



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MND, FF

### Introduction

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

- a monetary order for damage to the rental unit, and 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;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended hearing via conference call and provided affirmed testimony. The landlords' counsel (the landlords) provided affirmed testimony that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 21, 2015. The tenants confirmed service in this manner and that the package was received on January 17, 2016. Both parties confirmed that the tenant submitted documentary evidence which the landlord received on July 11, 2016. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act, I find that both parties are deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

### Background and Evidence

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

Both parties confirmed that this tenancy began on September 1, 2011 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 1, 2011. The monthly rent was \$750.00 payable on the 1<sup>st</sup> day of each month. The monthly rent was later increased to \$800.00. A security deposit of \$375.00 was paid on August 22, 2011.

Both parties agreed that the landlord returned the \$375.00 security deposit to the tenants. Both parties confirmed that the tenancy ended on May 7, 2015.

The landlords seek a monetary claim of \$6,089.97 which consists of:

\$4,391.10	Floor Damage Repairs due to water damage
\$150.00	Wall Repairs due to holes and mold
\$410.12	Repairs of Sink/flooring due to prolonged water damage
\$338.75	Carpet Cleaning/Re-cleaning/deodorizing
\$800.00	Loss of Rental Income (June 2015)

The landlords stated that after the end of tenancy on May 7, 2016 it was found that the tenants had caused, or allowed to be caused, significant damage to the rental property through either or both negligence or willful negligence that resulted in significant and unreasonable repair costs. The tenants have disputed all of the landlords' claims.

Both parties agreed that no condition inspection reports for the move-in or the move-out were completed.

The landlords provided affirmed evidence that a noticeable leak under the kitchen sink was not reported to the landlords and was discovered after the tenants had vacated the rental premises. The landlords stated that this caused significant damage to the subfloor due to water damage over time. The landlords have referred to a general picture of the kitchen before the tenancy began and a photograph of the damaged areas after the tenancy ended. The landlords have also provided photographs of six areas (close up) showing damaged flooring, mold on windows and water stains under the stove which originated under the sink. The landlords claim that because of the neglect in reporting the noticeable leak to the landlords that this caused significant damage over time.

The tenants provided affirmed testimony that they were not aware of any wet areas. The tenants noted that stains were coming up in the carpet, but that these areas were not wet. The tenants further stated that the landlords were notified of these issues. The tenants also noted that the only leak that they were aware of was one in the laundry room.

The landlord provided affirmed evidence that there was significant mold and rot requiring the replacement of the floors in the laundry room and the hallway. The landlord also stated that this damage was not new and had been occurring over a long period of time. The landlord has referred to a general photograph of the front of the washer and dryer in comparison to the exposed subfloor. The landlord stated that the leak in the laundry room originated from the kitchen which was never reported to the landlord.

The landlord provided affirmed evidence that there was a water leak from the bathroom toilet which caused the need for the flooring and subfloor to be replaced. The landlord has referred to a general photograph of a towel bar in the bathroom in comparison to a close up photograph of the exposed subfloor where the toilet was placed.

The landlord has submitted in support of the claim copies of:

- 25 photographs of the rental unit before and after the tenancy began.

- An estimate dated July 2, 2015 to install commercial laminate in the dining room and red room and to supply and install heavy duty lino.

- An invoice dated September 6, 2015 for \$4,391.10 based upon the estimate.

- An estimate for painting the interior and exterior of the rental property.

- An invoice dated May 28, 2015 to repair interior totalling \$4,719.27.

- A bank draft dated May 28, 2015 for \$4,719.27.

- A handwritten estimate to repair flooring, trim and replace cabinet handles for \$505.00.

- A handwritten receipt dated June 10, 2015 for \$410.12 to install flooring, trim, kick plates and paint.

- 4 letters describing the condition of the rental unit before and after the tenancy began.

- An estimate to clean the carpets in rental property for \$250.00 plus tax.

- A receipt dated June 17, 2015 to steam clean the carpets, 3 bedrooms, hallway, living room and noting heavy soiling and a small carpet repair for \$288.75. (A hand notation stating a second re-clean for re surface dirt and a third to deodorize at no charge)

- The signed tenancy agreement dated September 1, 2011.

The signed addendum to the tenancy agreement dated September 1, 2011 noting the condition of the rental unit in part:

-Please note that all walls and ceilings have been freshly painted.

-Carpets cleaned as well as De-Flea and five appliances operating.

A Mobile/Manufactured Home Insurance Policy Number statement.

### .Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlords over that of the tenants in this case. I find that the landlords have provided sufficient evidence to satisfy me that the tenants caused damage to the rental unit through their neglect and failed to notify the landlords of that damage causing continued damage to occur from the same water leak. I rely on the landlords' submissions of the copy of the signed addendum to the signed tenancy agreement from the beginning of the tenancy which states,

*-Please note that all walls and ceilings have been freshly painted.*

*-Carpets cleaned as well as De-Flea and five appliances operating.*

Also, 1 of 4 signed and dated statements of a witness to the condition of rental unit who states,

*I can verify that the home was in very good condition prior to the tenants in question moving into the unit as we had painted the home top to bottom. Now 3 1/2 years later we were called to the same home to repairs and paint once again. I can say that the tenant left the home in filthy condition. The homes addition was moldy due to items stored against walls. This cause an extra expense as the mold on the walls had to be removed and covered...*

These documents refer to the condition of the rental unit before and after; the undisputed 25 photographs showing the condition of the rental unit before and after. I find that this evidence is sufficient to establish that damage was caused by the tenants and that this neglect in notifying the landlord caused further damage.

I find based upon the above noted that the landlords have established a monetary claim of \$6,089.97 as claimed. The landlords' application for a monetary order is granted.

The landlords having been successful in their application are entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlords are granted a monetary order for \$6,139.97.

This order must be served upon the tenants. Should the tenant(s) fail to comply with the order, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 22, 2016

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Residential Tenancy Branch