



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MND, MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for compensation for damage to the rental unit; unpaid utilities; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing I confirmed service of hearing documents upon each other and the Residential Tenancy Branch. I also explained the hearing process to both parties and permitted them to ask questions.

During the hearing, the landlord stated that she would accept the security deposit in satisfaction of any and all losses she suffered as a result of this tenancy. As a result, I amended the application accordingly and limited the landlord's award to the amount of the security deposit.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation in an amount equal to or greater than the security deposit?
2. Is the landlord authorized to retain the tenants' security deposit?

### Background and Evidence

The tenancy started December 1, 2015 and ended December 1, 2016. The tenants paid a security deposit of \$550.00 and were required to pay rent of \$1,100.00 on the first day of every month. The tenants had a pet cat but did not pay a pet damage deposit.

I heard undisputed testimony that a move-in inspection report was prepared by the landlord with the tenant present but neither party signed it. The parties were in dispute as to whether a copy

of the report was given to the tenants at the start of the tenancy. The landlord stated it was given to the tenants with a copy of the tenancy agreement. The tenant denied that to be true.

I heard undisputed testimony that a move-out inspection was performed by the landlord without the tenants present on December 2, 2016. The landlord testified that a letter was given to the female tenant on October 15, 2016 to schedule the move-out inspection for one of two times proposed on November 30, 2016 but the tenant did not respond to the letter. On November 30, 2016 the landlord sent a text message to remind the tenant about a move-out inspection and there was no response. The tenant stated a letter was received from the landlord on October 27, 2016 but it was not signed by the landlord. The tenant testified that a specific date and time for a move-out inspection was not set. The tenant denied receiving a text message. The tenant stated that he tried contacting the landlord several times in person but the landlord was avoiding the tenants. .

On December 2 or 3, 2016 the male tenant delivered the keys to the landlord and provided forwarding address in writing. The landlord did not propose to do the move-out inspection at this time as the landlord stated the tenant was too upset and angry after she told him she would not be returning the security deposit. The landlord made this Application for Dispute Resolution on December 15, 2016.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

### **Carpet cleaning -- \$379.00**

The landlord submitted that the tenants left the carpeting stained and smelling of pet odours. The landlord had the carpets professionally cleaned, bio-treated, and scotch-guarded.

The tenant submitted that he cleaned the carpets himself with a home steam cleaning machine. The tenant was of the position that bio-treatment and scotch-guarding are an unnecessary upsell. The tenant stated that if the rental unit smelled it was sewer gas since the cat was not allowed in the bedrooms and the cat did not have any accidents. The tenant pointed out that the carpet cleaning was done 11 days after the tenancy ended.

The landlord explained that she had tried cleaning the carpets herself before calling in a professional carpet cleaner.

The landlord was of the position that the home cleaning machines do not work very well. The tenant stated he used to be a professional carpet cleaner and he used professional chemicals.

### **Hydro bills for August through November 2016 – \$130.39**

The landlord submitted that rent did not include utilities. The tenants were required to pay utilities to the landlord. There was a hydro meter located in the rental unit that measured the

amount of electricity consumed in the rental unit. The tenant would take a picture of the hydro meter and send it to the landlord. The landlord would then calculate the hydro charge based on the meter readings the tenant provided to her and the rates that appeared on the hydro bill, excluding taxes. The landlord submitted that the tenants did not pay the hydro for the months of August 2016 through November 2016.

The tenant testified that the hydro bills were paid promptly in cash as requested by landlord with the exception of the bill for November 2016. The tenant claims he requested receipts but they were not provided. The tenant questions the charges, claiming they appear high in comparison to the bills for his current rental unit that are \$10.00 per month less.

The landlord acknowledged that the tenants had paid for utilities in cash in the past and receipts were not given but maintained the tenants did not pay the bills for August 2016 onwards.

**Water bill for August through November 2016 -- \$109.42**

The landlord submitted that the tenants were required to pay for water in addition to rent. The landlord received a water bill for August 2016 through November 2016 in the amount of \$368.91. The landlord deducted \$199.49 as being the estimated usage by the upper suite and deducted another \$60.00 for estimated usage to water the lawn in arriving at the tenant's share of the bill.

The tenant questioned the accuracy of the bill presented by the landlord since it is the same as the previous bill and whether it accurately reflected the tenants' usage. The tenant stated that they limited their water consumption to keep the bills low whereas the landlord's boyfriend had long showers and there was lots of watering of the lawns and gardens.

The landlord stated that the bill is similar to the previous bill but the not the same.

**Cleaning -- \$150.00**

The landlord submitted that she spent an additional 10 hours cleaning the rental unit. Although the tenants left the rental unit surface clean it required additional cleaning behind the stove, on top of the fridge, in the drawers and cupboards, window tracks, cat litter in the closet, sticky floors, black specks on the outlets and on trim, and re-vacuumed.

The tenant stated the rental unit was left in rentable condition and pointed to the photographs he provided as evidence. The tenant claimed there was poor lighting in the kitchen and the landlord's photographs do not accurately reflect how the tenants left the rental unit.

**Painting -- \$45.00**

The landlord submitted that she had to do touch up painting for three hours after the tenancy ended. The landlord seeks \$45.00 in compensation. The landlord stated the beam and trim required painting to remove scuffs and the black specks that did not come off with cleaning and to correct the tenant's attempts to paint the walls with the wrong colour.

The tenant stated that he had no idea what the landlord meant when she spoke of black spots on the beam or trim. The tenant acknowledged that the kid's bedroom wall required painting because of a decal that had been applied to the wall and the paint was damaged when the decal was removed. The tenant stated that he asked for the matching paint from the landlord but he did not receive it. The tenant denied painting the walls with mismatching paint and alluded to the walls being that way at the start of the tenancy.

The landlord stated that she did get the matching paint for the tenant and she left a message for the tenant but the tenant did not pick it up. The landlord stated the walls were not mismatched when the tenancy began since the unit had just been painted before the tenancy began.

#### **Power washing patio -- \$30.00**

The landlord submitted that the patio had to be cleaned of ashes, dirt and green algae that necessitated power washing.

The tenant was of the position that power washing is not a tenant's responsibility since it was algae, tree debris and leaves on the patio.

The tenant denied responsibility for leaving dirt on the patio. The landlord said the dirt was from plants the tenant's had on the patio.

I noted that in the landlord's photographs cigarettes butts were visible in the patio area. The parties pointed to each other as the party responsible for leaving cigarette butts on the patio.

#### **Garbage disposal -- \$50.00**

The landlord submitted that the tenants left carpeting, car seats, and a stroller behind at the property which she hauled away. The landlord estimated the loss in filing the application and disposed of the items after filing. The landlord stated she has a receipt but did not provide it as evidence.

The tenant testified that recycling was left behind and a tricycle, stroller and car seats were left on the street with a "free" sign, but not on the landlord's property.

The landlord responded by stating she is not charging for the items left for "free" on the street but the items that the tenants left under the camper and back of trailer parked on the property.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the applicant, the landlord bears the burden of proof in this case. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 requires that a tenant leave a rental unit reasonably clean and undamaged at the end of a tenancy. Residential tenancy Policy Guideline 1 provides a number of policy statements and information with respect to various the obligations of a landlord and tenant to repair and clean a rental unit. I have referred to policy guideline 1 in making this decision.

### **Carpet cleaning**

Policy guideline 1 provides that a tenant is usually held responsible for carpet cleaning if the tenancy was over a year or the tenant had an uncaged pet in the rental unit. The tenants had a pet in the rental unit and the tenancy was one year in duration. Accordingly, I find the tenants responsible for cleaning the carpeting in the rental unit. The issue is whether the tenant did adequately clean the carpeting.

The tenant submitted that he cleaned the carpeting with a home machine and professional chemicals. I accept that the tenant may have used the home machine as I see a photograph of such a machine in the tenant's photographs; however, I also accept that the carpeting required more cleaning based on the landlord's photographs and the carpet cleaner's statements on the invoice that described "heavy soiling" and "strong pet odours". Therefore, I hold the tenants responsible to pay for additional carpet cleaning and bio-treatment.

I do not award the landlord recovery of the scotch-guarding of the carpets as the tenants are not responsible to have this reapplied to the carpeting.

In light of the above, I find the landlord has established an entitlement to compensation of \$292.90 (\$149.00 + \$110.00 + \$19.95 + 5% tax) for carpet cleaning.

### **Hydro bills**

The tenancy agreement provides that rent does not include hydro. The rental unit was equipped with a meter and I accept that the meter readings obtained by the tenants and given to the landlord represent a fair approximation of the tenants' consumption of hydro.

The parties were in dispute as to whether the tenants had paid the August 2016 through September 2016 hydro bills. The parties acknowledged that the ordinary method of payment for the previous hydro bills was cash and the landlord did not give receipts. Under section 26 of the Act, a landlord is required to give receipts for cash payments. I am of the view that had the landlord done so the dispute concerning the older bills could have been avoided. I find I am unable to determine whether the tenants had or had not paid the August through September 2016 hydro bills based on disputed verbal testimony. Since the landlord bears the burden of proof I dismiss the landlord's claims for hydro bills for August 2016 through October 2016.

The tenant acknowledged that the November 2016 bill was not paid by the tenants and I award the landlord \$32.54 for hydro for that month.

I have rejected the tenant's assertion that the hydro bills appear high in comparison to his current bills as I am of the view that \$32 for a month of hydro during a month in the fall season is not unreasonable and considering the tenant did not provide a copy of his current bills to corroborate his position.

### **Water bill**

The landlord's calculations were called into question by the tenant. The landlord did not provide a copy of the actual water bill she received from the municipality to show that she \$368.71 for water for the subject period and I find it reasonable to expect the bill was readily available to her and could have been provided to corroborate the amount used to calculate the claim. I find I am unable to verify the accuracy of the landlord's claim which means the landlord did not meet her burden of proof and I dismiss this portion of the landlord's claim.

### **Cleaning**

The landlord's photographs show that additional cleaning was required in a number of areas including behind and on top of the fridge, under and on the side of the stove, in the drawers, on baseboards, and carpeting. The tenant provided photographs as well; however, the tenant's photographs are limited in the areas that they depict. In other words, the tenant's photographs do not show the same areas that the landlord's photographs show. Upon review of the photographs, I accept that additional cleaning was required to bring the rental unit to a reasonably clean condition and I find the landlord's request for compensation of \$150.00 to be reasonable and I award that amount to the landlord.

### **Painting**

The tenant acknowledged that a wall in the kid's bedroom required painting but the tenant denied that other areas required painting. Upon review of the move-out inspection report I do not see that the landlord indicated wall damage or repainting was required. Therefore, I limit the landlord's award to the one wall the tenant acknowledged responsibility for which I estimate to be 1/3 of the amount the landlord requested, for an award of \$15.00.

### **Power washing patio**

The patio was used by the tenants during the tenancy and I find the tenants were obligated to leave it reasonably clean at the end of the tenancy. I would expect the tenants to sweep or rinse off the patio to accomplish this requirement. Upon review of the landlord's photographs it is apparent that there were cigarette butts and a significant amount of dirt on the patio which indicates there was no attempt to sweep or rinse off the patio. However, I do not hold the tenants responsible to power wash the patio of algae which is usually attributed to moist and shady areas. I find it reasonable to expect that the landlord would power wash the algae off the patio from time to time. Therefore, limit the landlord's award to one hour, or \$15.00.

### **Garbage disposal**

The landlord failed to provide sufficient evidence to establish the loss she incurred dispose of items left behind by the tenants. Therefore, I dismiss this portion of the landlord's claim.

### **Filing fee**

The landlord requested recovery of the filing fee she paid for this application. Since the tenants provided a forwarding address to the landlord and did not authorize the landlord to make any deductions from the security deposit, the landlord was obligated to file this Application for Dispute Resolution in order to retain or make any deductions from the security deposit. I have found that the landlord's claim did have some merit and I award the landlord recovery of one-half of the filing fee she paid, or \$50.00.

### **Security deposit**

All of the above awards total \$555.44 which is more than the \$550.00 security deposit. Therefore, I grant the landlord's request and I authorize the landlord to retain the tenants' security deposit in full satisfaction of her claims.

Conclusion

The landlord has been authorized to retain the tenants' security deposit in satisfaction of all of her claims.

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 14, 2017

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Residential Tenancy Branch