning was \$99.00.

The addendum to the tenancy agreement provides at clause 19 that the carpets would be professionally cleaned at the end of the tenancy. The agent testified that the carpets were not clean at the end of the tenancy. The agent testified that the tenants had children and that the carpets were soiled. The landlord provided an invoice for carpet cleaning. The landlord provided a receipt in the amount of \$150.00 for the cost of carpet cleaning.

The agent testified that the tenants installed their own washer and dryer. The agent testified that the tenants caused water damage to a large section of drywall behind the washer and dryer. The agent believes that the tenants did not tighten the water attachment correctly and that water dripped over the course of the tenancy to cause the damage. The agent testified that the tenants never reported any leak or flood to the landlord. The agent testified that the tenants caused damage to the walls. The landlord provided photographs showing graffiti and paint on walls. The agent testified that the tenants caused damage to the patio door locking mechanism and screen. The landlord provided an invoice for the repairs dated 31 March 2016 in the amount of \$396.38.

I was provided with copies of the condition inspection reports created at the beginning and end of tenancy. The reports note the same complaints to which the agent testified.

The landlord claims for \$1,070.38:

<b>Item</b>	<b>Amount</b>
Unpaid March Rent	\$425.00
Cleaning	99.00
Carpet Cleaning	150.00
Repairs	396.38
<b>Total Monetary Order Sought</b>	<b>\$1,070.38</b>

## Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants owed rent in the amount of \$850.00 on 1 March 2016. The tenants have paid \$425.00 towards this amount. There is no evidence submitted that indicates that the tenants were entitled to deduct any amount from rent. On this basis, the landlord has proven its entitlement to the rent arrears totaling \$425.00.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord testified that the tenants had not cleaned the rental unit at the end of the tenancy. The agent testified that while the unit was not filthy, no real effort to clean the rental unit had been made. On the basis of the uncontested evidence of the landlord, I

find that the tenants breached subsection 37(2) of the Act by failing to clean the rental unit. The landlord incurred losses in the amount of \$99.00 as a result of the tenants' failure to clean the rental unit. The landlord has provided a detailed ledger establishing the amount of time spent cleaning the rental unit. On this basis, I find that the landlord is entitled to compensation in the amount of \$99.00 for the tenants' breach of the Act.

The tenants and landlord agreed in the tenancy agreement that the carpets will be professionally cleaned at the end of the tenancy. Further, the uncontested evidence of the landlord is that the carpets were soiled at the end of the tenancy. Accordingly, the tenants were responsible for cleaning the carpets pursuant to subsection 37(2) of the Act and the tenancy agreement. By failing to clean the carpets the tenants caused the landlord to incur the costs of cleaning the carpets. The landlord provided me with a receipt for carpet cleaning in the amount of \$150.00. I find that the landlord is entitled to recover this amount from the tenants.

The landlord provided evidence that the tenants damaged a screen door and walls. The uncontested evidence before me indicates that the tenants caused this damage through their actions or neglect. On the basis of this evidence, I find that by failing to repair this damage prior to the end of the tenancy the tenants breached subsection 37(2) of the Act. The landlord has shown that as a result of the tenants' breach the landlord incurred costs of repairs. The landlord provided a receipt from a contractor who completed the repair showing a total outlay in the amount of \$396.38. I find that the landlord has proven its entitlement to this amount.

The landlord applied to keep the tenants' security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$745.38 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid March Rent	\$425.00
Cleaning	99.00
Carpet Cleaning	150.00
Repairs	396.38
Offset Security Deposit Amount	-425.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$745.38</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 06, 2016

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Residential Tenancy Branch