# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with monetary cross applications, as amended. The landlords applied for compensation for damage to the rental unit and cleaning; unpaid rent; and, authorization to retain the security deposit. The tenants applied for return of the security deposit; compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on a *2 Month Notice to End Tenancy for Landlord's Use of Property*; and, compensation for loss of use of a pellet stove. 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.

The hearing was held over two dates. An Interim Decision was issued and should be read in conjunction with this decision. As reflected in the Interim Decision, the parties reached an agreement with respect to the tenant's claim for loss of use of the pellet stove and the landlords' claim for unpaid rent. Further, the tenants' for return of the security deposit was pre-mature and disposition of the security deposit shall be dealt with under the landlord's application, as amended.

Issue(s) to be Decided

1. Are the tenants entitled to compensation provided under section 51(2) of the Act because the landlords did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*?
2. What are the terms of agreement with respect to the tenants' claim for loss of use of the pellet stove and the landlords' claim for unpaid rent?
3. Are the landlords entitled to compensation from the tenants for damage to the rental unit and cleaning?
4. Disposition of the security deposit.

Background and Evidence

The tenants entered into a tenancy agreement with the landlords' former property manager for a tenancy that commenced in May 2012. That tenancy agreement was a one year fixed term

agreement than continued on a month to month basis upon expiry of the fixed term. The tenants and the owners entered into a second tenancy agreement that started on July 1, 2015 for a one fixed term that continued on a month to month basis thereafter. The tenants paid a security deposit of $675.00 and were required to pay rent of $1,375.00 on the first day of every month.

The tenants participated in a move-in inspection with the property management company at the start of their first tenancy agreement. A report was prepared although the tenants could not find their copy of that report and the property management company is no longer in business. Another condition inspection report was prepared at the start of the second tenancy agreement, in June 2015, with a person acting as an agent for the owners. The June 2015 inspection report was provided as evidence for this proceeding.

The tenancy ended pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice) issued on February 3, 2017. The 2 Month Notice indicated an effective date of April 4, 2017 and the stated reason for ending the tenancy was:

> *"The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*"

The tenants accepted the end of the tenancy would be April 4, 2017 and vacated the rental unit on that date.

The landlords did not set up a move-out inspection with the tenants before or around the time the tenants moved out. Although the landlords resided in another town, the landlords did not arrange for an agent to do the move-out inspection with the tenants. The landlords arrived at the rental unit on April 27, 2017 and did not request the tenants' participation in a move-out inspection at that time. On May 8, 2017 the landlord sent the female tenant a text message indicating the landlords were keeping the security deposit and the landlord had obtained estimates. The landlord invited the tenant to contact him if the tenants would like to meet. The tenants did not consider this an invitation to participate in a move-out inspection and did not respond. On or about May 12, 2017 the tenants went to serve the landlords with their Application for Dispute Resolution and at that time the landlord invited the tenant in to the rental unit. The tenant declined as he thought it would be inappropriate in the circumstances.

Despite the lack of a move-out inspection or move-out inspection report, the parties provided fairly consistent testimony as to the condition of the rental unit at the end of the tenancy. The landlords provided a number of photographs of the rental unit after the tenancy ended as evidence for this proceeding.

**Tenant's claim**

1. Tenant's compensation payable where a landlord does not use the rental unit for the purpose stated on the 2 Month Notice

The tenants submitted that due to the reason for ending the tenancy the tenants expected to see the rental unit demolished or undergo significant renovations while the unit was vacant. Instead the tenants observed what appeared to be the landlord residing in the rental unit. The tenants observed the cable/internet company installing what appeared to be cable and internet services. The tenants contacted the City Hall and found out the landlords did not have any permits for demolition or for significant repairs or renovations. The tenants did observe the landlord having new windows installed and some renovation activity but nothing significant enough that would have necessitated the tenants having to move out and an end to their tenancy. The tenants also pointed out that the landlords had renovated the ensuite bathroom during their tenancy and they accommodated the landlord's requests for access to make the renovations.

The landlords explained that they indicated the reason they did on the 2 Month Notice because it was the only reason available to them as there was no box to tick where permits are not required. The landlords were of the position that significant renovations were made from April 27, 2017 through to June 25, 2017. During that time the landlord stayed in the rental unit with sparse furnishings that permitted him to prepare food, sleep, watch TV, and sit at a table and on a couch when he was not working on the renovations. The landlord stated that he worked on the renovations for approximately 12 hours per day during the two months he was staying in the rental unit. The significant renovations were described as: repairing holes and painting the walls, removing and installing new flooring, replacing the interior doors, removing the pellet stove, and replacing seven windows along with repairs to the exterior siding. The landlords had provided photographs showing the landlords' furnishings in the rental unit while the renovations were underway. The landlord's couch, coffee table and TV can be seen in the living room and there is a bed seen in the bedroom.

The tenants were of the position that the landlords issued the 2 Month Notice because of their dispute concerning the loss of the pellet stove and the tenant's request for a rent reduction. The landlord had initially communicated to them that the landlords intended to sell the house but then they were served with the 2 Month Notice indicating the landlord was going to demolish or significantly renovate the rental unit in a manner that required the rental unit to be vacant. The tenants did not doubt the landlord undertook the renovation tasks described by the landlord during the hearing but maintained that the renovation performed could have accomplished without ending the tenancy and while the tenants continued to occupy the rental unit by accommodating the landlord's efforts, just as they did when the landlords renovated the ensuite bathroom.

The landlords were of the position that the rental unit could not be occupied by the tenants and their two children during the renovation because "a million" staples had to be removed from the subfloor where the old carpeting was located and there was carpeting in most rooms. The

landlord pointed out that when the ensuite bathroom was renovated during the tenancy it took six weeks to do because the tenants were in place. Also, the landlords were of the position that in order to do a proper renovation a unit needs to be vacant.

Both parties provided consistent testimony that after the rental unit was renovated it remained vacant. The landlords indicate that they are undecided as to what they intend to do with the property: either sell it or move into it.

2. Loss of pellet stove

The parties reached a mutual agreement with respect to this claim. The tenants had deducted $375.00 from the February 2017 rent payment. The parties mutually agreed that the $375.00 deduction the tenants already made shall be their compensation for loss of use of the pellet stove. Accordingly, the landlords' claim to recover unpaid rent of $375.00 for the month of February 2017 is considered settled as part of this agreement.

**Landlords' claims**

The landlord's seek compensation for damage to the residential property and cleaning. Below, I have summarized each party's respective position with regard to these claims.

1. Damage to vinyl siding

The landlords withdrew this claim as the landlords did not incur a loss as a result of damage to the vinyl siding. The landlords stated they had left over vinyl siding pieces and they were installed by the contractor who installed the new windows at no additional cost.

2. Damage to garage/laundry room door frame

The landlords submitted that the tenants damaged the door frame between the garage and the laundry room by forcing the door open. The landlord fixed the door frame using nails and glue. The landlords seek compensation of $160.00 for four hours of labour.

The tenants agreed the door frame was cracked at the end of the tenancy but they denied forcing the door open. The tenants explained that the door locked from inside the laundry room and opened into the garage meaning they would have no reason to force the door open as the landlords allege. The tenants testified that the door frame was already cracked at the start of their tenancy.

3. Damage to laundry room/dining room door

The landlords assert the tenants damage the door between the laundry room and the dining room. The door was approximately 35 years old but in good shape and solid wood. The landlords seek the cost of purchasing a new door and lockset, paint and a tool, and six hours of labour for a total claim of $404.40. The landlords stated that the new door was painted grey in colour.

The tenants acknowledged that this door, which was previously on the master bedroom, was damaged by one of their children and they are responsible for the damage. The tenants stated that they would have repaired the door but the landlords were ending their tenancy to either demolish or significantly renovate the house so they did not make the repair. The tenants were also of the position the amount claimed by the landlords is unreasonable. The tenants submitted that the damaged door was not solid wood and was an old hollow door with a wood veneer. The tenants were agreeable to some compensation in recognition this door was damaged but did not suggest a particular dollar amount.

4. Cleaning

The landlords submit that the house had not been cleaned at the end of the tenancy. The landlords estimated that they spent 13 hours cleaning the stove, fridge, shower, bathroom, floors and kitchen. The landlords seek compensation at $30.00 per hour, plus cleaning supplies, for a total claim of $395.49

The tenants stated they wiped, swept and vacuumed but acknowledged more cleaning could have been done. The tenants were of the position that since a significant renovation or demolition was going to take place a more thorough cleaning would be pointless. The tenants acknowledged that they did not clean the oven as seen in the landlords' photographs.

5. and 6. Damage to walls in the children's' bedrooms

The landlords submitted that there were numerous and large holes in the walls, plus crayon marks, in the children's' bedrooms that required patching and repainting. The landlords seek compensation for 16 hours of labour at $40.00 per hour, to patch and re-paint the walls, plus the cost of 4 gallons of paint for a total claim of $900.00.

The tenants acknowledged that there were a number of small pin holes in the walls which the tenants considered wear and tear. The tenants also acknowledged that there were a few larger dents in the drywall as seen in the landlords' photographs but the tenants took the position that they would have repaired the larger dents if they had not been evicted for the purpose of the landlord demolishing or performing significant renovations to the house.

7. Damage to girls' bedroom door, bathroom door and master bedroom door

The landlords submit that there were holes in the door to the girls' bedroom. The landlords seek to recover the cost of a new door, paint for the new door, and six hours of labour for a claim of $312.00.

The landlords submitted that bathroom and master bedroom doors required patching with plastic wood and new paint. The landlords seek compensation of $20.00 for paint and six hours of labour for a claim of $260.00.

The tenants acknowledge that a hole was at the bottom of the girls' bedroom door due to the door spring punching a hole in the door. The tenant's pointed out that the door was an old hollow door and that there was evidence of a previous patch in the same place.

The tenants stated that there was no damage to the bathroom and master bedroom door.

The tenants also pointed out that when the landlords had renovated the ensuite during the tenancy the landlord installed a new door. The tenants suggest that new doors were part of the renovation the landlords were making to the property.

8. Unpaid rent for February 2017

This claim was withdrawn as it forms part of the settlement agreement reached between the parties with respect to the tenants' loss of use of the pellet stove.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to both applications before me.

**Tenant's application**

*Tenant's compensation payable where a landlord does not use the rental unit for the purpose stated on the 2 Month Notice*

Where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, as in this case, the tenant is entitled to compensation pursuant to section 51 of the Act. Section 51 contains two separate provisions for compensation. First of which is compensation for receiving the 2 Month Notice provided under section 51(1) and this compensation is equivalent to one month's rent. Secondly, compensation may be payable to the tenant under section 51(2), in addition to compensation payable under section 51(1), where the landlord does not use the rental unit for the purpose stated on the 2 Month Notice. Compensation under section 51(2) is intended to dissuade landlords from issuing a 2 Month Notice to end a tenancy for a reason not permitted under the Act or in bad faith.

The tenants have already received compensation payable under section 51(1) by withholding rent for March 2017 and are seeking compensation pursuant to section 51(2) of the Act.

Section 51(2) provides:

> (2) In addition to the amount payable under subsection (1), if
>
> > (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
> >
> > (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
>
> the landlord...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the stated reason for ending the tenancy was so that the rental unit could be demolished or renovated or repaired in a manner that requires the rental unit to be vacant.

The rental unit was not demolished so in order to fulfill the reason stated on the 2 Month Notice the landlords were required to renovate or repair the rental unit in a manner that required the rental unit to be vacant. The parties were in dispute as to whether the renovations and repairs required the rental unit to be vacant.

The Act does not define the word "vacant" and I have turned to its ordinary meaning, which includes: "having no fixtures, furniture, or inhabitants; empty".

The landlord acknowledged that he had some furnishings in the rental unit and that he ate, slept, watched TV and inhabited the rental unit during the two month renovation. Accordingly, I find the rental unit was not vacant during the renovation. Therefore, the rental unit was not repaired or renovated in a manner that required the rental unit to be vacant.

The renovations undertaken by the landlords are not uncommon when a dwelling gets to a certain age and homeowners often do not vacate their home in order to have new flooring and interior doors installed, drywall patching and painting, and installation of new windows. Interestingly, the landlords took the position that a unit needs to be vacant to perform a proper renovation; yet, the landlord inhabited the rental unit while renovating the rental unit after ending the tenancy. While I appreciate that it is easier and faster to renovate while the unit is not occupied by tenants, the landlords remained obligated to repair or renovate the rental unit in a manner that required the rental unit to be vacant in order to fulfill the stated purpose on the 2 Month Notice and avoid paying the tenants additional compensation under section 51(2) of the Act.

In light of the above, I find the landlords did not use the rental unit for the reason stated on the 2 Month Notice and the tenants are entitled to additional compensation as provided under section 51(2) of the Act, which is the equivalent of two month's rent, or $2,750.00.

Considering the tenants did not pay rent for March 2017; the tenants did not finish vacating the rental unit until April 4, 2017; and, the tenants did not pay rent for the days of April 1 – 4, 2017, I find the tenants have already received compensation equivalent to $183.33 [$1,375.00 x 4/30 days]. Therefore, I have reduced the tenant's Monetary Order to reflect this benefit.

*Loss of pellet stove*

The parties reached an agreement that the tenants shall be compensated $375.00 for loss of the pellet stove and the tenants have already received this compensation by way of a deduction from rent payable for February 2017. Therefore, there is no further award to be made with respect to this claim.

**Landlords' claims**

The landlords seek compensation for damage to the rental unit and cleaning. Accordingly, the landlords have the burden of proving their claims under sections 7 and 67 of the Act. The landlords must prove the following:

1. That the tenants violated the Act, regulations, or tenancy agreement;
2. That the tenants' violation caused the landlords to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the landlords did whatever was reasonable to minimize the damage or loss.

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.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and undamaged at the end of the tenancy. There is no exception to this requirement; however, section 37 also provides that reasonable wear and tear is not damage. Accordingly, a landlord may pursue the tenant for compensation to rectify damage caused by the tenant's actions or negligence but not wear and tear.

Also of consideration is that awards for damages are intended to be restorative. Accordingly, where a damaged item has a limited useful life, it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

*Damage to laundry/garage door frame*

The parties were in agreement that the door frame was cracked at the end of the tenancy but the parties were in dispute as to whether the door frame was cracked before the tenancy started. The tenant stated that the former property management company had done a move-in inspection report but that it was no longer available from the property management company since it closed. I was not provided any photographs of the subject door frame at the start or end of the tenancy. There was a condition inspection report prepared in June 2015 and upon review of the document I find I am unable to determine the condition of the subject door frame as of June 2015 either. There is a room described as "utility" which includes an assessment of the washer/dryer and electrical outlets, but not a door. There is also an area described as "garage or parking area" which includes an assessment of the electrical outlets but not a door.

Considering the tenants readily admitted causing damage and leaving the rental unit in need of additional cleaning, I found the tenants' denial of forcing the door open or otherwise cracking the door frame by their actions or neglect to be believable.

Since the landlords have the burden to prove the damage to the door frame was caused by the tenants, considering the tenant's denied causing the damage and the lack of documentary or photographic evidence to demonstrate otherwise, I find I am unsatisfied the tenants owe the landlords compensation for this damage as claimed. Therefore, I dismiss this portion of the landlords' claim.

*Damage to interior doors and lockset*

The landlords seek replacement cost for two interior doors: the door between the laundry room and dining room (the former master bedroom door) and the girls' bedroom door. The tenants acknowledge damage to the former master bedroom door occurred during their tenancy as a result of their child's actions but the tenants raise an issue with pre-existing damage to the girls' bedroom door and the amount of compensation sought by the landlords for both doors.

The landlords seek the entire cost to install two new doors and paint the doors a new colour which I find to be unreasonable for the following reasons. The photographs of the doors that were provided by the landlords appear to depict old hollow core doors with a dark wood veneer. According to the landlords the doors were 35 years old and I heard that the landlords had replaced the ensuite bathroom door during the ensuite renovation project. Policy Guideline 40 provides that door and locks have an average useful life of 20 years. Therefore, I find the loss suffered by the landlords as a result of damage to the old, hollow doors to be negligible, if anything. Therefore, I award the landlords a nominal award of $1.00 to reflect damage caused by the tenants' children.

As for repairs to the bathroom and master bedroom door, I find the disputed oral testimony concerning damage and the absence of other evidence such as photographs to be insufficient evidence that damage was caused to these doors.

*Damage to walls*

The landlords seek compensation to patch all of the holes or imperfections in the drywall and repaint the walls in the bedrooms. The tenants acknowledged that a few larger holes were in the walls but point out that small pin holes are wear and tear. Upon review of the landlords' photographs, I find the tenants' position is more accurate. In other words, there appears to be a number of smaller patches over small holes or imperfections in the drywall and some larger dents or holes that are beyond wear and tear.

Although the landlords had indicated to the tenants that their tenancy was ending for significant renovation, I find there was no suggestion that there was intention to remove or replace drywall

as part of the renovation. As such, I find the tenants remained obligated to repair the larger holes/dents in the drywall and since they did not, I find the landlords entitled to compensation for these repairs.

The difficulty with the landlords' claim for wall damage is determining the amount of compensation that pertains to the larger dents/holes in the walls since the landlords claimed for their time to patch small holes and purchase paint and to repaint walls that had not been painted for a number of years. Policy guideline 40 provides that the average useful life of interior paint is four years and this tenancy was more than four years in duration. Accordingly, I find the walls were in need of repainting in any event. Rather than dismiss the landlords' claim for wall damage entirely I have estimated an award to repair the larger dents/holes based on the photographs and the landlords' claim of $900.00. I award the landlords compensation equivalent to one-third of their claim, or $300.00.

*Cleaning*

The landlords asserted that additional cleaning was required and the tenants acknowledged that more cleaning would have been done had they not been evicted for the reason they were. As mentioned previously, there is no exemption to a tenant's obligation to leave a rental unit reasonably clean. Although the landlords were about to embark on a renovation, the landlords are not obligated to clean the dirt or grime that was the result of the tenants living in the rental unit. The landlords provided photographs of the rental unit that appear to depict a number of dirty areas, including the stove, oven, floor, baseboard, floor, shower, window sill, and exterior walkway.

In light of the above, I find the landlords are entitled to compensation for cleaning and I find their estimate of 13 hours to be with reason. However, $30.00 per hour for cleaning is high and I limit the hourly rate to $20.00 per hour. Therefore, I grant the landlords' request for compensation for cleaning, in part, for the lesser amount of $265.49 including the oven cleaner product.

**Filing fees, Security Deposit and Monetary Order**

Both applications had merit and a filing fee was paid by both parties. Therefore, I make no award for recovery of the filing fee to either party and both parties shall bear the cost of their respective application.

I authorize the landlords to deduct the following amounts from the security deposit and I order the landlords to return the balance of security deposit to the tenants without further delay:

| | |
|---|---|
| Security deposit | $675.00 |
| Less authorized deductions for: | |
| Damage to doors (nominal award) | - 1.00 |
| Damage to walls (partial award, estimated) | - 300.00 |

| | |
|---|---|
| Cleaning (reduced) | - 265.49 |
| Balance of security deposit to be refunded to tenants | $108.51 |

With this decision, the tenants are provided a Monetary Order for the balance of the security deposit owed to them and the additional compensation they are entitled to receive from the landlords under section 51(2) of the Act calculated as follows:

| | |
|---|---|
| Balance of security deposit payable to tenants, as above | $ 108.51 |
| Tenant's compensation payable under section 51(2) | 2,750.00 |
| Less: free rent received for April 1 – 4, 2017 | - 183.33 |
| Monetary Order for tenants | $2,675.18 |

Conclusion

Both parties had partial success in their respective applications and settled another portion. After awards have been offset, the tenants are provided a Monetary Order for the net amount of $2,675.18 to serve and enforce upon the landlords.

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: December 28, 2017

Residential Tenancy Branch