



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for 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.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised. The tenant agreed that the landlords' evidence has been provided to the tenant, and the tenant has not provided any evidentiary material. All evidence provided by the landlords 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 loss of income, gasoline costs for obtaining quotes and prepare for this hearing, and costs of obtaining evidence?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first landlord** (SCG) testified that this fixed term tenancy began on May 1, 2015 and expired on April 30, 2017, which actually ended on May 1, 2017. A copy of the tenancy agreement has been provided as evidence for this hearing. Rent in the amount of \$1,250.00 per month was originally payable on the 1<sup>st</sup> day of each month, which was increased to \$1,286.00 after the first year, 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 \$625.00 as well as a pet damage deposit of \$625.00, both of which are still held in trust by the landlords. The rental unit is a 3 story duplex, and the other portion of the home is owned by another person and is not related to this claim.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy. At move-out, the landlord asked the tenant to participate in a move-out condition inspection report at 5:30 p.m. on May 1, 2017 but the tenant didn't show up. The landlord called the tenant and left a message and texted the tenant, who replied by text message with a forwarding address and stating that the tenant would not be returning. The landlord completed the move-out condition inspection report in the absence of the tenant, and took photographs within 48 hours after that. A total of 105 photographs have been provided for this hearing, as well as a copy of the move-in/out condition inspection reports.

The landlord also conducted an inspection in December, 2016 but did not provide a copy of a report.

The landlords served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on February 27, 2017 which contained an effective date of vacancy of April 30, 2017. A photograph has been provided which is cut off on one side, however the landlord testified that the reason for ending the tenancy was for the landlord's son to move into the rental unit. He moved in about 10 days after the tenant moved out. The landlord did not think it fair, due to the damages caused by the tenant, to give the tenant a free month of rent as required. To avoid another hearing, the landlord is content with deducting one month of rent from any monetary order resulting from this hearing.

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

- \$64.74 for gasoline for getting quotes and preparing for this hearing;
- \$93.88 for the cost of photographs for this hearing;
- \$5,145.00 for painting;

The landlord obtained 2 estimates for painting, and claims the average between them, and reduces that portion of the claim to \$4,131.00. The landlord testified that the house was last painted 2 years prior to the beginning of this tenancy however walls are damaged from being attacked with sharp objects. The landlords had to get a drywaller and have to repair and prime fist holes before it can be painted. There is quite extensive damage.

- \$630.00 estimate to clean enough for giving the deposits back;

The landlords have provided an estimate from a cleaning company which was based on the square footage of the rental home and the extent of cleaning to be done. The landlords worked for 14 to 15 hours cleaning themselves, and claim the amount of the estimate.. There was also pet damage by the tenant's dog, having urinated on carpets.

- \$4,798.69 for replacing carpet, laminate, linoleum;

The landlord testified that the quotes provided as evidence for this hearing are separated between floors. Laminate was completely destroyed, the finish and joints were lifting and now peeling from standing water or liquid. The landlord inspected the rental unit on December 16, 2016 and saw a puddle on the floor under a window. The laminate was brand new at the beginning of this tenancy.

- \$290.85 Drywall damage estimate

The landlord testified that the estimate provided has been paid, but more work needs to be done and the landlords do not have a final bill yet.

- \$270.00 for missed work;

The landlord is self-employed and had to miss work to copy photographs, go to the Access Center and get quotes, etc.

- \$478.38 missing items;

The landlords have provided a list of missing items, including trim, flooring, paint cans, and extra laminate which the landlords kept in the basement for matching purposes. One cannot always find matches when needed, and the tenant put them outside and they were damaged, and now they are gone. Also, the toilet paper holder was missing and the landlord could not find the spool only and had to buy a \$15.00 entire toilet paper fixture. The sink and tub plugs were missing as well as the stair attachment to the vacuum, the kick plate under the fridge, and florescent light cover in laundry room.

- \$419.20 to replace 2 bedroom doors and bathroom door;

The landlord testified that the doors were new at the beginning of the tenancy.

- \$341.25 to install doors;

The landlord testified that the doors have to be templated due to laminate changing the height of the doors, which also includes priming, painting and delivery.

The landlords' total claim is \$11,618.84.

The rental unit suffered a flood in the basement for which the landlords make no claim, however a restoration company was called who said it looked like a vandalism claim. It was not wear and tear, but blatant damage. The landlords did not make an insurance claim to avoid deductibles and at the time thought there may be an insurance claim due to the flooding.

**The second landlord** (DKS) testified that just prior to this tenancy he installed new floors and painted most of the rental unit. The entire rental unit was almost brand new when the tenant moved in and was pretty destroyed when the tenant left. The tenant left holes in walls, doors and damaged floors. Laminate floors were buckled from standing water and the finish was completely gone.

The landlords had told the tenant at the beginning of the tenancy that some paint cans and other items, such as trim and laminate boards were being stored under the stairs and that the tenant should not dispose of them and should not put them outside. The tenant took them outside and left them in the rain. The trim and laminate was warped and swollen and the stuff was all wrecked.

The rental unit went from new to destroyed.

**The tenant** testified that her son caused some damage to the walls and 2 doors, but not to all 3 doors as claimed by the landlords. Another door was scratched by the tenant's dog. The bathroom floor has a very small burn hole from a candle.

The tenant's friend was helping with cleaning when the landlord arrived for the inspection, and was washing the floor, not knowing that leaving water might damage the floor.

The tenant also asked the landlord several times about compensation for one month's rent, but the landlord ignored the tenant. Further, the tenant does not believe the

landlord's son resides in the rental unit. The person living there is a friend of the tenant's daughter, and that person's mother is not the landlord.

The tenant agrees that the move-in condition inspection report is an accurate reflection of the condition of the rental unit at the beginning of the tenancy. The tenant had agreed to participate in the move-out condition inspection but when the tenant arrived, the landlord had arrived early and started taking photographs. The landlord's claim is inflated; work has not been completed or was completed by the landlord, not by contractors. When the landlord inspected in December, 2016 there was no mention of damages, nor did the tenant receive a copy of an inspection report.

### Analysis

Firstly, the *Residential Tenancy Act* puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, and if the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. The parties agree that the move-in condition inspection report was completed in accordance with the regulations, and I accept that even though it is not signed. The tenant also agreed that the report accurately reflects the condition of the rental unit at the beginning of the tenancy.

With respect to the move-out condition inspection report, the *Act* states:

### **Condition inspection: end of tenancy**

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Subsection 2 requires the landlord to offer the tenant at least 2 opportunities, as prescribed. The regulations prescribe (underlining added):

### **Two opportunities for inspection**

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The landlords did not schedule the second opportunity in the approved form, and therefore the landlords' right to claim against the security deposit or pet damage deposit for damages is extinguished.

However, the landlords' right to make a claim for damages is not extinguished. Where a party makes a claim 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 *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate such damage or loss.

A tenant is required to leave a rental unit reasonably clean at the end of a tenancy and must repair any damage caused by the tenant, beyond normal wear and tear.

The *Act* also states that the condition inspection reports, if completed in accordance with the regulations are evidence of the condition of the rental unit at the beginning and

end of the tenancy. I accept the move-in portion, however because the move-out portion was not done in accordance with the regulations, the evidentiary weight is somewhat diminished.

I have reviewed the landlords' evidentiary material, including the photographs and Monetary Order Worksheet. I note that a number of the items and amounts claimed by the landlords are estimated costs. It appears that the landlords have used the estimates from contractors as bench-marks for the work the landlords have or will complete on their own, and I accept that not all of the work has been completed yet. Estimates can be considered where work has not yet been completed in order to quantify the value.

The *Residential Tenancy Act* allows for recovery of a filing fee but not of costs related to postage or service of documents or preparing for a hearing. Therefore, the landlords' claims for gas receipts and photograph costs must be dismissed.

With respect to painting the rental unit, I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the life of interior paint at 4 years. Any award I make must not put the landlords in a better financial position than the landlords would be if the damage didn't exist. In other words, to order the tenant to pay for painting the entire rental unit, the landlords would have a new painted rental unit, but wouldn't have a newly painted rental unit if the tenant hadn't caused any damage. The landlords have also claimed drywall damage, and that includes preparing for painting. I deny the landlords' claim for painting.

With respect to cleaning costs, the photographs show that the tenant did not leave the rental unit reasonably clean. I have also reviewed the estimate provided by the landlords which shows a price of \$600.00 plus taxes for a move-out clean, based on a 1700 square foot duplex. The landlord may not claim taxes for work the landlord has completed rather than hiring a business, and I am satisfied that the landlords have established a claim of \$600.00.

With respect to flooring, the move-in condition inspection report shows holes, water damage and lifting laminate and burn marks. The landlords' estimates also show that the laminate was damaged from water. The parties also agree that the landlords had left supplies for matching laminate another items in the rental unit to mitigate any damages. I accept the laminate quotes of \$2,244.80 and \$1,587.56, as well as the \$539.26 for carpeting and flooring quote of \$427.07. The landlords testified that the laminate was brand new at the beginning of the tenancy and the tenant didn't dispute that. The landlord

also testified that all flooring was new at the beginning of the tenancy, which is also reflected in the move-in condition inspection report.

With respect to drywall damage, the tenant doesn't deny the holes in the walls, and I accept the \$290.85 estimate.

With respect to missed work, the landlords have not provided any evidence, other than a hand-written estimate of how much the landlord expected to earn in her own business. Also, time spent preparing for a hearing is not recoverable under the *Act*.

With respect to missing items, I have reviewed the list and absent any evidence to support the cost of the trim, pieces of laminate or paint, I cannot be satisfied that the landlords have established element 3 in the test for damages. Further, I am not satisfied that a missing spool for a toilet paper roll required the landlords to purchase the entire hardware for the toilet paper roll. The landlords have provided no receipts or evidence of the costs for the missing items, and have therefore not established element 3 in the test for damages.

With respect to doors and installation, the tenant did not deny holes in 2 of the 3 doors, however the tenant acknowledged damage to the other door by the tenant's dog. In the circumstances, I find that the landlords have established the \$419.20 claim for purchasing the replacement doors and \$341.25 for installation.

I am also satisfied that some of the damage or cleaning costs were a result of the tenant's dog.

Having reviewed the evidence and upon hearing from the parties, I find that the landlords have established a monetary claim for damages as against the tenant totaling \$6,449.99. Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

The landlords currently hold a security deposit and pet damage deposit totaling \$1,250.00, and although the landlords' right to claim against them for damages is extinguished, the *Act* requires a landlord to return the deposits in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Sending a text message does not suffice for the purposes of the *Act*, and therefore I find that the doubling provisions of the *Act* do not apply.

The landlords have agreed to deduct an additional \$1,286.00 as compensation required by the *Act* for giving a Two Month Notice to End Tenancy for Landlord's Use of Property.



Having found that the landlords have established a claim totaling \$6,549.99, I offset that amount by those deductions and I grant the landlords a monetary order for the difference in the amount of \$4,013.99.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$625.00 security deposit and \$625.00 pet damage 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 \$4,013.99.

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: October 05, 2017

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Residential Tenancy Branch