



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for:

- a monetary order for damage to the unit, site or property;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenants for the cost of the application.

The tenants have applied for:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for the cost of emergency repairs;
- a monetary order for return of all or part of the pet damage deposit or security deposit; and
- for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other and make submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing, the tenants withdrew the application for an order cancelling a notice to end the tenancy for landlord's use of property, and advised that they vacated the rental unit by mutual agreement on June 1, 2017. Therefore, I dismiss the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically as compensation for the landlord's failure to use the rental unit for the purpose intended?
- Have the tenants established a monetary claim as against the landlord for the cost of emergency repairs?
- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit or pet damage deposit?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on June 1, 2012 and expired on May 31, 2013, and then new tenancy agreements were created each year. A portion of the latest tenancy agreement has been provided as evidence for this hearing which states that the tenancy reverted to a month-to-month basis. The tenancy ended by mutual agreement in writing, a copy of which has been provided for this hearing, on June 1, 2017. Rent in the amount of \$1,650.00 per month was payable on the 1<sup>st</sup> day of each month, which was never raised during the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$825.00 as well as a pet damage deposit in the amount of \$825.00, both of which are still held in trust by the landlord. The rental unit is a single family dwelling.

The parties had completed a move-in condition inspection report at the beginning of the tenancy, a copy of which has been provided for this hearing, however the relationship of the parties was frustrated and a move-out condition inspection report was not completed.

The landlord received the tenants' forwarding address in writing on June 1, 2017.

The tenants did not leave the rental unit clean at the end of the tenancy, and the landlord claims cleaning fees of \$25.00 per hour for easily 40 hours and testified that the landlord is still cleaning. There was grime on window coverings and the tenants didn't clean grout or anything in 5 years. Windows were caked with mildew from not cleaning. It appeared that it had just been swept out in 10 minutes. The landlord has provided photographs as evidence for this hearing which the landlord testified were taken in early June, and all within a 24 hour period.

The tenants also left damages. The tenants had fastened screws to trim on windows, and their dog chewed on the front door. The landlord did not complete any painting during the tenancy.

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

- \$68.05 for the lockset and labor;
- \$40.00 for cleaning supplies;
- \$750.00 for the time spent cleaning (30 hours @ \$25.00/hour);
- \$700.00 for sanding, painting and re-staining the deck;
- \$1,650.00 for unpaid rent; and
- \$100.00 as recovery of the filing fee.

Receipts for the cleaning supplies and lockset have been provided for this hearing. The landlord's total claim is \$3,308.05.

In response to the tenants' application the landlord testified that it is nonsense. The tenants claim that the fridge didn't work, but the landlord took care of all needed repairs that were brought to the attention of the landlord. A new fridge was delivered within 2 days.

The driveway was the same as it is now, and the landlord now lives there. The rental house is on an acre of property, and is about 50 years old. The tenancy agreement required the tenants to shovel and maintain the driveway.

The sewer had backed up into the yard, not the house, and the landlord dealt with it by calling a plumber who went to the rental unit the next day. It was repaired, but the landlord does not recall how long it took.

On March 6, 2017 the landlord went to the rental unit intending to get it ready for possibly selling. The tenants didn't want to allow showings, so the landlord compromised by signing a Mutual Agreement to End Tenancy rather than a notice to end the tenancy for landlord's use of property. A copy of the Mutual Agreement to End the Tenancy has been provided as evidence for this hearing. It is dated March 30, 2017 and contains an effective date of vacancy of June 1, 2017 and signed by all parties.

On May 26, 2017 the landlord texted the tenants asking to give the keys to the rental unit to the landlord's agent, but the tenants refused to do so. They had changed the dead bolt at some point.

**The tenant** testified that the rental unit was left very clean at the end of the tenancy and has provided photographs and video that the tenant testified were taken on June 1, 2017.

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

- \$84.00 for the cost of transferring the security deposit via a Money Mart, at the landlords' insistence;
- \$100.00 for spoiled food due to the fridge not working;
- \$50.00 for the cost of the stove delivery;
- \$800.00 for bobcat services for the driveway;
- \$420.00 for re-grading the driveway with a packer;
- \$3,668.85 for veterinarian bills;
- \$125.00 for labor to the tenants;
- \$50.00 for labor to another party;
- \$1,650.00 for return of the security deposit and pet damage deposit;
- \$1,650.00 for compensation required for vacating the rental unit for the landlord's use;
- \$3,300.00 for compensation for lack of good faith;
- \$7,200.00 difference in rent;
- \$5.00 for a bank fee;
- \$12.50 for a bank fee;
- \$100.00 as recovery of the filing fee for this application.

Receipts for the Money Mart fee, driveway re-grading, and veterinarian bills have been provided as evidence as well as a copy of the tenancy agreement the tenants currently have with their current landlord, establishing rent at \$2,250.00 per month commencing June 1, 2017. The tenants' total claim is \$19,215.35.

The tenant further testified that the landlord wanted the security deposit right away and promised to reimburse the tenants for the cost of the Money Mart transfer, but didn't. The tenants had moved to the rental unit from Alberta, and arrived on June 15, 2012.

When the tenants arrived, the fridge didn't work, and the landlord was advised that day. The landlord left it to the tenants to buy one charging the landlord's credit card, with a cap of \$250.00. The tenants had no fridge from Friday to Monday and had brought food in coolers that spoiled. There was no ice in the coolers.

The tenants also had to find a stove and get the landlords to pay for it. The tenants had to pay someone \$50.00 to deliver the stove because a 4 X 4 was required over the driveway.

The tenants also had to fix the driveway; the landlord wouldn't do it. The tenants were unable to get a receipt as evidence for the \$800.00 bobcat services because the fellow they paid has passed away.

The parties had discussed overgrown trees, and someone mistakenly came down the driveway, slipped while backing out due to the landlord's failure to maintain the grade and mark the driveway, and ran over the tenants' dog.

The tenants' claims of \$125.00 and \$50.00 for labor are for dealing with the sewer back-up. The tenants told the landlord about it 2 weeks before he showed up to do the repair.

The \$5.00 bank fee is a result of the landlord putting through rent cheques early, and the \$12.50 bank charge is for a Stop Payment fee for the final rent cheque for May, 2017. The tenants did not pay rent for the last month of the tenancy.

The landlord didn't use the rental unit for the purpose they discussed which was the reason for signing the Mutual Agreement to End Tenancy, and the tenants claim double the monthly rent as compensation for lack of good faith.

### Analysis

Firstly, the landlord may have had an intention of selling or moving into the rental unit, but because the landlord did not serve a Two Month Notice to End Tenancy for Landlord's Use of Property and the parties signed a Mutual Agreement to End Tenancy, the landlord had no obligation to provide compensation of one month's rent. The tenants put a Stop Payment on the rent payment for the last month of the tenancy, and I find that the landlord has established the \$1,650.00 claim for unpaid rent for May, 2017. Therefore, the tenants' claim for bank fees of \$12.50 for the Stop Payment must be dismissed.

Similarly, the landlord had no obligation to use the rental unit for the purpose the parties discussed because the parties mutually agreed to end the tenancy, and therefore the tenants' claim of \$3,300.00 for lack of good faith and \$7,200.00 for rent differential are also dismissed.

Where a party makes a monetary claim for damage or loss, 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 because 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. what efforts the claiming party made to mitigate the damage or loss suffered.

With respect to the landlord's claim of \$68.05 for the lockset and labor, the tenant did not dispute that the tenants refused to return keys to the landlord's agent, or that the tenants had changed the deadbolt. I find that the landlord has established that claim.

I have reviewed the photographs provided by the parties, which paint a very different view of the condition of the rental unit at the end of the tenancy. The *Act* places the onus on the landlord to ensure that the move-out condition inspection report be completed according to the regulations, and that the reports are evidence of the condition of the rental unit. The landlord has not done so in this case, and I find that the landlord has failed to establish that any damage or loss for cleaning exists. The landlord's claim for cleaning supplies and time cleaning are dismissed.

The landlord testified that there had been no painting done in the rental unit since the beginning of the tenancy in 2012. I have reviewed the photographs of the deck and I find that to be entirely normal wear and tear, and I dismiss the landlord's \$700.00 claim.

With respect to the tenants' claim for the cost of transferring the security deposit via a Money Mart, at the landlords' insistence, the landlord did not dispute that. There is no provision in the *Residential Tenancy Act* to order that rent or a security deposit be paid via any specific method, and I find that the landlord required the transfer in that manner to benefit the landlord only, and the tenants have established the \$84.00 claim.

I accept that the fridge and stove did not work, however I am not satisfied that the tenants did what was reasonable to mitigate the loss of food. The tenant testified that the coolers that the food was sitting in didn't have ice in it. I dismiss the \$100.00 claim for loss of food. I find that the tenants have failed to satisfy element 3 in the test for damages with respect to the cost to deliver the stove, and I dismiss the \$50.00 claim.

The Addendum to the tenancy agreement is clear, that the tenants were to maintain the driveway, and therefore I dismiss the \$800.00 claim for bobcat services and \$420.00 for re-grading the driveway with a packer.

I am not satisfied that the tenants have established that the landlord is responsible for someone else running over the tenants' dog, and I dismiss the \$3,668.85 claim.

The *Residential Tenancy Act* specifies that a tenant may claim for the cost of emergency repairs, and it describes emergency repairs that qualify for such a claim. The tenant did not dispute the landlord's testimony that the landlord had a plumber there, and regardless of what the tenant and another party actually did with respect to sewer back-up in the yard, I find that the landlord did what was required and the claims of \$125.00 and \$50.00 are dismissed.

The landlord did not dispute putting the rent cheque early, and I accept the tenants' \$5.00 claim for bank fees.

Since both parties have been partially successful, I decline to order that either party recover the filing fees.

The landlord currently holds a security deposit and a pet damage deposit totalling \$1,650.00. Having found that the landlord is owed \$1,650.00 for rent and \$68.05 for the lockset, and the tenants have established the \$84.00 claim for Money Mart costs and \$5.00 bank service charge, I set off the amounts and I grant a monetary order in favour of the tenants for the difference in the amount of \$20.95.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$20.95.

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: November 17, 2017

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Residential Tenancy Branch