



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MND, MNSD & MNDC

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$8554 for damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the tenant by mailing, by registered mail to where the tenant resides on September 6, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on September 1, 2011. The latest tenancy agreement provided that the tenancy would start of September 1, 2015 and end on August 31, 2016 and the tenants

would have to leave the rental unit at that time unless the parties renewed the agreement. The tenancy agreement provided that the tenant(s) would pay rent of \$5300 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$2625 on August 1, 2011 and a pet damage deposit of \$2625 on September 1, 2014 for a total of \$5250. The claim filed by the landlord indicates the tenants should receive a credit of 383.25 for stove repair.

The tenancy ended on August 22, 2016.

#### Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

#### .Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$254.97 for the Fortis bill as the Tenants have acknowledged responsibility for this claim.
- b. I determined the landlord is entitled to \$276.38 for the Hydro bill as the Tenant has acknowledged responsibility for this claim.
- c. I determined the landlord is entitled to \$100 for the removal of baseboards and windows as the tenant accepted responsibility for this claim..
- d. I determined the landlord is entitled to \$40 for lawn maintenance as the tenant accepted responsibility for this claim. .
- e. I determined the landlord is entitled to \$1627.50 for the cost of repairing the damaged back gate as the Tenants have acknowledged responsibility for this claim.
- f. I determined the landlord is entitled to \$115.50 for the cost of two remotes that were not returned as the tenants have acknowledged responsibility for this claim.
- g. The landlord claimed \$6090 for the cost of repairing a damaged shower. The tenant disputes this claim. The landlord provided the following evidence:

- In 2014 the landlord installed a shower. During the process unknown to the parties the shower pan was punctured.
- The tenants failed to advise the landlords of the puncture.
- The tenants failed to advise them of a water leakage problem until November 2015 (1 ½ years later).
- When the landlord sent the repair person in to complete the work he thought the problem was with the grout and not work was done on the shower pan.
- The landlord was not aware of the punch hole until after the move out.
- The hole in the shower pan is small and not obvious. It is easy to see how a repair person might not see it.

The tenant disputes the landlord's testimony including the following:

- His family did not cause the punch hole. It must have been caused in the construction stage by a repair person hired by the landlord.
- When he mentioned it to the repair person at the time of construction the repair person told there was "nothing to worry about" and "there was no problem with it".
- When he advised the landlord of the water problem in November of 2015 the landlord's repair person was not able to find the problem
- The landlord sent in at least 3 tradesperson at different time looking to find the problem but they failed to locate it.

After carefully consider all of the evidence I determined the landlord failed to prove the tenants was negligent or breached the tenancy agreement and I dismissed this claim for the following reasons:

- The tenants did not cause the puncture.
- When the tenants alerted the landlord agents (the repair person) they assured the tenants that it was not a problem.
- The crack was not obvious or easily identifiable.
- I determined it was not appropriate to hold the tenants liable where the landlord's repair people were not able to identify it as a problem on three different occasions.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$2414.35 plus the \$100 filing fee for a total of \$2514.35. The

materials filed by the landlord indicate the tenant is entitled to a credit in the sum of \$383.25 for a stove repair thus reducing the amount that is owed to \$2031.10.

### Security Deposit

I determined the security deposit and pet damage deposit totals \$5250. I ordered that the landlord may retain the sum of \$2031.10 from the security deposit. I ordered the landlord shall return to the Tenants the balance of the security deposit and pet damage deposit in the amount of \$3218.90.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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: December 06, 2016

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Residential Tenancy Branch