



# Dispute Resolution Services

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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 unit, 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 tenant for the cost of the application.

The landlords both attended the hearing, one of whom gave affirmed testimony. However, the landlord testified that the tenant was personally served with the Landlord's Application for Dispute Resolution and notice of this hearing on March 14, 2016 at the tenant's place of employment. The landlord also testified that the tenant was personally served at her place of employment with the landlords' amendment to the application and additional evidence. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the hearing. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*, and the hearing commenced in the absence of the tenant.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue and unpaid utilities?
- 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 landlord** testified that this fixed term tenancy began about 3 years ago and expired. The parties entered into a new tenancy agreement on a month-to-month basis.

Rent in the amount of \$1,050.00 per month was payable under the tenancy agreement, half in advance on the last day of the month and the other half on the 15<sup>th</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing about 60 units.

The tenant failed to pay rent for the month of March, 2016 and the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant moved out in accordance with that notice, but did not tell the landlords, who reside in a different community. The landlords attended the rental unit and found the door left wide open and a mess inside. No keys that give access to the rental unit were left.

The landlord further testified that a move-in condition inspection report was completed by the parties at the commencement of the tenancy, and the landlords provided a copy. Since the tenant abandoned the rental unit, the landlords did not complete a move-out condition inspection report.

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

- \$960.00 for cleaning and painting (receipt provided);
- \$1,000.00 for replacement of the stove (receipt provided);
- \$57.18 for photographs and copying forms (receipts provided);
- \$249.12 for paint, supplies and deadbolts (receipts provided);
- \$152.80 for gasoline (receipts provided);
- \$1,050.00 for March 2016 rent;
- \$217.11 for hydro; and
- \$100.00 for recovery of the filing fee.

The landlord testified that the tenant left candle wax on virtually every wall in the rental unit and nail holes. The entire rental unit had to be cleaned, candle wax cleaned off, and nail holes filled before they could be painted.

The stove was ruined. The landlords found clear tape on the door handle, which was removed and the entire front of the door fell onto the floor. The landlords found a replacement stove which was originally more expensive and the landlords were successful in getting a discount for a whole sum of \$1,000.00 which the landlords claim as against the tenant.

The landlords had to get new locks because keys were not left by the tenant, and the landlords had to purchase the paint and pick the colors.

The landlords also claim gasoline costs due to the landlords having to travel to the rental unit several times to install the new stove, see contractors and show the rental unit. Missed work hours have not been claimed, but the landlords claim the gasoline costs.

The landlord also testified that the hydro bill was not paid by the tenant and the landlords claim \$217.11, however no bill has been provided.

The landlords have also provided photographs of the rental unit and the landlord testified that they were taken on March 12, 2016. When the landlords attended the rental unit and found the door wide open and the condition of the rental unit, they were shocked.

The tenant has not provided the landlords with a forwarding address.

### Analysis

Where a party makes a monetary claim against another party 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 such damage or loss.

I have reviewed the evidentiary material provided by the landlords, particularly the photographs and the move-in condition inspection report. In the absence of any evidence to the contrary, I accept the testimony and evidence of the landlords respecting cleaning and painting in the amount of \$960.00; \$249.12 for paint, supplies and deadbolts, and purchasing a new stove for \$1,000.00. I also accept that the landlords have not recovered rent for the month of March, being the month that the notice to end the tenancy for unpaid rent was issued, and I grant the landlords a monetary order for \$1,050.00.

The *Residential Tenancy Act* provides for recovery of the cost of making an application for dispute resolution but not for preparing for a hearing. Therefore, the landlords' claim of \$57.18 for those costs cannot succeed.

I find that gasoline costs are not recoverable, in that there is not evidence to satisfy me that the landlords used that gasoline for nothing other than issues relating to the tenancy, or that the costs were a result of the tenant's failure to comply with the *Act* or the tenancy agreement.

The landlords have not provided a copy of the hydro bill and did not provide any testimony of what period such a bill covered. Therefore, I find that the landlords have not established the test for damages.

Since the landlords have been partially successful with the application, the landlords are entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$525.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords for the difference in the amount of \$2,834.12.

### Conclusion

For the reasons set out above, I hereby order the landlords to keep \$525.00 security deposit and the \$525.00 pet damage deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,834.12.

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: July 29, 2016

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Residential Tenancy Branch