



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, MNSD, FF, O  
                                 MNSD

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit. The landlords have applied 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.

Both landlords and the tenant attended the hearing, and each gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The tenant also intended to call a second witness, however that person did not join the conference call hearing, and being given the opportunity, the tenant could not reach the witness to alert the witness that it was time to dial in.

The parties were given the opportunity to question each other and the tenant's witness respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

### 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 replacement costs for keys and locks?
- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit or pet damage deposit?

### Background and Evidence

**The first landlord** (GAL) testified that this month-to-month tenancy began on January 1, 2015 and ended on February 29, 2016. Rent in the amount of \$750.00 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 tenant in the amount of \$375.00 as well as a pet damage deposit in the amount of \$25.00, both of which are still held in trust by the landlords. The rental unit is a suite within a 4-plex and the other named landlord also resides in one of the suites, and the others are also tenanted. A copy of the tenancy agreement has been provided.

The landlord further testified that a move-in condition inspection report was completed by the parties at the commencement of the tenancy. A copy has been provided and it is signed by both parties. A move-out condition inspection report was also completed at the end of the tenancy but the tenant did not participate. The landlord testified that he went inside the rental unit at the end of February to show to prospective tenants and the place was a mess, and the tenant apologized for that to the prospective tenant. The prospective tenant wasn't very happy with the rental unit, so the landlord left.

The landlord returned some time later and all of the tenant's belongings were gone but the rental unit was still not clean. As far as the landlord is aware, the other landlord called the tenant to complete a move-out condition inspection, and the tenant attended with another person. The other landlord pointed out some things, and the tenant and friend just left. The other landlord completed the move-out condition inspection report in the absence of the tenant.

The landlord received the tenant's forwarding address in writing in a letter, a copy of which has been provided, but the landlord does not recall when. The letter requests return of the deposits to the tenant by March 15, 2016, so the landlord believes the letter was received prior to that.

**The second landlord** (CH) testified that he met with the tenant at the rental unit to inspect it at the end of the tenancy. The landlord pointed out marks on the walls, and the tenant said they were there when she moved in. The tenant had also mudded the wall in the bedroom to cover holes where a TV had been mounted, and a black mark was left on the wall where the bed was. The tenant's friend said it was a bleed-through from paint, but there was no previous dark paint, only beige, so it couldn't be a bleed-through.

The landlord also pointed out some tin foil in the oven, but there's a big notice on the door that restricts that. The tenant didn't know how to use the self-cleaning part, and

the oven was filthy under the foil. The tenant told the landlord it was like that before, and the tenant and her friend got upset and left. The landlord finished completing the move-out condition inspection report in the absence of the tenant. A copy has been provided and it shows that the inspection was completed on March 1, 2016.

The landlord does not recall whether or not he participated in a move-in condition inspection, and didn't have a copy with him when the move-out condition inspection was completed, but he compared the 2 reports later, after the tenant left. The landlord also took photographs which have been provided for this hearing.

The landlords have provided a Monetary Order Worksheet wherein the landlords claim:

- \$81.96 for the cost of paint, and the landlord testified that he painted the whole suite, and that he had last painted the entire suite just before the tenant moved in;
- \$179.18 for locks (\$111.99 + \$67.19) – the landlord testified that the tenant won't give keys back and told the landlord that she would return them when she received her security deposit and pet damage deposit back;
- \$7.00 for gyprock mud for patching holes in the walls;
- \$525.00 labor for the landlord's time making repairs, although he is not certain if he gave the other landlord invoice;
- \$200.00 for the other landlord's time cleaning after the tenant moved out;
- \$6.69 for keys for common laundry room; extra keys were cut so that the landlords could both gain access until the locks were changed a few weeks after the tenant moved out;
- \$3.35 for a mail key, and the landlord testified that the tenant shared a mailbox with him, and he has always had 2 keys. He allowed the tenant to use his, and when he asked for it back, the tenant said she lost it
- \$36.29 for printing pictures, which the landlord testified were taken right after the tenant left on February 27, 2016;
- \$100.00 recovery of the filing fee; and
- \$20.00 for cleaning supplies such as detergents, but no receipts have been provided.

**The tenant** testified that she sent the landlord a letter that contained her forwarding address on March 1, 2016 by registered mail. The letter requests return of the deposits by March 15, 2016 or the tenant will be seeking double. The landlord has not returned any portion of either of the deposits.

The tenant further testified that she finished cleaning, and denies that the landlord's photographs are of the rental unit. They are taken at such close-ups they are hard to determine but the tenant does not believe all are photographs of the rental unit.

On February 29, 2016 the tenant's previous landlord accompanied the tenant at the rental unit for support for the purpose of the move-out condition inspection. Neither landlord would go into the rental unit for the inspection, and didn't appreciate what the tenant's previous landlord wanted to talk about. The tenant testified that her previous landlord said, "How can you be so ignorant, let's go in and look." But the landlord just peeled out of the driveway and the other landlord just went about his other business. The landlords did not have a report with them, and the tenant did not write her forwarding address on any move-out condition inspection report. The tenant went in with her previous landlord, who said the condition of the rental unit was not a problem.

The tenant agrees that the photograph showing where the tenant's TV was in the bedroom is a true likeness, and the tenant filled the holes with mud and sanded, so all the landlord had to do was paint the area. The tenant cleaned the rental unit, which is a small 1 bedroom suite, on February 29, 2016 after her belongings had been moved out, and she even washed the floors.

The tenant agrees that she did not leave keys, thinking she should keep them until the security deposit and pet damage deposit were returned.

**The tenant's witness** testified that he is the tenant's current landlord and a friend. The witness attended the rental unit with the tenant on February 29, 2016 and neither landlord attended. The witness gave the tenant a hand cleaning.

The witness also testified that he has seen the landlord's photographs and does not believe they reflect the tenant's rental unit. The witness was in the rental unit about 5 times during the tenancy.

The tenant has also provided several letters from other acquaintances who all state that they have visited the rental unit during the tenancy and always found it to be clean. One in particular states that the writer would recommend it to others.

### Analysis

In this case, the tenant seeks an order for return of the security deposit and pet damage deposit, and the landlords seek to keep the deposits to off-set the landlords' claim for damages. In order to be successful in a claim 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 the damage or loss suffered.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. The tenant and the tenant's witness testified that at least some of the photographs provided by the landlords are not that of the rental unit, however the tenant later testified that many are taken about 5 inches away and don't show the room, and I accept that. The tenant has also provided photographs that were taken at a much further range. However I also consider the testimony of the landlord that the photographs were taken after the tenant left the move-out condition inspection. I am satisfied that the landlords' photographs are photographs of the rental unit taken on March 1, 2016 at close-up range.

The regulations to the *Residential Tenancy Act* specify how move-in and move-out condition inspection reports are to be completed, and that the reports are evidence of the condition of the rental unit. A landlord is required to provide the tenant with at least 2 opportunities to complete the inspection at move-out, and I find that the evidence shows that the tenant and her previous landlord were at the rental unit intending to conduct an inspection, but I also find that at that time the landlord's purpose for being there was to show the rental unit to a prospective tenant. Regardless, the tenant did attend an inspection but left before it was completed. Therefore, I accept the reports as evidence of the condition of the rental unit at the beginning and end of the tenancy.

The landlord testified that the entire rental unit had been painted just prior to the tenancy, and that the entire rental unit required painting again. I have reviewed the photographs and the inspection reports, and I find that the tenant did not leave the rental unit reasonably clean and undamaged. The tenant attended the move-in condition inspection report and signed it indicating that it was correct. The tenant told the landlord during the move-out condition inspection report that the soiled oven and marks on the walls were like that at the beginning of the tenancy, but that is not what is reflected in the move-in condition inspection report. I find that the landlords have established that the rental unit required painting again at the end of the 13 month tenancy. I have also reviewed the receipts provided by the landlords, and find that the landlords have satisfied the test for damages, and therefore I accept the landlords' claims for the cost of paint and mud, being \$81.96 and \$7.00 respectively.

The tenant does not deny that she retained the keys, which is contrary to the *Residential Tenancy Act*. I find that the landlords have established the claims for new keys at \$6.69, a mailbox key for \$3.35 and new locks for \$179.18.

With respect to the landlords' claims of \$525.00 and \$200.00 for labor, the time it took to make repairs by one landlord and the time for the other landlord to complete cleaning, neither landlord provided any evidence of the time it took nor what would be a reasonable amount per hour to claim. The tenant testified that the rental unit is a small bedroom suite, and the landlords did not dispute that. The *Act* permits me to allow nominal damages, and I so order in the amount of \$100.00 for painting and repairs and \$100.00 for cleaning.

The *Residential Tenancy Act* provides for recovery of a filing fee at the discretion of the Arbitrator, but not for recovery of costs associated with preparing for a hearing, and therefore the landlords' claim of \$36.29 for photographs is dismissed.

With respect to the landlords' claim of \$20.00 for cleaning supplies, I find the amount to be reasonable in the circumstances.

The *Residential Tenancy Act* requires a landlord to return any security deposit or pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against those deposits within that 15 day period. If the landlord fails to do so, the landlord must repay the tenant double the amount.

The parties agree that the tenancy ended on February 29, 2016. The landlord was unable to say when the forwarding address was received, and the tenant testified that she sent her forwarding address to the landlords by registered mail on March 1, 2016. I also note that the move-in condition inspection report was completed on March 1, 2016 and it contains the same forwarding address of the tenant that is contained in the tenant's letter requesting return of the deposits. The letter is not dated, but it does specify that the deposits are to be returned to the tenant by March 15 or would be double. In the circumstances, I am satisfied that the tenant sent the letter by registered mail to the landlord on March 1, 2016, which is deemed to have been received 5 days later, and in the absence of any evidence to the contrary, I find that the landlord had until March 21, 2016 to return the deposits or claim against them. The landlords' application claiming against the deposits was filed on March 17, 2016, and therefore, the landlords are not obligated to pay double.

In summary, I find that the landlords have established the claims for paint and mud, being \$81.96 and \$7.00 respectively; new keys at \$6.69; a mailbox key for \$3.35; new locks for \$179.18; and \$220.00 for labor and cleaning supplies; for a total of \$498.18. Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee. The landlords currently hold \$375.00 for a security deposit and \$25.00 for a pet damage deposit, and I set-off those amounts. I order the landlords to keep the deposits and I grant a monetary order in favour of the landlords for the difference in the amount of \$198.18.

### Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$375.00 security deposit and the \$25.00 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 \$198.18.

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 12, 2016

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Residential Tenancy Branch