



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, MNSD, MND, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on June 29, 2016, the date the Residential Tenancy branch (the “RTB”) received the Tenant’s application to waive the filing fee, for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38;
3. An Order for the Landlord’s compliance - Section 62; and
4. An Order to recover the filing fee - Section 72.

The Landlord applied on September 22, 2016 for:

1. A Monetary Order for damage to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to compensation for overpayment of utilities?

Did the Tenant leave the unit damaged?

Is the Landlord entitled to the costs claimed?

### Background and Evidence

The tenancy started on May 15, 2012 and ended on June 30, 2014. Rent of \$775.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. No move-in or move-out inspection and report was completed.

The Landlord states that the Tenant provided its forwarding address with the dispute materials received by the Landlord sometime in July 2016. The Tenant states that the Landlord was also provided with the forwarding address by regular mail on August 6, 2016. The security deposit has not been returned. The Tenant claims return of double the security deposit.

The Tenant states that the Landlord used a garage beside the rental unit and told the Tenants at the outset of the tenancy that electricity to the garage was on a separate meter. The Tenant states that a spike in hydro usage was noted from the periods when the Landlord stayed in the garage and the Tenants discovered the Landlord had been accessing and using the Tenants' hydro without the Tenants' knowledge or consent. The Tenant states that when the Landlord was confronted with the extra expense the Landlord said that he did not think this would be a problem for the Tenants. The Tenant estimated the Landlord's usage as 30% of the overall costs during the tenancy of \$5,398.11. The Tenant provides a copy of a hydro bill as an example of the costs for that period. The Tenant claims \$2,050.00 in compensation for hydro usage.

The Landlord states that the Tenants heated their unit with portable heaters instead of using the oil furnace and that as a result their hydro costs were higher than expected. The Landlord states that he was only periodically in the garage on some week-ends only in the summer months. The Landlord states that the tenancy agreement provides that the Tenants are to pay for their own utilities and that there is no requirement in the tenancy agreement for the Tenants to pay for utilities used by the garage. The Landlord does not dispute that the hydro used for the garage was being paid by the Tenants. The Tenant agrees that the oil costs were very expensive and as a result they tended not to use the oil furnace. The Tenant states that they could not use the fireplace as the Landlord had told them at the outset that the fireplace was not up to code and could not be used.

The Landlord states that new filters were required for the furnace because the Tenants allowed the oil tank to go empty. The Landlord states that the Tenants were shown a dipstick level for maintain the oil level. The Landlord provides an invoice dated October 23, 2014. The Landlord states that he does not believe this is the correct invoice. It is noted that the invoice indicates the use of diesel as a problem for the filters. The Landlord claims the costs of filter replacement. The Tenant state that the Landlord never said anything about keeping the oil at a certain level and that the Tenants were only told to keep it at the level it was at from the onset. The Tenants state that their video submitted as evidence shows the level of the oil being higher than the empty point indicated on the dipstick the Landlord refers to. The Tenant states that they used the oil furnace a couple of times and replaced the oil to the original level.

The Landlord states that the Tenants allowed water to overflow from the two sinks in the bathroom causing the arborite covering to separate from the wood counter tops. The Landlord claims \$60.00 for the materials for the counter top. The Landlord states that some kitchen floor tiles were broken as though someone had hit them with a hammer. The Landlord claims \$40.00 to repair the tile areas. The Landlord states that the floor tiles were at least 15 years old.

The Tenant states that the counter top was ancient and that the taps were not working in the bathroom. The Tenant states that the kitchen floor tiles were actually wall tiles and that they cracked when the temperature became frigid outside. The Landlord states that the countertop in the manufactured home could be as old as its manufactured date of 1975.

The Landlord states that the Tenants left the carpet damaged by pet feces and urine. The Landlord states that upon removing the carpet the floor molding also had to be replaced. The Landlord states that he believes the carpet to be 20 years old. The Tenant states that no pet stains were left on the carpet.

The Landlord states that the bathroom sinks had to be replaced as they no longer fit the counter top that was replaced. The Landlord states that the counter top was built by a contractor who threw the old counter top and sinks away. The Landlord states that he had no idea how old the sinks were but that they were older than 15 years. The Tenant states that the sinks were old, chipped and painted over at the outset of the tenancy. The Tenant states that they were likely original to the home. The Landlord states that the kitchen sink needed replacement as it was causing a leak underneath somewhere. The Landlord states that the sink was at least 15 years old. The Tenant states that there was never any leak in the kitchen and that nothing was wrong or damaged under the kitchen sink.

The Landlord states that the kitchen ceiling tile was broken along with the whole lightbulb fixture. The Landlord states that the light ballast did not have enough power going to it and likely resulted in the fixture being damaged. The Landlord claims variable amounts for lightbulbs and ceiling tiles. The Landlord states that the kitchen and another room needed painting. The Landlord claims \$831.93 for paint and paint supplies for painting the unit. The Landlord states that the unit was painted 5 years before the Tenants moved in. The Landlord states that the kitchen taps were torn out and required replacement. The Landlord claims \$38.21 and states that new taps were put in place three years prior to the start of the tenancy.

The Tenant states that no ceiling tiles were broken when they moved out, that the taps were loose and wobbly at move-in and that the lights worked fine at move-out.

The Landlord claims \$665.00 for labour costs in relation to the bathroom and kitchen repairs and plumbing and for labour to install the light fixtures. The Tenant states that they asked for the repairs to the bathroom before the tenancy ended and that although the Landlord sent a person nothing was done and the Tenants shortly thereafter gave their notice to move out.

The Landlord states that due to the damages the Landlord lost rental income. The Landlord states that the unit was not rented out until October 2016 and that the Landlord lived at the unit prior to this date. The Landlord claims \$2,400.00 in lost rental income. The Tenants state that the Landlord had the unit for sale at the end of the tenancy and had no intention of renting the unit out. The Tenants provide the name of the real estate agent.

#### Analysis

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results. There is no dispute that the Tenants paid for the hydro usage in the garage. I accept the Tenant's believable evidence that they did not expect this extra cost and did not agree to it. I find therefor that the Tenants have substantiated that the Landlord caused a cost to the Tenants that was not agreed to. However the Tenants provided no supporting evidence of their total hydro costs and I accept the Landlord's believable evidence that he did not use the garage on a regular basis. I find that the Tenants have not substantiated the amount claimed and are only entitled to a nominal sum of \$10.00 per month for a period of 25 months totaling **\$250.00**.

Given the lack of supporting evidence that the Tenants were given any specific instructions at the onset of the tenancy in relation to the use of the oil furnace, considering the Landlord's confusion about the invoice and noting that the invoice provided makes no mention of a problem caused by running out of oil, I find that the Landlord has not substantiated that the Tenants caused damage to the furnace filter by allowing the tank to be empty. I therefore dismiss the claims for furnace repairs.

RTB Policy Guideline #40 provides that tile has a useful life of 10 years, bathroom counters have a useful life of 25 years, carpets have a useful life of 10 years, sinks have a useful life of 20 years, and interior paint has a useful life of 4 years. Given the Landlord's evidence of the age of the tile I find that there was no longer any useful life left in the tiles and that any damage occurred from consequential wear and tear. Given the Landlord's evidence that the counters could be as old as the manufactured home and considering the Tenants evidence of extreme age of the counters I find that the Landlord has not substantiated that the Tenants caused any damage beyond wear and tear to counters that were older than 25 years and no longer had any useful life to them. Given the Landlord's evidence of the age of the carpets I find that the carpets no longer had any useful life and that there was no value lost by the

Landlord. Given the Landlord's uncertain evidence of the age of the sinks and considering the Tenant's evidence of old age, I find that the sinks were likely as old as the home and well beyond 20 years old. Given the Landlord's evidence that the unit had not been painted since approximately 2007 I find that there was no longer any useful life to the paint and therefore no value lost. For the above reasons I dismiss the claims for repairs to the counters, floor tiles, carpet, sinks and for painting the unit.

Given the lack of a move-in or move-out condition report and considering the Tenants evidence of pre-existing or no damage, I find that the Landlord has failed to provide sufficient evidence to substantiate that the Tenants caused the damage to the lights, ceiling and taps. I dismiss the claims for costs of repairs to these items. Given that the Landlord has not substantiated that the Tenant caused the damages to the items that were repaired I dismiss the claims for labour costs for those repairs.

Given the Tenant's persuasive evidence of the unit being for sale and considering that the Landlord has no supporting evidence of any advertisements for rentals I find that the Landlord did have the unit for sale. As a result no rental income was either expected or lost and I dismiss step claim for lost rental income.

Given that there is no evidence to support that the Landlord intended to rent out the unit out after the Tenants moved out and considering the Landlord's evidence of having moved into the unit I find that the Landlord has not substantiated that the Tenant caused any rental loss and I dismiss this claim. As the Landlord's claims have not been successful I dismiss the Landlord's claim to recovery the filing fee.

Section 39 of the Act provides that despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

As the Tenants did not provide a forwarding address in writing until nearly two years after the end of the tenancy I find that the Tenants are not entitled to its return and I dismiss the claim.

As the Tenant paid no filing fee I dismiss this claim.

### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$250.00**. If necessary, this order may be filed in the Small Claims 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: January 13, 2017

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Residential Tenancy Branch