



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNR, MNDC, MNSD, FF  
   MNDC, MNSD, RPP, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; 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. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord return the tenants' personal property; and to recover the filing fee from the landlords.

Both landlords and both tenants attended the hearing, during which one of the tenants and both landlords gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided.

### Service

One of the tenants testified that the Landlord's Application for Dispute Resolution and evidentiary material of the landlords has not been received by the tenants. One of the landlords testified that the documents were served to the tenants by registered mail on July 13, 2016.

The parties agree that the tenants provided a forwarding address by email, a copy of which has been provided, and the landlord testified that the move-out condition inspection report was sent to that address on June 15, 2016 which was returned to sender. A copy of the returned envelope has been provided. The tenants' application was filed on June 23, 2016, and the landlords received it a short time after, which included a post office box number in the tenants' address. The email did not contain a post office box number. The landlords served the landlords' application and evidence to that post office box on July 13, 2016 by registered mail, but the mail has not yet been claimed by the tenants and is still at the post office.

The tenant testified that other mail that does not include the post office box number still gets delivered to the tenants' box number, but no documents have been received from the landlords.

I have reviewed the email provided by the tenants, which clearly does not include a post office box number, and the tenants' application does include both a street address and a post office box number. I also accept the testimony of the landlord that the move-out condition inspection report

was returned to the landlords which is addressed to the tenants at the forwarding address provided in the tenants' email.

The *Residential Tenancy Act* provides for service by registered mail, and specifies that documents served in that manner are deemed to have been served 5 days later. I accept the testimony of the landlord, and I find that the landlords have served the tenants in accordance with the *Residential Tenancy Act*.

No issues were raised by the parties with respect to service or delivery of documents or evidence of the tenants, and all evidence provided by the parties has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the deposits?
- Have the tenants established that the landlords should be ordered to return the tenants' personal property?
- Have the landlords established a monetary claim as against the tenants for unpaid utilities?
- 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 liquidated damages and storage fees?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

#### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on January 1, 2016 and was to expire on September 30, 2016, however the tenancy ended on May 31, 2016 by mutual agreement. Rent in the amount of \$1,395.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$697.50 as well as a pet damage deposit in the amount of \$200.00, both of which are still held by the landlords. The rental unit is the upper portion of a house with a basement suite, which was tenanted when the tenants moved in. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlords had completed a move-in condition inspection report prior to the tenants taking possession, in the absence of either tenant. No move-out condition inspection report was completed.

The tenants provided the landlords with a forwarding address by email on June 2, or 3, 2016, and a copy has been provided. The tenant testified that the parties had exchanged multiple emails previously. The landlords have not returned any portion of the security deposit or pet damage deposit. The Residential Tenancy Branch suggested to the tenants that double the security deposit should be claimed, and the tenants claim \$1,395.00 for the security deposit and \$200.00 for the pet damage deposit.

With respect to the tenants' application for an order that the landlords return the tenants' personal property, the tenant testified that she was under the impression that the tenants had until June 1, 2016 at noon to finish cleaning, and the tenants had left cleaning supplies and 2 vacuums in the rental unit. When the tenant returned on June 1, the landlords denied entry and refused to let the tenant retrieve the belongings. The items have a nominal value, perhaps \$100.00.

With respect to utilities, the tenant testified that the landlords had taped a hydro bill to the tenant's door at the beginning of May, but it might have blown away. The landlords provided the tenants with a second copy on May 31, 2016 along with a water bill. Utilities were 60% the responsibility of the tenants according to the tenancy agreement. The tenants' share of the hydro bill was \$82.29 and the water bill \$42.32, which the tenants agree to pay to the landlords.

**The first landlord** (PDB) testified that the landlords currently reside in the basement suite of the rental home, having moved in on April 5, 2016, and prior to the end of the tenancy.

The landlords obtained a draft of the Addendum to the tenancy agreement from professional property managers. Paragraph 22 puts the onus on the tenants to schedule a move-out condition inspection. It reads: "22) It is the tenant's responsibility to contact the landlord to schedule a time to perform a move out inspection. Keep in mind that all move outs are performed on or before the last day of the lease (1<sup>st</sup> of month) at 12:00 p.m. or before or you may be charged accordingly." The landlord tried to talk to one of the tenants about scheduling it, but the tenant walked right past and had no interest in talking to the landlord. The landlords completed the move-out condition inspection report on June 1, 2016 in the absence of the tenants, and a copy has been provided.

The landlords have provided a spreadsheet setting out the landlords claims as against the tenants, and the landlord testified that utilities are pro-rated. The claims are as follows:

- \$42.32 for a water bill;
- \$82.29 for a hydro bill;
- \$15.41 for a water bill pro-rated from May 20 to May 31, 2016;
- \$65.17 for a hydro bill pro-rated from May 4 to May 31, 2016;
- \$76.00 for late fees for non-payment of the hydro bill on time;
- \$180.00 for cleaning services;
- \$287.65 for carpet cleaning;
- \$183.75 for painting the foyer and deck;
- \$937.50 for the landlords' time and cost to move and dispose of garbage, clean the rental unit, make repairs, and rid the rental unit of ants;
- \$16.00 for photocopies;
- \$200.00 for liquidated damages, as per the tenancy agreement;

- \$90.79 for paint and roller refill;
- \$96.00 for storage fees; and
- \$100.00 as recovery of the filing fee.

The landlord testified that the utilities were pro-rated by dividing the number of days from the previous bill by the amount of the previous bill, multiplying it by the number of days to the end of the tenancy, and calculating 60% of those amounts.

The landlord further testified that the tenants were late with utilities, and the landlords added \$1.00 per day to the bill as an incentive. The claim is from May 5, 2016 when the landlords first provided the bill to today.

The landlord also testified that as a regular matter of course, the landlords hire cleaners. A copy of a receipt for \$180.00 has been provided. The tenants left the rental unit filthy with cat hair, pet urine on the rug, and the stove and oven had not been cleaned. The tenants were also, according to the tenancy agreement, to have the carpets professionally cleaned and to provide the landlords with a receipt for that. The tenants failed to do so, and the landlords have provided a copy of a receipt in the amount of \$287.65 for that service.

The landlord also testified that the tenants had spilled liquid down the walls of the stairwell, and neither landlords nor the cleaner could get it off. The painter had to use 3 coats of paint to cover it. Prior to this tenancy, the living room and halls were painted about 2 years ago, and the bedrooms 3 and 4 years ago. The tenants left numerous nail holes in the walls. The landlord had to complete multiple drywall repairs prior to the painter arriving, and the landlords made numerous attempts to remove the urine smell from the rental unit. The landlord also painted the base-boards. There were also deep scratches in the laminate in the living room at the end of the tenancy which the landlords attempted to repair. The tenants didn't take out the garbage or obtain the services of a garbage collector as required in the rental location, nor did they use a garbage can. Beer bottles and food were stacked in the kitchen. The tenants also left a big desk in the laneway and the landlord had a contractor assist in moving it to the road. The landlords claim \$183.75 for the painter, and a receipt has been provided. The landlords also claim \$25.00 per hour for the landlords' time to complete the necessary cleaning and repairs, for a total of \$937.50. The landlords have prepared their own invoice in that amount which includes, "spiteful loss of quiet enjoyment," and "multiple purposeful lease addendum violations." The landlords also claim loss of quiet enjoyment during the tenancy and for failure to comply with the terms in the Addendum to the tenancy agreement, but no specific amount has been claimed. The tenants were spiteful and are not credible.

The landlord also had to provide paint, and has provided receipts for that purchase totalling \$90.79.

The landlord further testified that the tenancy agreement provides for liquidated damages of \$200.00 if the tenants do not remain in the rental unit until the end of the fixed term. However, since the parties mutually agreed to end the tenancy, the landlords were not sure if it applies.

With respect to storage, the *Act* permits charging for storage of items left by a tenant, and the tenants left 2 vacuums, for which the landlords claim \$96.00.

Although not on the spreadsheet, the landlords also claim \$160.00 to repair a section of the stone mason, and a receipt has been provided.

**The second landlord** (CEB) testified that while the masonry work was being completed by a contractor, the tenant threw her garbage on the ground and instead of walking around it, she stepped on it and broke the new masonry work. When the mason returned, he said it had to be replaced and could not be repaired, at a cost of \$160.00.

The landlord further testified that the cleaning lady charges \$30.00 per hour, and it took 6 hours just for general cleaning.

When the tenant returned on June 1, 2016, she just walked right in and had no cleaning supplies with her. The landlord disputes that the tenant was there to clean, and the mutual agreement to end the tenancy was effective at midnight on May 31, 2016.

### Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit and pet damage deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address, or must make an application for dispute resolution claiming against it within that 15 day period. If the landlord does neither, the landlord must repay the tenant double the amount(s). In this case, there is no dispute that the landlords received a forwarding address in an email. Email is not necessarily the acceptable method of providing it, however where there is evidence that the landlord received it, that method can be acceptable. In this case, I have reviewed the email provided by the tenants, and not only does it not contain a post office box number, it also does not include a City. Therefore, I am not satisfied that the tenants have established the date the landlords received a forwarding address in writing, and therefore the tenants are not entitled to double recovery of the deposits.

With respect to the tenants' application for an order that the landlords return the tenants' personal property, there is no question that the landlords have retained the vacuums, and I see no reason that the landlords should keep them or charge storage fees. I order the landlords to return both vacuums to the tenants.

With respect to the landlords' claim for unpaid utilities, I accept the testimony of the landlord with respect to pro-rating the bills to the end of the tenancy, and the tenants do not deny the water bill or the hydro bill. Therefore, I find that the landlords have established a monetary claim in the amount of \$147.46 for the hydro, and \$57.73 for the water bills.

With respect to the landlords' claim for late fees for the tenants' failure to pay the utilities on time, the regulations specify what non-refundable fees a landlord may charge. One of those is late fees for the late payment of rent, if it's contained in the tenancy agreement, and the amount may not be more than \$25.00. There is no provision for late payment of utilities, and the landlords' claim for \$76.00 is dismissed.

The *Residential Tenancy Act* puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, which go into great

detail of how that is to happen. A landlord or a tenant may not contract outside the law, and any attempt to do so is ineffective. If a landlord fails to ensure the reports are completed in accordance with the law, the landlord's right to make a claim for damages against the security deposit or pet damage deposit is extinguished. In this case, the landlords completed the move-in condition inspection report in the absence of the tenants, and did not provide the tenants with at least 2 opportunities to complete the move-out condition inspection report as required. Therefore, I find that the landlords' right to make a claim against the security deposit and pet damage deposit for damages is extinguished. However, the landlords' right to make a claim for damages is not extinguished.

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:

That the damage or loss exists;

That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

The amount of such damage or loss; and

What efforts the claiming party made to mitigate the damage or loss suffered.

With respect to the landlords' claim for cleaning, a tenant is required to leave a rental unit reasonably clean at the end of a tenancy except for normal wear and tear. I was unable to open the disk provided by the landlords and was not able to review the photographs. The landlords both testified that garbage was left which attracted ants and the tenants never took out the garbage or used a garbage can. The tenant did not deny that, but relies on the defence that the landlords didn't comply with the *Act* with respect to the move-out condition inspection report. I accept the testimony of the landlords that the tenants did not leave the rental unit reasonably clean, and the landlords are entitled to recovery of \$180.00.

The tenancy agreement clearly provides that the tenants will have the carpets professionally cleaned at the end of the tenancy. I am satisfied in the evidence that the tenants did not do that, and don't deny that they didn't. I have reviewed the receipt provided by the landlords and I find that the landlords have established a monetary claim in the amount of \$287.65.

I have reviewed the move-in and move-out condition inspection reports, which the tenant did not dispute, and I accept the landlord's testimony that painting the foyer required 3 coats. I allow the landlords' claim of \$183.75.

The first landlord testified that the landlords' claim of \$937.50 is for the landlords' time and costs to move and dispose of garbage, clean, make repairs, and to rid the rental unit of ants, for which the landlords claim \$25.00 per hour. The second landlord testified that the cleaner charges \$30.00 per hour, and it took 6 hours just for general cleaning, which has also been claimed. The invoice that the landlords provided for the \$937.50 includes, in my opinion, a claim to punish the tenants, which is not sanctioned by the *Act*. However, the *Act* permits nominal damages where no significant loss has been proven by way of receipts. A nominal damages awarded is an affirmation that there has

been an infraction of a legal right, where placing an actual value on the loss is not possible. The invoice of the landlords does not break down what amount is claimed for out-of-pocket expenses and what portion is for "multiple purposeful lease addendum violations," or "spiteful loss of quiet enjoyment." Therefore, I grant a nominal amount to the landlords in the sum of \$100.00.

The *Residential Tenancy Act* provides for recovery of a filing fee for making an application for dispute resolution where a party is successful with the application. However, the *Act* does not provide for recovery of costs associated with preparing for a hearing, and therefore the landlords' claim of \$16.00 for photocopies is dismissed.

Where a landlord and a tenant agree in writing to end a tenancy, the landlord is not entitled to liquidated damages, and I dismiss that portion of the landlords' application.

I have reviewed the move-in and move-out condition inspection provided by the landlords. I accept the landlords' testimony that the bedroom, foyer and baseboards required painting at the end of the tenancy, and I find that the landlords have established the claim of \$90.79 for purchasing paint and painting supplies.

The landlord also testified that the landlords' claim of \$96.00 is for storage fees which the landlord is entitled to claim. I disagree. The regulations specify that:

**24** (1) A landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
- (b) subject to subsection (2), the tenant leaves the personal property on residential property
  - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
  - (ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
- (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

In this case, the tenant attended the rental unit to retrieve the vacuums, but was denied that by the landlords. Therefore, I am not convinced that the landlord could consider them to be abandoned. If a landlord is entitled to consider the circumstances as abandonment, the landlord has other obligations under the regulations:

### **Landlord's obligations**

#### **25** (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
  - (b) keep a written inventory of the property,
  - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
  - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
- (a) the property has a total market value of less than \$500,
  - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
  - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

### **Tenant's claim for abandoned property**

#### **26** (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [*disposal of personal property*], the landlord may, before returning the property, require the tenant to

- (a) reimburse the landlord for his or her reasonable costs of
    - (i) removing and storing the property, and
    - (ii) a search required to comply with section 27 [*notice of disposition*], and
  - (b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.
- (2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

The landlords' claim for storage fees for the vacuums is dismissed.

I also accept the undisputed testimony of both landlords that the tenant damaged the stone mason work, and I allow the claim of \$160.00.

In summary, I find that the landlords have established the following claims:

- \$42.32 for the water bill;
- \$82.29 for the hydro bill;



- \$15.41 for a water bill pro-rated from May 20 to May 31, 2016;
- \$65.17 for a hydro bill pro-rated from May 4 to May 31, 2016;
- \$180.00 for cleaning services;
- \$287.65 for carpet cleaning;
- \$183.75 for painting the foyer and deck;
- \$100.00 for the landlords' time and cost to move and dispose of garbage, clean the rental unit, make repairs, and rid the rental unit of ants;
- \$90.79 for paint and roller refill; and
- \$160.00 to repair a section of the stone mason work;

for a total of \$1,207.38. I order the landlords to keep the \$697.50 security deposit and \$200.00 pet damage deposit in partial satisfaction, and I grant the landlords a monetary order for the difference in the amount of \$309.88. I also order the landlords to return the tenants' vacuums. Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

### Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$697.50 security deposit and the \$200.00 pet damage deposit, and I grant the landlords a monetary order as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$309.88.

I hereby order the landlords to return both vacuums to the tenants.

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: August 02, 2016

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Residential Tenancy Branch

