



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants and landlords attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Preliminary Issue – Amendment of Landlords' Application

At the outset of the hearing, the landlords confirmed that they wished to amend the landlords' application to reduce the monetary claim. Specifically the landlords testified that they no longer sought to recover the cost of the tree removal in the invoiced amount of \$160.00 but sought to amend the carpet removal and cabinet repair estimate of \$733.46 to the amount paid of \$812.15. In total, the landlords requested to amend their monetary claim from \$1,229.46 to \$1,148.50. The tenants did not dispute the landlords request for an amendment. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords' application for a monetary claim from \$1,229.46 to \$1,148.50.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2013 on a month-to-month basis. Rent in the amount of \$800.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$400.00 and pet deposit in the amount of \$100.00 at the start of the tenancy. The tenants vacated the rental unit on May 31, 2016.

The parties agreed that a written move in condition inspection report was not completed at the start of the tenancy. The parties further agreed that the tenants refused to attend the move-out inspection.

### Landlords Claim

The landlords testified that they are seeking \$1,148.50 in damages.

#### *Yard Maintenance, Cleaning & Carpet Removal*

The landlords testified that the tenants were responsible for maintaining the yard including gardens, as per the signed tenancy agreement addendum. The landlords seek to recover the cost of removing pine needles and garbage from the yard. The landlords seek to recover the cost of cleaning the fridge and stove. The landlords testified that the tenants' pet damaged the carpet to the extent that the carpet needed to be removed and replaced. The landlords seek to recover the cost of the carpet removal.

The landlords have submitted an invoice in the amount of \$336.00 for the above repairs. The landlords have also submitted photographs of the yard and carpet.

#### *Laminate Floor & Bathroom Vanity*

The landlords seek to recover the cost and installation of the laminate that replaced the removed carpet. Additionally the landlords seek to recover the cost of a bathroom vanity alleged to be damaged by the tenants. The landlords submitted an invoice for the above in the amount of \$812.15. The landlords submitted photographs of the bathroom vanity.

### Tenants Reply

In reply, the tenants testified that they maintained the yard; they mowed the lawn and weeded the gardens throughout their tenancy. The tenants testified that raking pine needles does not form part of their agreement. The tenants contend that the garbage removed by the landlords belonged to either the landlords or the tenants prior to them.

The tenants stated that they cleaned the fridge and stove prior to vacating therefore additional cleaning was not required. The tenants testified that the carpets were old and in poor condition at move in. The tenants denied damaging the bathroom vanity.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the landlords to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The landlords seek reimbursement in the amount of \$1,148.50.

#### *Yard Maintenance, Cleaning & Carpet Removal*

The *Residential Tenancy Policy Guideline* (“*RT Policy Guideline*”) establishes that a tenant is responsible for routine yard maintenance. The *RT Policy Guideline* stipulates that the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

I do not find the removal of pine needles to be a major project. I am satisfied this routine task only evolved into a major project after nearly three years of neglect. Therefore, I find the tenants failed to maintain the yard by regularly removing pine needles and award the landlord the invoiced amount of \$175.00.

The *RT Policy Guideline* stipulates that unless there is an agreement to the contrary, the tenant is responsible for removal of garbage at the end of tenancy. In the absence of such an agreement and on the basis that there is no dispute garbage remained on the residential tenancy property, I award the landlords the invoiced amount of \$75.00 for garbage removal.

Although the landlords submitted an invoice for the cleaning of the fridge and stove, the landlords did not provide photographs of the condition of these appliances at the end of

tenancy. For this reason, I cannot adequately find the appliances were left unclean and dismiss this portion of the landlords claim.

*Laminate Floor & Bathroom Vanity*

In the absence of a condition inspection report depicting the state of the carpet and bathroom vanity at move-in, I cannot find the tenants are responsible for any damage noted to the carpet or bathroom vanity at move-out. I dismiss this portion of the landlords claim.

*Security Deposit*

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$250.00 of the \$500.00 security and pet deposits in full satisfaction of the monetary award. The tenants are entitled to the remaining \$250.00 security and pet deposit balance.

Conclusion

The landlords are entitled to \$250.00. I order the landlords to retain \$250.00 from the security and pet deposits in full compensation of this amount. The tenants are entitled to the return of the balance of the security and pet deposits. I therefore grant the tenants a monetary order for the balance of the deposits, in the amount of \$250.00.

The landlord's application for damages in relation to cleaning of the fridge and stove, carpet removal, laminate installation and bathroom vanity replacement is dismissed without leave to reapply.

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 12, 2017

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Residential Tenancy Branch