



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

On April 30, 2016, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for damage to the rental unit; a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; a monetary order for unpaid rent; to keep all or part of the security deposit; for an order of possession; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

Both parties attended the teleconference hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Procedural and Preliminary Matters

The first hearing on August 2, 2016, was adjourned because the Landlord's evidence was not organized, readily identifiable and clear. The Landlords were ordered to submit a new copy of the evidence that they wish to rely on at the hearing. On August 2, 2016, an Interim Decision was sent to the parties stating:

*"The Landlords are ordered to submit a new copy of the evidence that they wish to rely upon at the hearing. The Landlords are not permitted to provide any new evidence. The Landlords are not permitted to amend their Application for Dispute Resolution. All pages must be numbered and properly organized. The Landlords must provide a copy to the Residential Tenancy Branch and to the Tenant post marked no later than September 9, 2016. The Landlords must serve the Tenants with the evidence by Canada Post Registered Mail or by personal service."*

The Adjournment also served as an opportunity for the Tenant's to have more time to consider the Landlord's evidence.

The Residential Tenancy Branch (RTB) case management system indicates that the RTB received 149 pages of evidence from the Landlords on Monday, September 12, 2016. However, the Landlord's evidence was not in the file when the hearing commenced on October 11, 2016. I explained to the Landlord that the evidence was likely misfiled and the Landlords were offered another adjournment pursuant to the RTB Rules of Procedure 3.18. The Landlords requested that that hearing proceed and asked that their evidence be considered when it is located after the hearing.

The hearing proceeded as scheduled. The Tenants did not raise any objection to proceeding with the hearing. At the end of the hearing the Landlord's evidence was immediately located. I find that the Landlord's evidence was received by mail at the RTB on Monday September 12, 2016, and as such it was post marked on or before September 9, 2016.

Prior to the first hearing the Landlord submitted 14 pages of evidence on May 4, 2016. The Tenants testified that they received the 14 pages of evidence that were sent in three different packages. The Landlord then submitted an additional 76 pages to the RTB received on July 20, 2016. The Landlord testified that the evidence was sent to the Tenants by courier on July 19, 2016. The Tenants testified that they received the Landlord's evidence. The Landlord's evidence was provided 14 days prior to the hearing. The Landlord K.P. explained that she provided the evidence just prior to the hearing because she needed time to get the text messages from her phone.

The Residential Tenancy Branch Rules of Procedure 3.3 requires that evidence must be served at the same time as the hearing package and be received by the other party not less than 14 days prior to the hearing. While the Landlord did not serve the additional 76 pages of evidence at the same time as the hearing package, I find that it was provided 14 days before the hearing.

Upon reviewing the evidence that the RTB received from the Landlord on September 12, 2016, I note that the Landlords have now submitted 149 pages. I find that the Landlords have provided new evidence which is contrary to my Interim Decision that the Landlords are not permitted to provide any new evidence. The Interim Decision required the Landlords to organize their evidence in a clear manner. The Landlord's evidence now has yellow post it tabs to identify the contents within; however, the Landlord's evidence is not numbered as I ordered in the Interim Decision dated August 2, 2016.

I find that there is a wilful or recurring failure on the Landlord's part to comply with the rules of procedure and my order. The Residential Tenancy Branch Rules of Procedure 3.12 states that an Arbitrator may refuse to accept evidence if the Arbitrator determines there has been a wilful or recurring failure to comply with the Act, Rules of Procedure, or

an Order. Due to the Landlord's failure to comply with the RTB rules of procedure and my order regarding evidence, the Landlord's 149 pages of evidence will not be considered in this hearing.

The Landlords 14 pages of evidence, and 76 pages of evidence previously provided to the Tenants and the RTB will be considered.

The Landlord's Application includes a request for an order of possession. During the hearing it was established that the Tenants moved out of the rental unit in April 2016. As such, the Landlord's application for an order of possession is not required and is dismissed.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order due to damage to the rental unit?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties testified that the tenancy began in September 2015. Rent in the amount of \$1,700.00 was payable on the fifth day of each month. The Tenants paid the Landlord a security deposit of \$850.00 and a pet deposit of \$850.00.

The Landlords testified that cleaning and repairs were required to the rental unit after the Tenants moved out.

The Landlord's application indicates they are seeking a monetary order in the amount of \$5,410.00. During the hearing the Landlord testified to the following claims:

ITEM	CLAIM
Unpaid rent (February, March, April)	\$1,700.00 x 3 =\$5,100.00
Ceiling repair & floor(brown water damage)	\$475.00
Dryer	\$186.61
Front storm door	\$529.20
Kitchen tap	\$75.00
Duct cleaning	\$315.00
Electrical permit	\$102.40
Lock change	\$157.43
Cleaning	\$138.00
Canada Post	\$34.02
Staples (copies)	\$16.95
Diamond Delivery	\$37.80

Flower shop (copies)	\$76.87
Vacancy insurance	\$132.00
Staples (copying)	\$32.59
Filing fee	\$100.00
total	\$7,508.00

The Landlords are requesting to be reimbursed for serving documents and evidence, and for photocopying documents. These claims are dismissed. I find that these costs are not recoverable under the Act and are a cost of doing business as a Landlord.

### Loss of Rent

The Landlords submitted that the Tenants were supposed to have moved out of the rental unit by February 4, 2016. The Landlords submitted that the Tenants moved out on February 9, 2016, which is the day they returned the key to the Landlord. The Landlords submitted that the Tenants are responsible for a situation where a toilet overflowed and the waste water flooded the bathroom floor and ran into a floor heating duct. The Landlords testified that the waste water in the duct leaked out and caused damage to the basement ceiling area below. The Landlords submitted they needed to hire a company to perform a fecal matter test on the ducting and furnace, in the interest of health and safety. The Landlords submitted that the test results came back on May 5, 2016. The Landlords submitted that they could not rent the unit out during this time and are claiming rent for the months of February 2016, March 2016, and April 2016.

The Landlords provided color photographs of the ceiling area that was stained by the waste water and a receipt in the amount of \$315.00 for Duct cleaning.

In response to the Landlord's claim, the Tenants advocate A.L. submitted that he helped the Tenants move out of the rental unit on February 5, 2016 not February 9, 2016. He submitted that the house could have been rented out because there was only minor damage. A.L. referenced the move out inspection document that provides information on the damage at the time of the move out. A.L. submitted that the water from the toilet was a small overflow. A.L. submits that the restoration company were simply called out to clean the vents. The Tenant's advocate A.L. also stated that the restoration company is the male Landlords Company. A.L. submits that this amounts to a conflict of interest. The Tenants have provided documentary evidence of a move out inspection document.

In a written statement from Tenant A.R. he indicates that he used the toilet and it clogged requiring him to plunge the toilet. He indicates some water overflowed onto the floor. He submits it was not raw sewage just toilet water. He submits it was a minor incident and could not have caused the amount of damage that the Landlords are stating.

The male Landlord responded that the restoration company is not his company but he does work for the company.

Ceiling Repair and Duct Cleaning

The Landlords testified that waste water leaked into the ducts and caused damage to the ceiling area below. The Landlords submitted in the interest of health and safety they needed to hire a company to perform a fecal matter test on the ducting and furnace. The Landlords submitted that they had the ducts and furnace cleaned. The Landlords submitted that the test results came back on May 5, 2016. The Landlords have provided an invoice from a restoration company in the amount of \$315.00.

The Landlords submitted that they have not done the repair of the ceiling due to brown water damage. They submitted that they have not been able to afford to redo the ceiling. They submitted that the ceiling will need to be painted with something to neutralize bacteria. They submitted that they don't know how much it will cost.

The Tenants advocate A.L. responded on behalf of the Tenants. A.L. submitted that there is a small brown stain on a T bar ceiling panel. He submitted that the panel can be easily popped out and replaced for \$9.00. A.L. submitted that there is no justification to charge \$475.00.

The male Landlord responded by confirming that the stain is on a panel in a T bar ceiling. He stated that he is unable to purchase that panel anymore. He submits that the ceiling panels will have to be painted rather than replaced.

Dryer

The Landlords submit that the Tenants are responsible for breaking the dryer. The Landlord's submit that the Tenants left it on for so long that it burned out. The Landlords have provided a receipt from the repair company that states that a thermal cut off kit was installed. The receipt indicates the blower duct was plugged with lint due to failure to clean the lint screen. The Landlords are claiming \$186.61 for the repair costs.

In response, the Tenant's advocate A.L. submitted that it is impossible that the dryer burned out because it has a timer that would have shut it off.

Front Storm Door

The Landlords submitted that the front storm door was damaged by the Tenants and needed to be replaced. The Landlords submitted that the top hinges were ripped out and the hinge was also bent and could not be fixed. The Landlords provided photograph of the door and submit that the door was approximately 2 years old. The Landlord provided an estimate to replace the door and a copy of the cheque they paid to have it replaced. The Landlords are claiming the amount of \$529.20.

In response, the Tenants advocate A.L submitted that the Landlords have not provided any proof as to the age of the door. He submitted that to change a door out it would only take a couple of hours of work.

A written submission provided by Tenant K.S. states that the storm door did not need to be replaced.

A written statement by Tenant C.E. states that the storm door did not need to be replaced and indicates it is the male Landlords writing on the invoice that states it needed to be replaced.

### Kitchen Tap

The Landlords submitted that they needed to re-align the kitchen tap because the bolt had unspun and the tap was loose and spinning. The Landlord provided a receipt from a company to come out and investigate a plumbing issue. The Landlord is claiming \$75.60 for the repair.

In response, the Tenant's advocate A.L. submitted that the repair to the kitchen tap is a bogus claim.

### Electrical Permit

The Landlords submitted that they hired an electrician to come out to the rental property and conduct an inspection. The Landlords are claiming the amount of \$102.90 for the cost of the inspection. The Landlords have provided a receipt from a company charging \$102.90 for an electrical permit fee.

In response, the Tenant's advocate A.L. questioned why the Tenants have to pay for an electrical inspection or permit fee?

### Lock Change

The female Landlord submitted that a parent of one of the Tenants came to her place of business and threatened her. She submitted that the RCMP told her to change the locks. She submitted that the locks were changed. The Landlords have provided an invoice in the amount of \$157.43 for the cost of changing the locks.

In response, the Tenant's advocate A.L. submitted that the Landlord has the onus to change locks when a Tenant leaves a rental unit.

### Cleaning

The Landlords submitted that the rental unit was left unclean and they needed to hire a cleaner. The Landlord testified that the oven and cupboards were dirty and the floors were not washed. They testified there was film on the bathroom window and the walls

were stained by spilled drinks. The Landlord provided a receipt in the amount of \$138.00 comprised of six hours of cleaning at \$23.00 per hour. The Landlord provided photographs of the backsplash and stove. The Landlords are claiming \$138.00.

In response, the Tenants advocate A.L. stated that he helped move the kids out of the rental unit. A.L. submits that he took photos at the time of the move out that shows the house was immaculate. He submits that he does not agree to any amount of the Landlord's claim. The Tenants provided photographs in support of their response.

The Tenants provided letters from two parties who helped clean the rental unit and provided detailed information that the rental unit was cleaned at the end of the tenancy.

#### Vacancy Insurance

The Landlords submitted that they have to pay an insurance premium when the rental unit is vacant because of the risk for squatters and vandalism. The Landlords are claiming \$132.00 for the cost of their vacancy insurance premium. The Landlords provided a receipt for a payment of \$132.00 made to an insurance company on May 31, 2016.

In response, the Tenant's advocate A. L. questioned why the Landlord would need Tenants insurance if they were renting the unit.

#### Security Deposit and Pet Damage Deposit

The Tenants paid the Landlord a security deposit of \$850.00 and a pet damage deposit of \$850.00. The Landlords testified that they did not conduct a move in inspection with the Tenants at the start of the tenancy. The Landlords testified that they did conduct a move out inspection with the Tenants at the end of the tenancy. The Landlords written submission within their summation of events indicates that the Tenants were at the rental unit for a final inspection on Saturday February 6<sup>th</sup>. The Landlords submission indicates that damage to the ceiling; front door; dryer and kitchen sink were pointed out at that time. The Landlords provided page 3 of an undated Condition Inspection Report. The Landlords testified that they received a letter dated April 15, 2016 requesting the return of the security deposit and pet damage deposit.

In response, the Tenant's advocate A.L. submitted that the Landlords did not conduct a proper move out inspection. A.L. submitted that a final inspection was conducted with the male Landlord on February 6, 2016, who stated that everything was clean at that time. On February 9, 2016, Tenant A.R. was asked by the Landlord to come to the house to sign off on a Condition Inspection Report.

A.L. submits that on April 15, 2016, the Tenants provided the Landlord with a written letter providing their forwarding address and requesting the Landlords to return the security deposit.

The Tenants provided a copy of a four page Condition Inspection Report (the Report) for the rental unit. The Report is blank for a move in inspection, but indicates a move out inspection was conducted with Tenant A.R. on February 9, 2016. The Report is signed by the Landlord and the Tenant. The Report does not contain an agreement from the Tenant allowing the Landlord to retain the security deposit or pet damage deposit. The report does not contain a forwarding address of the Tenant.

The report indicates that the kitchen faucet needs to be fixed; there is damage to the front screen door; a dryer element problem; water damage on basement ceiling; and that a key to the rental unit is missing.

### Analysis

Based on the evidence before me, the testimony of the parties and on a balance of probabilities, I make the following findings.

#### Ceiling Repair and Duct Cleaning

Residential Tenancy Branch Policy Guideline # 40 Useful Life of Building Elements states that if the arbitrator finds that a Landlord makes repairs to a rental unit due to damage caused by the Tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

I find that the Tenants are responsible for the staining of the tiles on the basement ceiling. The Landlord's photographs show the water staining is limited to a small area within a few ceiling tiles on the basement ceiling. I accept the Landlord's evidence that the furnace and ducts were cleaned at a cost of \$315.00 and I find the need for the duct cleaning to be a reasonable measure.

After considering the apparent age of the ceiling tiles based on the Landlord's evidence that they are no longer available, I award the Landlord the amount of \$475.00 for the duct cleaning and for the repair or painting of the ceiling tiles.

#### Dryer

The Residential Tenancy Branch Policy #1 Responsibility for Residential Premises states the Landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the Tenant.

I find that the Tenants are responsible for the repair needed to the dryer. The Tenants submitted that the dryer stopped working correctly shortly before moving out. The invoice for the dryer repair indicates that the dryer blower duct was plugged with lint due to a failure to clean the lint screen. I find that it is more likely than not that the Tenants



neglected to clean the lint screen which caused damage to the dryer. I award the Landlords the amount of \$186.60.

### Front Storm Door

There is no evidence of the condition of the front storm door at the start of the tenancy. The Landlords submitted that the door is approximately two years old. I find that the photograph of the door provided by the Landlords provides no probative evidence of damage. I cannot identify any damage to the door in the photograph. The Landlord did not provide any other photographs showing damage.

The Tenants submit that the storm door did not need to be replaced and indicate it is the male Landlords writing on the invoice that states the door needed to be replaced. The Tenants provided a photograph of the front door. I find that the photograph of the door submitted by the Tenants provides no probative evidence on its condition. The photograph was taken at too far a distance to be of value.

A party making a claim for damage and compensation bears the burden of proving the claim. I find there is opposing but equally believable testimony and evidence from the parties regarding the door. The Tenants allege it is the Landlord's writing on the invoice and I find that this allegation raises the question of whether the door needed to be replaced. Without evidence from the Landlord showing damage to the door to support the claim, the Landlord's claim to replace the door fails. The Landlords claim for \$529.20 is dismissed.

### Kitchen Tap

I dismiss the Landlord's claim for \$75.00 to fix the kitchen tap. There is no evidence as to the condition of the tap at the start of the tenancy and the testimony is that the tap is simply loose. There is no evidence that the tap is damaged. The Tenant is not responsible for reasonable wear and tear to the rental unit.

### Electrical Permit

I dismiss the Landlord's claim for \$102.90 to recover the cost of the electrical inspection. The Landlords did not provide any compelling reason why an electrician was required to inspect the rental unit. There is insufficient evidence from the Landlord that the Tenant's damaged the electrical system. I note that there is no mention of an electrical problem within the Condition Inspection Report.

### Lock Change

Residential Tenancy Branch Policy #1 Responsibility for Residential Premises states that the Landlord is required to pay for any costs associated with changing the locks.

I dismiss the Landlord's claim for \$157.43. The Landlord decided to change the locks after speaking to the RCMP; however, the decision to change the locks was the Landlord's choice. The Landlord can be required to change locks at the beginning of a new tenancy and must bear the cost associated with a lock change. I find it reasonable that in the circumstances, that the Landlord is responsible for the cost of the lock change.

### Vacancy Insurance

I dismiss the Landlord's claim for \$132.00 for vacancy insurance. I find that the vacancy insurance was an option that the Landlords chose and this is a cost of doing business as a Landlord. Recovery of this type of cost is more appropriately built into the amount of rent a Landlord charges.

### Cleaning

Section 21 of the Residential Tenancy Regulations states in dispute resolution proceedings, a Condition Inspection Report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

The Landlords failed to conduct a move in inspection as required by section 14 of the Residential Tenancy Regulations. There is no reliable evidence that shows the condition of the rental unit at the time the Tenants moved in. The move out inspection that was completed after the Tenants had moved out indicates the unit was in good condition. In addition, the Tenants have provided photographs of the interior of the rental unit. I find that the photographs show that the rental unit was in good condition. I do not find the two photographs provided by the Landlords is enough evidence to support their claim. The Landlords claim for \$138.00 for cleaning is dismissed.

### Loss of Rent

Residential Tenancy Branch Policy Guideline #5 Duty to Minimize Loss states:

*where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

*If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.*

I find that due to the water damage and the requirement for duct cleaning, the Tenants are responsible to pay the Landlord rent for the month of February 2016. I accept that the Landlords needed some time to conduct these repairs of the rental unit. I do not accept the Landlord's claim that the Tenants are responsible to pay rent for the months of March 2016 and April 2016. The Landlord made reference to a fecal matter test result that came back on May 5, 2016, but they did not provide any evidence of the test or the results. The Landlord also testified that they have not been able to afford to redo the ceiling. Whether or not the Landlord can afford the repair is not the responsibility of the Tenants. The Landlord is responsible to mitigate a loss to keep it as low as possible. I grant the Landlords \$1,700.00 for loss of rent for the month of February 2016.

### Security Deposit and Pet Damage Deposit

Section 38 of the Act states that a Landlord must repay any security deposit or pet damage deposit to a Tenant, or make application for dispute resolution and claim against it within 15 days of the later of the date the tenancy ends, and the date the Landlord receives the Tenants forwarding address in writing.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required*

The policy guideline also provides that a Landlord, who has lost the right to claim against the security deposit for damage to the rental unit, retains the following rights:

- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

I find that the Landlord did not conduct a move-in inspection as required at the start of the tenancy. Consequently, the Landlord's right to file a claim against the security deposit and pet damage deposit is extinguished. I find that the Landlords received written notice of the Tenant's forwarding address on April 15, 2016. The Landlords applied for Dispute Resolution making claim against the deposits on April 30, 2016. I award the Tenants the return of the security deposit and pet damage deposit in the amount of \$1,700.00. The \$1,700.00 will be set-off against any awards given to the Landlord for damages arising out of the tenancy.

With respect to the filing fee, Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlords were successful with a number of their claims. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

Set Off of Claims

The Tenants are awarded \$1,700.00 for the security deposit and pet damage deposit.

The Landlords are awarded \$2,461.61 for the following items:

ITEM	AWARD
Loss of rent (February)	\$1,700.00
Ceiling repair & Duct cleaning	\$475.00
Dryer repair	\$186.61
Filing fee	\$100.00
total	\$2,461.61

I order that the Landlord's may retain the Tenants security deposit in the amount of \$850.00 and the pet damage deposit in the amount of \$850.00 in partial satisfaction of the monetary award of \$2,461.61

I grant the Landlord a monetary order for the remaining amount of \$761.61. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants caused some damage to the rental unit. The Landlords have established damages and loss in the amount of \$2,461.61. I order that the Landlord can keep the security deposit and pet damage deposit in partial satisfaction of the Landlord's claim.

The Landlords are granted a monetary order in the amount of \$761.61

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: November 1, 2016

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Residential Tenancy Branch