



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for a monetary order for the cost of emergency repairs; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlords.

Both landlords and the tenant attended the hearing, and one of the landlords and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other.

At the commencement of the hearing, the tenant advised that she had not received the landlord's evidentiary material. The landlord testified that it was sent to the address of the tenant on the Tenant's Application for Dispute Resolution by registered mail on May 23, 2017, and it was returned unclaimed. The landlords have provided a copy of a Canada Post cash register receipt bearing that date. The tenant has changed her address, but checks mail at the address on the Application, and none has been received. The landlord opposed an adjournment, and I found that the landlords had served the evidentiary material in accordance with the *Residential Tenancy Act* and the Rules of Procedure, and I found that an adjournment would prejudice the landlords, and the hearing proceeded.

All evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?

- have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for deductions arbitrarily made by the tenant for rent?
- should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- has the tenant established a monetary claim as against the landlords for the cost of emergency repairs?
- has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for repairs, painting, cleaning and overpayment of rent?
- has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The tenant** testified that this fixed term tenancy began on June 1, 2015 and expired on May 31, 2016 at which time the tenant was to move out, but the parties entered into a new tenancy agreement. The tenancy ended on December 15, 2016. Rent in the amount of \$1,700.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$850.00, and \$750.00 was returned to the tenant just before January 1, 2017. The tenant did not provide the landlords with a forwarding address in writing until serving the Tenant's Application for Dispute Resolution. The rental unit is an apartment in a building containing 32 floors.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

1. \$850.00 "Loss of suite due to previous tenants."

The previous tenant's belongings remained in the rental unit in cupboards, furniture and stuff in bathroom and almost all over the apartment. The tenant called the landlord to pick them up and the tenant moved them to one side of the room. The landlord retrieved the items a couple of weeks later.

2. \$925.00 "Loss of suite due to smoke smell."

The landlords had advertised the rental unit as non-smoking but previous tenants had smoked heavily. The smell was noticeable on walls, ceilings and light fixtures. The tenant was getting headaches from it and asked the landlord who confirmed that the previous tenant had smoked and painted, but it was water thin. The tenant asked for re-painting and sealing in smoke smell, and after weeks of going back and forth the landlords agreed to purchase paint and the tenant would do the painting. The tenant was under the impression she would be compensated for her time.

3. \$932.25 "Loss of rent (Dec 15 to 31/16)."

The tenant found new tenants for the landlords and arranged a meeting. The new tenants wanted to move in December 15 and the tenant had paid full rent for that month, but the landlord said that the tenant should claim that money from the new tenant.

4. \$100.00 "remainder of security deposit."

The tenant only agreed that the landlords could retain \$100.00 so she could get some back. The landlords have provided a copy of email where the tenant agreed due to a mark on a counter with some cheap film on it that covered the mark when the move-in condition inspection report was completed.

5. \$600.00 "fixing/repairs of suite including re-grouting."

The tenant cleaned mold on window sills for which the landlord compensated the tenant, and approved replacing light fixtures, but the tenant had to hire electrician. The tenant has calculated the claim based on \$25.00 per hour.

6. \$195.00 for cleaning.

The parties participated in a move-in condition inspection report prior to cleaning, but when the tenant moved in she took photographs and sent them to the landlords showing what was dirty, including nicotine stains all over the bathroom, and everything other than new flooring had to be cleaned.

7. \$600.00 painting/sealing of entire suite.

The tenant testified that she calculated her time, which took almost 2 weeks priming with an oil base primer to seal and then paint walls and ceiling at \$25.00 per hour.

8. \$400.00 "loss of laundry facilities f/3.5 months."

The tenant told the landlords at end of July/, 2016 that the washer/dryer were not working. The washer had serious leaks spilling onto the tile floor. The tenant had a plumber who said the fault was with the machine leaking from the bottom. The Concierge told the tenant it was an issue with that brand of washer in other units, which the tenant told the landlords. The dryer had a piece on front broken which was tearing up clothes. The landlord said he'd replace them but didn't till November, 2016. The tenant washed laundry in the tub and told the landlords that. Using the appliances in the apartment could have damaged the floor and suite below.

The landlords also had the tenant arrange for everything, including delivery of the washer and dryer and to ensure it was installed properly, and now the landlords claim a scratch. The door rubbed against the front of the dryer when it was installed, and the tenant removed the door on the washer/dryer area to prevent further damage, and put up a curtain. The landlord also inspected the machines after they were installed.

With respect to the landlords' claim, the tenant disagrees that business expenses of the landlords should be paid by the tenant. The tenant also testified that the shower curtain was rusted.

**The landlord** testified that the tenant's testimony is ludicrous. The tenant called the landlords multiple times to repair things, abusing her rights as a tenant.

On April 23, 2015 the floors were replaced, a new range was placed in the rental unit on April 25, 2015 and had to have been vacant. The rental unit was painted on May 5, 2015. Evidence of that has been provided for this hearing. The tenant didn't like the colour so re-painted.

The tenant also collected \$900.00 rent from the people she sub-let the apartment to. The advertisement on Craigslist was \$1,800.00 per month, but the tenant rented from the landlords at \$1,700.00 per month. The landlords didn't know the tenant was sub-letting for more money, and the landlords didn't collect any money from the sub-tenant for the period of December 15 to 31, 2016. A copy of the Craigslist advertisement has been provided for this hearing.

The tenant agreed in writing that the landlords could keep \$100.00 of the security deposit and a copy of an email to that effect has been provided for this hearing.

The tenant arbitrarily reduced rent during the tenancy without the landlords' authorization, and copies of notes and receipts of the tenant have been provided. The tenant reduced rent without authorization on 4 occasions.

The landlords also disagree with the tenant's claim for cleaning; the rental unit was newly painted at the commencement of this tenancy.

With respect to the tenant's claim for laundry, the landlord testified that the tenant ordered the appliances at the landlord's expense. An Invoice dated October 5, 2016 has been provided showing that the original appliances worked fine. The landlord had been there and tested all cycles in the washer and there were no leaks, and the landlord went beyond what he was required to do. His English is not good, and the tenant coerced him into a new washer and dryer.

The landlords have also provided a Monetary Order Worksheet setting out the following claims:

1. \$1,756.00 – washer/dryer;

The tenant scratched the new washer/dryer, so they were not able to return them, and the landlord had to dispose of the older ones and paid someone \$100.00 to pick it up.

2. \$322.00 – delivery and installation of the washer/dryer;

The tenant agreed to pay for delivery and installation totalling \$321.53 but arbitrarily deducted that amount from rent.

3. \$163.00 – washer/dryer inspection;

The landlords also claim \$162.70 for the washer and dryer inspection ordered by the tenant.

4. \$1,260.00 – paint and repair walls;

The tenant installed shelving and did not remove them at move-out, and the landlords have provided a quote in the amount of \$1,260.00 for repairing and re-painting, and to remove the shelves.

5. \$326.00 – lava rocks, shower head;

The tenant deducted \$325.43 from the rent for September, 2015 for a business expense, and the landlord didn't know the tenant was conducting business in the rental unit.

6. \$170.00 – light bulbs;

The tenant also deducted \$169.42 from the rent for light bulbs.

7. \$150.00 – light bulbs and fixtures;

The tenant also deducted \$150.00 of the rent for light bulbs and fixtures.

8. \$1,793.00 to repair the countertop;

The tenant left ring marks in the bathroom, and the landlords claim \$1,793.12 for replacing it, and disputes the tenant's claim that a film covered it.

9. \$1,547.00 for property manager fees to act for the landlords multiple times.

Photographs have also been provided. The landlords claim \$7,586.00 as against the tenant.

### Analysis

Where a party makes a monetary claim as against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. the efforts the claiming party made to mitigate any damage or loss suffered.

I do not accept that the tenant should recover half a month's rent for belongings of the previous tenants remaining in the rental unit for "a couple of weeks." The landlord disputes the testimony, and I find that the tenant has failed to establish that any loss was suffered.

I also dismiss the tenant's claim of \$925.00 for the smoke smell. The landlords have provided evidence of having painted the rental unit prior to this tenancy.

I also dismiss the tenant's claim for loss of rent in the amount of \$932.25 for sub-letting. The landlord testified that no rent was collected for the period of December 15 to 31, and I find that the tenant has failed to establish that the landlords did collect any.

The tenant agreed that the landlords keep \$100.00 of the security deposit, and regardless of the reason for agreeing, the tenant agreed, and I dismiss that portion of the tenant's application.

A tenant is not permitted to reduce rent by any amount unless the tenant makes emergency repairs for health or safety reasons after making at least 2 attempts to contact the landlord and giving the landlord a reasonable time to make those repairs. The Act also specifies what emergency repairs are:

- 33 (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
  - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
  - (c) made for the purpose of repairing
    - (i) major leaks in pipes or the roof,
    - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
    - (iii) the primary heating system,
    - (iv) damaged or defective locks that give access to a rental unit,
    - (v) the electrical systems, or
    - (vi) in prescribed circumstances, a rental unit or residential property.

Therefore, I dismiss the tenant's claims of \$600.00 for fixing and repairing, re-grouting.

I also dismiss the tenant's \$195.00 claim for cleaning. The move-in condition inspection report is evidence of the condition of the rental unit at the beginning of the tenancy, and there is no indication that cleaning was required.

I also dismiss the tenant's \$600.00 claim for painting, and I accept the testimony of the landlord, considering the evidentiary material, that the rental unit had been repainted prior to the commencement of the tenancy, and the tenant didn't like the color.

The washer was not in poor enough condition that it had to be replaced, and I do not accept that the tenant suffered a \$400.00 loss for 3 ½ months.

I find that the tenant has reduced rent unlawfully, has made absolutely no emergency repairs as defined by the *Act*, and has filed a frivolous claim as against the landlords, and I dismiss the tenant's claim in its entirety.

With respect to the landlords' claim, the landlords have the washer and dryer, and requiring the tenant to pay for it would put the landlord in a better financial situation than if the older appliances remained in the rental unit instead. The landlords have a duty to maintain such appliances, and I find that the landlord has done so, however claiming the cost of the inspecting or delivery and installation cannot be a responsibility of the tenant. Therefore, I dismiss the landlords' claims of \$1,756.00 and \$321.53 and \$162.70, respectively.

I accept that the tenant deducted rent arbitrarily for sundry items, such as light bulbs, without the landlord's consent in writing, and the landlords are entitled to recovery of the following deductions: \$325.43 from September, 2015 rent; \$150.00 from October, 2015; rent; and \$169.42 from December, 2016 rent.

With respect to the landlords' claim for repairing and painting after the tenancy had ended, including removal of shelves left by the tenant, I have reviewed the photographs and I am satisfied that the tenant erected numerous shelves of different shapes and sizes in different rooms throughout the rental unit. A tenant must not leave such items behind, and must repair any damages caused by doing so. The tenant testified that the new tenants wanted the shelves, however if the new tenants don't want to take them at the end of their tenancy, the landlord may not claim against them for the actions of a previous tenant. The landlords have provided a quote, and I find that the landlords have satisfied all 4 elements in the test for damages. Therefore, I find that the landlords have established the claim of \$1,260.00.

With respect to the landlords' claim for kitchen and bathroom countertops, there is no evidence before me regarding a move-out condition inspection report, however it is clear that at the beginning of the tenancy there were no such damages. I have also reviewed the email provided by the landlords, which permits the landlords to keep the \$100.00 of the security deposit for the damage to the countertop. I find that to be an agreement, and I dismiss the landlords' \$1,793.00 claim .

A tenant is not responsible for property management fees paid by a landlord. The landlord and the tenant have a tenancy agreement, and any agreement that the landlord has with another party is not part of the tenancy agreement, and I dismiss the landlords' claim of \$1,547.00 for property management fees.

Since the landlords have been partially successful the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$100.00 security deposit in lieu of damage to the vanity, and having found that the landlords have established a claim of \$2,004.85 (\$325.43 from September, 2015 rent; \$169.42 from December, 2016 rent; \$150.00 from October, 2015 rent;

\$1,260.00 for removal of shelving, repairs and painting) and \$100.00 as recovery of the filing fee I grant a monetary order in favour of the landlords for the difference in the amount of \$2,004.85.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlords to keep the \$100.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,004.85.

This order is final and binding and may be enforced.

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: July 04, 2017

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Residential Tenancy Branch