



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, FF

### Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord JL" did not attend this hearing, which lasted approximately 81 minutes. Landlord CL ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to speak on behalf of his wife, landlord JL, as an agent at this hearing (collectively "landlords").

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and both landlords were duly served with the tenant's written evidence.

The tenant confirmed that she had no objection to me considering the landlords' one page of late written evidence, which was received by her on the day before this hearing. Accordingly, I considered the landlords' one-page late written evidence in addition to the other written evidence from the landlords.

### Issues to be Decided

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

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began sometime in March 2011, although neither party could recall the exact date. The tenancy ended on November 30, 2015. Monthly rent in the amount of \$930.00 was payable on the first day of each month. A security deposit of \$440.00 was paid by the tenant and the landlords returned this deposit within 15 days of the end of the tenancy. Both parties signed a written tenancy agreement but a copy was not provided for this hearing. The rental unit is a one-bedroom, one-bathroom separate contained suite on the main floor of a two-level house. There is another rental suite next door to the rental unit, that was occupied by other tenants during this tenancy. The upper floor of the house is occupied by the landlords.

Both parties agreed that the landlords did not perform any move-in or move-out condition inspection reports for this tenancy. The landlord testified that he performed a move-out condition inspection of the rental unit on his own on December 2, 2015, after the tenant had already vacated. He initially stated that it was his usual practice to perform an inspection after the tenant moves out. He later claimed that he could not perform the move-out inspection with the tenant because she left unexpectedly and taped the rental unit keys to the door. He further stated that he had a medical appointment that afternoon and he did not want to interrupt the tenant while she was moving. He confirmed that he did not provide the tenant with two opportunities to perform a move-out condition inspection.

The landlords seek a monetary order of \$191.25 plus the \$100.00 application filing fee.

The landlords seek \$60.00 for clearing a clogged drain in the sink of the bathroom at the rental unit. The tenant disputes this cost. The landlords provided an invoice, dated January 4, 2016, for the above amount. The landlord said that he waited to get someone in to fix the problem because he did not have an "immediate use of the area" and he wanted the tenant next door to the rental unit to move out first. The landlord claimed that the tenant reported a problem with the clogged drain about two years into her tenancy. The tenant stated that the problem with the slow speed of the water draining began about two months into her tenancy.

Both parties agreed that the landlord told the tenant that it was her responsibility to unclog the drain. The landlord said that the tenant has long hair and it got stuck in the drain, so it was her responsibility to fix the problem. The tenant stated that she did not wash her hair in the sink and the problem was pre-existing before she began her tenancy. She claimed that the landlords eventually had a plumber fix the problem after the tenant was careful using the sink and had tried her own methods to clear it first. The tenant agreed that she provided a note to the landlord thanking him for bringing in a plumber to fix the problem initially, but said that the problem returned after it was fixed.

The landlords seek \$94.50 for general cleaning of the rental unit. The tenant disputes this cost. The landlords provided an invoice, dated January 6, 2016, for the above cost. The landlord testified that the cleaning took 2.5 hours for two people and that they charged approximately \$35.00 per hour. The invoice did not provide a breakdown of the items cleaned, the amount of

time it took, the amount of people that cleaned or the amount charged per hour. The landlords provided a photograph of a dirty oven, which the tenant said was not the oven in the rental unit. The tenant claimed that she cleaned the oven before vacating. The landlords provided a photograph of food items in a freezer, which the tenant said that she could not remember whether she left items in there. The landlord testified that the rental unit was dirty and “unacceptable,” that vacuuming had to be done, and kitchen cabinets had to be washed as well. The tenant explained that she shampooed the carpet every six months while living at the rental unit because of her allergies, and that she had shampooing done again before she vacated. She claimed that she cleaned the entire rental unit before vacating and that she left it in the same condition as when she moved in.

The landlords seek \$36.75 for removing and depositing of a metal head board from a bed frame that the tenant left behind after vacating. The tenant disputes this cost. The landlords provided an invoice, dated July 4, 2016, for the above cost. The landlords also provided a photograph of the head board. Both parties agreed that the tenant left behind the head board after vacating and both parties mutually agreed that the tenant would retrieve this head board from the rental unit. The tenant said that she went twice in December 2015 to retrieve the head board but the landlord did not leave it where he said he would. She stated that she arranged for friends with trucks to assist her to remove the head board because she did not have a car and needed a larger vehicle for it. The tenant provided a statement from “witness SR,” a friend who assisted her to retrieve the head board on December 19, 2015, and claimed that it was not there in the alley as it was supposed to be. The landlord explained that he left it in the correct place but the tenant failed to retrieve it.

The tenant claimed that after the second attempt to retrieve it, she was able to speak to the landlord and find it in May or June 2016, put a “free” sign on it and leave it in the alley, off the landlords’ property. The tenant provided a photograph of this. The landlord testified that the garbage collectors put the head board back on the landlords’ property so he had to get someone to remove it after that in July 2016. He said that it took some time for him to find a cheaper company to remove and dispose of the head board, since most companies charged a lot of money. He stated that his own car was not big enough for him to dispose of it.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must show that the tenant caused damage beyond reasonable wear and tear, satisfying 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 tenant 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlords' claim of \$60.00 for clearing a clogged bathroom sink drain, without leave to reapply. I find that the landlords failed to provide sufficient evidence to show that the tenant caused this clogging to occur. The landlords did not submit a move-in or move-out condition inspection report regarding the condition of the bathroom sink drain. The landlords had the repair work done on January 4, 2016, more than one month after the tenant vacated on November 30, 2015. It is not clear who or what was in the rental unit after the tenant vacated. The landlords failed to show a breakdown of the invoice, which only stated "clearing plugged wash basin in washroom." There is no note about why the drain was plugged, what caused the plugging, how many people worked to fix it, how long it took to fix and what the rate was per hour for the labour. I find that it is the landlords' responsibility to repair and maintain the premises as per section 32 of *the Act*, which includes repairing clogged sink drains, in the absence of proof that the tenant specifically caused this problem.

I dismiss the landlords' claim of \$94.50 for general cleaning without leave to reapply. I find that the landlords failed to provide sufficient evidence to show that the tenant failed to properly clean the rental unit when she vacated. The landlords did not submit photographs or a condition inspection report regarding the condition of the rental unit when the tenant moved in. The landlords did not submit a move-out condition inspection report. The landlords did not submit a receipt for the cleaning, only an invoice showing a balance due. The landlords had the cleaning done on January 6, 2016, more than one month after the tenant vacated on November 30, 2015. It is not clear who or what was in the rental unit after the tenant vacated. The landlords only submitted two photographs after the tenant moved out, which did not show the general condition of the unit when the tenant vacated. The landlords failed to show a breakdown of the invoice for cleaning such as the work done, the amount of people that cleaned, how many hours it took, or the charge per hour. There is no indication that the landlords paid anything to have the food items in the freezer removed, even if the tenant left the items behind. I accept the tenant's testimony that she properly cleaned the rental unit before vacating and that she shampooed the carpet.

I dismiss the landlords' claim of \$36.75 for removing and disposing of a metal head board, without leave to reapply. The landlords had this work done on July 4, 2016, over seven months after the tenancy ended on November 30, 2015. The landlords did not provide a receipt for the amount paid, only an invoice showing a balance due. I accept the tenant's testimony that she attempted to collect the bed frame twice in order to dispose of it but the landlords failed to leave it in the correct location; the tenant provided a witness statement to confirm same. I do not accept the landlord's testimony that the garbage collector put the item back on his property when it was left with a "free" sign in the common alley of a number of properties, not just the landlords' property. If this were an urgent issue for disposal, it would not have taken the

landlords more than a month from sometime in May or June 2016, to have the item disposed of on July 4, 2016. I find that while the tenant did leave this item behind, she made repeated efforts to contact the landlord in order to retrieve it and get rid of it, but the landlord did not cooperate and took it upon himself to incur more costs to dispose of it, rather than mitigate his losses.

As the landlords were not successful in this application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The landlords' entire application 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: April 03, 2017

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Residential Tenancy Branch