



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

MND, MNR, MNSD, FF (Landlord's Application)  
MNSD, MNDC, FF (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on March 4, 2016 and by the Tenants on June 16, 2016.

The Landlord applied for a Monetary Order for: unpaid utilities; damage to the rental unit; to keep the Tenants' security and pet damage deposits, and to recover the filing fee. The Tenants applied for: the return of their security and pet damage deposits; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee.

The Landlord and the Tenants appeared for the hearing. However, only the male Tenant and the Landlord provided affirmed testimony. Both parties confirmed receipt of each other's Application and each other's evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Preliminary Issues

The Landlord and the Tenants had both applied to deal with the issue of unpaid utilities in this tenancy. The proceedings started by hearing evidence from both parties on this matter. However, after a short discussion with the parties, the parties agreed that the amount of utilities owed by the Tenants up until the end of the tenancy on February 29, 2016 was \$155.00. The parties confirmed their agreement to this amount in the hearing.

However, the parties were unable to reach mutual resolution in the matter pertaining to the Landlords' claim for damages to the rental unit and the Tenants' allegation regarding loss of peaceful and quiet enjoyment of the rental unit. Therefore, I turned my mind to the evidence provided by both parties which is summarized as follows.

Issue(s) to be Decided

- Is the Landlord entitled to damages and cleaning costs for this tenancy?
- Are the Tenants entitled to two months of rent as monetary compensation?
- What is to happen to the Tenants' security and pet damage deposits?

Background and Evidence

Both parties agreed that this tenancy for the basement suite of a residential home started on August 1, 2015 on a month to month basis. A written tenancy agreement was completed and rent was established at \$1,100.00 payable by the Tenants on the first day of each month.

The Tenants paid the Landlord \$550.00 as a security deposit and \$550.00 as a pet damage deposit, both of which are herein referred to in this decision as the "Deposits". Although the Landlord has sent the Tenants a cheque for a portion of the Deposits she was not claiming, the parties confirmed that this cheque had not been received or cashed by the Tenants. Therefore, the Landlord still retains the full amount of \$1,100.00 in the Tenants' Deposits.

The parties confirmed that a move-in Condition Inspection Report ("CIR") had been completed on August 1, 2015. The tenancy ended when the Tenants provided written notice to the Landlord that the tenancy was to end on February 29, 2016. On February 28, 2016 a move-out CIR was completed by the parties and the CIR was provided into evidence. The Tenants provided their forwarding address on the move-out CIR.

The Landlord testified that the Tenants had cat(s) and failed to clean the carpets in the rental unit at the end of the tenancy. As a result, the Landlord seeks to claim \$174.30 from the Tenants for carpet cleaning. However, the Landlord did not provide an invoice to verify this cost. The Tenant confirmed that they had vacuumed the carpets but had not shampooed or steam cleaned it. This was because there was nothing in the tenancy agreement requiring this and the carpets had not been shampooed at the start of the tenancy.

The Landlord testified that the Tenants had failed to clean the stove top, the inside oven and the stove element bowls at the end of the tenancy. Therefore, the Landlord seeks to claim \$50.00 for the cleaning costs as verified by a quote she obtained from a cleaning company provided into evidence. The Landlord testified that the actual cost she incurred was a lot more than this. The Tenant acknowledged that they had not cleaned the oven or the stove top but submitted that they did clean the rental unit and spent a considerable amount of time doing so.

The Landlord testified that the Tenants' cat had scratched a four inch diameter hole in the carpet of the foyer area of the basement level. As a result, the Landlord seeks to recover \$157.50 from the Tenants to repair the damaged as evidenced by a receipt provided into evidence. The Tenant denied that their cat caused the damage to the carpet. The Tenant explained that the foyer area where the damage occurred was a common area which the Landlord used to access the laundry/utility room as well as a room for the Landlord's storage.

The Tenant pointed to the move-in CIR which does not even mention the foyer area and submits that this could have been there at the start of the tenancy or done by the Landlord. The Tenant confirmed that their cats had free access from the rental unit to go to the utility room from the rental unit, via the common foyer area, to go to the toilet. The Tenant also confirmed that he had not noticed the damage to the carpet at the start of the tenancy.

The Landlord testified that she did not cause the damage to the carpet and when she pointed this out to the female Tenant at the end of the tenancy, the Tenants explained that this was normal wear and tear and documented this on the move-out CIR as "normal wear + tear". The Tenant rebutted this and stated that this was in reference to the general state of the carpet as the Landlord was also pointing to other damage which was wear and tear.

The Tenants were then asked to present their monetary claim. The Tenants confirmed that in addition to seeking the return of their Deposits, they also seek two months of rent paid for the last two months of the tenancy because the Landlord prevented them from having peaceful and quiet enjoyment of the property.

The Tenant testified that in January 2016, they purchased a new vehicle and then made efforts to sell one of the two old ones they had. The Tenant testified that the car for sale remained on the property until it was sold but the Landlord began sending text messages asking them to move it in a threatening tone. The Tenant testified that the Landlord threatened them that if they did not sell and remove it, she would start charging them storage fees. The Tenant testified that the Landlord sent them a number of text messages which were aggressive in nature. There were provided into evidence.

The Tenant testified that the Landlord entered their rental unit illegally on two separate occasions. The first one occurred in the middle of January 2016 when the Tenants came home to find a package which the Landlord had left for them in the rental unit.

The second occasion was at the end of January 2016 when the Tenants noticed that a strip of paper which they had left in the door, because they suspected the Landlord was entering their rental unit, had been moved which led them to conclude that the Landlord had entered their rental unit. The Tenant testified that this created an unsafe environment for them to live in. The Tenant confirmed that they had not addressed the issue of the illegal entries into their rental unit with the Landlord in writing but that the Landlord had verbally admitted that she had entered the rental unit.

The Landlord denied the Tenant's testimony and stated that at no time had she entered the rental unit. The Landlord testified that she left a package for the Tenants that had been delivered to the house and that this was left in the foyer to which she had free access to. The Landlord testified that on previous occasions she had given written notice to enter the foyer area of the residential home but she did this as a courtesy to the Tenants which she stopped doing after the relationship deteriorated between them.

The Landlord dined that she had threatened the Tenants. The Landlord testified that the Tenants had an excessive amount of vehicles on the property that what was allowed by the tenancy agreement and that she was simply addressing this with the Tenants through her text messages with them.

### Analysis

In relation to the Landlord's Application to keep the Tenants' Deposits, I find the Landlord made the Application within the 15 day time limit set out by Section 38(1) of the Act after the tenancy ended and the Tenants had provided their forwarding address. As a result, I first determine the Landlord's Application for damage to the rental unit.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged when they vacate the rental suite. In addition, Section 21 of the *Residential Tenancy Regulation* states that a CIR can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary.

In relation to the Landlord's claim for carpet cleaning, I turn to Policy Guideline 1 to the Act which details the responsibility of both the landlord and a tenant for residential premises. In relation to carpets, the guideline explains that a tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of the tenancy, if the tenant has had pets which were not caged. Therefore, based on the foregoing, I find the Tenants had cats which were not caged and free to go from the rental unit to the laundry room via the foyer. As a result, the Tenants were required to steam clean or shampoo the carpets at the end the tenancy which they did not do.

The Landlord claimed \$174.30 for the cost of having the carpets shampooed by a professional carpet cleaning company. However, the Landlord failed to provide an invoice for this cost to verify the amount being claimed. Therefore, I turn to Policy Guideline 16 to the Act which explains claims for damages. This guideline explains that a nominal amount maybe awarded where a significant loss cannot be proven but there is an affirmation that there has been an infraction of a legal right. Because I find the Tenants were required to shampoo or steam clean the carpets at the end of the tenancy but the Landlord could not verify the cost of doing so, I find the Landlord is entitled to a minimum reduced award of \$100.00 for this portion of her claim.

I find that with respect to the cleaning of the oven and stove top, the Tenants failed to comply with Section 37(2) of the Act in cleaning this at the end of the tenancy. Therefore, I find the Landlord is entitled to the \$50.00 claimed as supported by the cost estimate she provided into evidence.

In relation to the damage to the carpet, I make the following findings. I find that the foyer area was a common area because both parties had free and unrestricted access to the utility room and the storage room, both of which were accessed via the foyer area. Although the parties failed to document the state of the carpet in the foyer area on the move-in CIR, the Tenant

testified that this carpet damage was not present at the start of the tenancy. The Tenant also confirmed that their cats were free to go from the rental unit to the laundry area to visit the bathroom via the foyer area. Therefore, I find that on the balance of probabilities, the Tenants' cats caused this damage. I find it highly unlikely that the Landlord caused this damage and the Tenants failed to provide a preponderance of evidence that showed the Landlord could have caused this damage. I also find that had the Landlord caused this damage as was suggested by the Tenants, then the Tenants would have likely noticed it and brought it to the attention of the Landlord. Based on the foregoing, I find the Landlord is entitled to the \$157.50 claimed as evidenced by the receipts provided to support this amount.

As the Landlord has been successful in the majority of her monetary claim, I also award her the \$100.00 filing fee she paid to file the Application pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$562.50 (\$155.00 + \$100.00 + \$157.50 + \$50.00 + \$100.00).

In relation to the Tenants' monetary claim for loss of two months of rent, I make the following findings. I find the Tenants' evidence that the Landlord entered their rental unit is not sufficient to prove this is based on unproven assumptions. The Tenant relied heavily on oral testimony that was disputed by the Landlord and in the absence of any other corroborative evidence, such as video recordings or breach letters sent to the Landlord of the alleged illegal entries, I find the Tenants' evidence leads to one parties word against the others. Therefore, the Tenants have not met the burden of proof in this respect.

I also find the Tenants failed to provide sufficient evidence that convinces me the Landlord threatened them and caused them harassment. The Tenants explain that the tone of the Landlord's text messages constituted harassment to them. I have examined the text message evidence and I find that the parties got into a dispute about the Tenants' vehicle which became strained. However, this evidence alone does not satisfy me that the Landlord pursued a course of vexatious conduct that was intended to harm the Tenants and that would justify the return of two months' rent to the Tenants. In fact, I find the Landlord had the right to challenge the Tenants about having excessive vehicles parked at the rental unit which was contrary to the tenancy agreement. Therefore, the Tenants' Application for the return of two months of rent is dismissed.

Based on the foregoing, the Landlord is allowed to deduct \$562.50 from the Tenant's \$1,100.00 Deposits. The remaining balance of \$537.50 is to be returned to the Tenants forthwith. The Tenants are issued with a Monetary Order for the remainder of their Deposits which may be enforced through the Small Claims Court if the Landlord fails to make the above payment.

As the Tenants have not been successful in their Application and their request for the return of their Deposits was dealt with through the Landlord's Application, I deny the Tenants' request to recover their filing fee.

Conclusion

The parties mutually agreed on utilities payable by the Tenants. The Landlord has been successful in proving damages to the rental unit. The Tenants' Application is dismissed without leave to re-apply. The Landlord may keep \$562.50 from the Tenants' Deposits and must return the remaining amount of \$537.50 to the Tenants.

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: July 07, 2016

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Residential Tenancy Branch