



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord, for compensation for damage to the unit, site or property, for compensation for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 19, 2017. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for that damage and if so how much?
3. Is there a loss or damage and if so how much?
4. Are the Landlords entitled to compensation for loss or damage and if so how much?
5. Are the Landlords entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on August 10, 2015 as a month to month tenancy. Rent was \$750.00 per month per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$325.00 at the start of the tenancy. The Landlord said the Tenant moved out of the rental unit on June 30, 2017 as a result of a 2 Month Notice to End Tenancy for Landlord's Use of the Property. The Landlord said a move in condition inspection was done August 11, 2015 and a move out condition inspection report was completed without the Tenant on June 30, 2017. The Tenant said he was not given an opportunity to discuss the time of the move out report and he was not given 2

opportunities to schedule it. The Landlord said she thought the Tenant said he would be there the last day of the tenancy so she thought they would meet and do the report then. Further this tenancy was for a furnished unit and no reference was made to the furnishings or the condition of the furnishings in the move in condition inspection reports.

The Landlord continued to say the rental unit was cleaned when the Tenant moved out, but there was damage to the unit and the furnishings. The Landlords said because the Tenant worked in house maintenance he over use the washer and dryer with work cloths and rags. The male Landlord said although the Tenant had unlimited free use of the washer and dryer and it was part of the tenancy agreement he believes the Tenant should pay for the repairs to the washer and dryer because of the over use. The Landlords requested \$200.00 in repairs. The Landlords submitted photographs and a paid receipt in support of their claim.

In addition the Landlords said they are requesting \$1,512.56 for painting and deodorizing as the Tenant burned incense in the unit and the unit was a no smoking rental. The Landlord said the unit was painted approximately a year prior to the Tenant moving into the unit.

The Landlords continued to say they had to replace the mattress at a cost of \$1,239.16 due to staining and an odor in the mattress. The female Landlord said the mattress was not new but was in good condition when the tenancy started. The Landlords asked for the cost of the new mattress in the amount of \$1,239.16.

Further the Landlord's said they are claiming the following due to damage to the items; \$49.63 for blind cleaning and repair, \$150.00 to replace a carpet, \$58.85 to replace a dresser, \$37.45 to replace a microwave oven and \$27.30 for laundering the bedding. The Landlord also requested to recover mailing costs of \$25.78 and the \$100.00 filing fee for this application. The Landlords said their total claim is \$3,401.23.

The Tenant said he did his laundry but the laundry was normal things like his clothing and some rags he used at work. The Tenant said there were no overalls, no work aprons and no tarps just normal laundry. The Tenant continued to say he used the machines in a normal manner and cleaned and took normal care of them. The Tenant said the washer and dryer were not new and he did not damage them.

The male Landlord said the Tenant over used the machines and caused excessive wear.

Further the Tenant said the unit was not painted when he moved in and he did not smoke in the unit but he did light incense because he is a vegetarian and he could smell meat coming from other parts of the rental complex. The Tenant said he left 7 small nail wholes in the wall but he cleaned the unit and he does not think he is responsible for painting it.

The Tenant continued to say that when the move in condition inspection was done the mattress was covered up and there was no mention about it or the other furnishings in the unit. The Tenant said the mattress was old and uncomfortable. The Tenant said he is not responsible for a new mattress as the condition of the mattress was not established at the start of the tenancy.

With regard to the blinds the Tenant said he cleaned the blinds before leaving and the repairs are normal wear and tear. The micro wave and carpets were given to the Landlord for storage at the start of the tenancy and the damage to these items happened in the Landlords' garage. The Tenant said he is not responsible for replacement of the micro wave and carpet. The Tenant continued to say the dresser was not inspected at the start of the tenancy so its condition is unknown and he is not responsible for it. Further he did not use the Landlords' duvet so he is not responsible for laundering it. The Tenant said he left the rental unit clean as indicated in his photographs and the Landlords' claims are unfounded and may be considered harassment.

The Tenant said he left the rental unit clean and undamaged as shown in the photographs he took on the last day of the tenancy. The Tenant submitted the photographs to support his testimony.

The Landlord say the Tenant's photographs were taken on the last day of the tenancy and are representative of the condition of the rental unit.

The Landlords said in closing that their main claims are for the mattress, the painting and the carpet.

The Tenant said in closing he left the unit in good clean condition and he is not responsible for the claims the Landlords are making.

### Analysis

Sections 23 and 24 explain the requirements and consequences for landlords and tenants with respect to move in condition inspection reports. They are as follows:

#### **Condition inspection: start of tenancy or new pet**

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
  - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) 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.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
  - (a) the landlord has complied with subsection (3), and
  - (b) the tenant does not participate on either occasion.

### **Consequences for tenant and landlord if report requirements not met**

- 24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and
  - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I accept the evidence and testimony as provided to the hearing by both parties that indicates a move in condition inspection report on the rental unit was completed, but that no information is provided on the furnishings of the rental unit. It is normal practice in a furnished rental unit to include an addendum listing all the furnishings and the condition of the furnishings. This establishes an inventory and a base line to measure any damage to the unit or furnishings from. In this situation there is no information on the furnishing in the move in condition inspection report. Therefore the Landlords' claim for damages on the mattress, carpet, dresser, microwave and duvet cannot be estimated as the amount of damage cannot be determined and allotted to this Tenant or previous tenants. The Landlords' claims for these items are dismissed without leave to reapply.

With regard to the blind cleaning and repair I have reviewed the evidence and testimony and I accept that the Tenant cleaned the blinds before vacating the unit and the damage to the blinds are normal wear and tear. The Landlords' claim for the cost to repair the binds of \$49.63 is dismissed without leave to reapply.

Policy guideline #40 says the useful life expectancy of assets in a rental unit are estimated as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in

the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. In the situation of interior paint the useful life in a rental unit is 4 years if the unit was freshly painted at the start of the tenancy.

In this situation the unit was not freshly painted at the start of the tenancy. The Landlord said they thought it was painted a year or so before the Tenant moved in. Therefore the unit was painted for a previous tenancy. Given that the rental unit was not freshly painted at the start of this tenancy and the paint was at least 1 year old at the start of this tenancy and this tenancy lasted 2 years the paint was at least 3 year old. I find the paint in the rental unit was not new at the start of the tenancy and there is no reference to the condition of the paint in the move in condition inspection report therefore, I find the paint is at the end of its expected useful life. Consequently the Tenant is not responsible for painting the rental unit. I dismiss the Landlords' claim of \$1,512.56 for painting the rental unit.

With regards to the deodorizing the rental unit I accept the Landlords' testimony that the Tenant burned incense and the tenancy agreement stated the unit was a no smoking rental. When the Landlord was asked to quantify the cost of deodorizing the unit the Landlord said they were unable to saying as it was part of the painting. Consequently I am not able to award an amount an amount for deodorizing the rental unit as the cost is not defined.

With regard to the repairs on the washer and dryer of \$200.00, the male Landlord said the tenancy agreement indicated the Tenant had free unlimited use of the washer and dryer. The Tenant said he used the machines in a normal manner and did not wash any heavy work items. I find that the tenancy agreement does not indicate any special instructions about the washer and dryer and I accept the Tenant did not wash any unusual items. Even is the Tenant used the machines excessively the Landlord and the tenancy agreement states the Tenant had free unlimited use of the washer and dryer. Consequently I find the Landlords have not established grounds to be successful on

their claim of \$200.00 for washer and dryer repairs. I dismiss the Landlords' claim for repairs of \$200.00 to the laundry machines.

Further the Landlords requested to recover the mailing costs to prepare for this hearing. Costs associated with preparing for the hearing are not eligible claims under the Act therefore the Landlord's mailing costs are dismissed.

As the Landlords have not been successful in this matter I order the Landlord to bear the cost of \$100.00 for the filing fee for this proceeding which they have already paid.

### Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the Tenant's security deposit of \$325.00 forthwith.

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 1, 2017.

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Residential Tenancy Branch