# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that she received a copy of the landlords' dispute resolution hearing package and written evidence package by registered mail in August 2017, I find that the tenant has been duly served with these packages in accordance with sections 88 and 89 of the *Act*. As both parties confirmed that they had received one another's full written and photographic evidence packages well in advance of this hearing, I find that these packages were also duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent, and for damage and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant first moved into this second floor rental unit in a strata building on the basis of a fixed term tenancy agreement with the landlords for a tenancy that ran from September 10, 2013 until June 26, 2014. Since then, the tenant vacated the rental unit during the summer months in 2014 and 2015, moving back into the rental unit each September when the landlords' short term summer rentals had ended. The final tenancy agreement was for a one-year fixed term, commencing on July 1, 2016, which was scheduled to end on June 30, 2017. According to the written residential tenancy agreements undertaken by the parties, monthly rent throughout these various tenancies was set at $1,600.00, plus hydro, payable on the first of each month. Although the landlords initially provided furniture for this tenancy, the parties eventually agreed that the tenant could move her own furniture into the rental unit as she acquired these furnishings, at which time the landlords removed some of their own furnishings. The landlords continue to hold the tenant's original security deposit of $800.00 and pet damage deposit of $200.00, both paid on July 1, 2014.

The tenant vacated the rental unit on June 15, 2017, after the landlords advised the tenant that they were planning to put this strata unit up for sale. The landlords informed the tenant that she would need to vacate the rental unit at the end of her fixed term tenancy, as per the terms of the tenancy agreement she signed on July 1, 2016.

Both parties agreed that the tenant provided the landlords with a $1,600.00 cheque for her June 2017 rent. The tenant had requested that the landlords apply her security deposit towards the first two weeks of June 2017. She maintained that she was not responsible for paying rent for the final half of June, as she had vacated the rental unit by June 15. Landlord GL (the landlord) testified that the tenant's rent cheque for that month was returned to the landlords as N.S.F. The tenant did not dispute this assertion, noting that she closed the bank account, which had the effect of preventing the landlords from cashing her June rent cheque.

The landlords refused the tenant's proposed arrangement for the payment of rent for June 2017, and included a request that they be allowed to retain the tenant's security deposit as part of their application for a monetary award of $7,926.37. They outlined their request for this monetary award in a Monetary Order Worksheet they attached to their application for dispute resolution. This Worksheet identified the following items:

| **Item** | **Amount** |
|---|---:|
| Blinds for Living Room | $157.20 |
| Blinds for Master Bedroom | 159.50 |
| Locksmith -Mailbox | 100.80 |

| | |
|---|---|
| Locksmith – Front Door | 99.75 |
| Strata – Fob Replacement | 50.00 |
| Estimated Repairs on Deck | 3,400.00 |
| Carpet Cleaning | 120.00 |
| June 2017 Rent | 1,600.00 |
| Missing Shelf – Laundry Room | 40.00 |
| Sofa Table – Water Damage | 200.00 |
| Broken Drawer - Kitchen | 40.00 |
| Photo Lab | 42.00 |
| Cleaning and Repair Products | 217.06 |
| Cleaning (45 hours @ $25.00 per hour) | 1,125.00 |
| Cleaning Estimated (20 hours @ $25.00 per hour) | 500.00 |
| Mailing Package to Tenant | 30.00 |
| Photos 2nd Copies | 46.56 |
| **Total Monetary Order Requested** | **$7,926.37** |

Landlord GL (the landlord) testified that the floods in the community where the strata building is located made it difficult for them to re-rent their rental unit until September 2, 2017. The landlord testified that the current tenants are paying $2,000.00 in monthly rent. The landlord testified that the landlords are expecting to list the rental property for sale later this year.

The landlord testified that the only repairs required as a result of the damage caused during this tenancy that have not been undertaken at this time are to the deck on the balcony. The landlord testified that the balcony is the responsibility of the strata, but that because the damage resulted from the tenant's practice of allowing her dog to urinate on the balcony deck, the landlords are responsible for these repairs.

The landlords entered into written evidence a copy of the joint move-in condition inspection report and a move-out condition inspection report, completed by the landlords after this tenancy ended. The dates on these reports had been altered and there had been a number of separate tenancies with breaks to accommodate the landlords' practice of using the premises for short-term summer rentals to vacationers. The landlord gave undisputed sworn testimony that the joint move-in condition report was completed in September 2014, when the second of the tenancies entered into between the parties commenced. There was then a break in the tenancy where short term renters had possession of the rental unit during the summer of 2015. Although the

landlords testified that they conducted their move-out inspection on June 15, 2017, their move-out report identified June 30, 2017, as the date of their move-out inspection.

The parties provided conflicting evidence as to who was responsible for the absence of a joint move-out inspection of the rental unit at the end of this tenancy. Both parties maintained that the other was responsible and declined their offers to participate in a joint move-out condition inspection. Although the landlords maintained that they sent text messages to the tenant to arrange for the scheduling of a joint move-out condition inspection, they confirmed that they did not provide two written notices to request a joint move-out condition inspection as required by section 35(2) of the *Act*.

The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The landlords' move-out condition inspection report, supported by extensive photographs and some detailed descriptions, stated that there was "very extensive damage & filth" in the rental unit at the end of this tenancy. Their report also alleged that the "tennant would not do walkthrough" (as in original). The landlord testified that she also ran a cleaning business and that it took her and her daughter at least the 65 hours of time to clean what she described as "a disgusting mess" at the end of this tenancy. She made specific mention of the eight hours of time it required to clean the self-cleaning oven, which had never been properly cleaned during this tenancy. She referred to a special product that had to be purchased to self-clean this oven.

The tenant maintained that the 65 hours of cleaning identified in the landlords' claim was totally unreasonable. She entered into written evidence a statement from the person who regularly cleaned her rental unit during her tenancy, in which that cleaner maintained that there was "no possible way" that it could have taken 65 hours to clean the rental unit. The tenant testified that her cleaner was last in her rental unit to do cleaning in May 2017. This cleaner claimed that it would have taken her and her associate a maximum of 3 hours each to clean the rental unit, even if it were in the condition alleged by the landlords. The cleaner's statement and the tenant's sworn testimony maintained that the self cleaning feature of the oven had been broken for two years, to the extent that the oven could no longer be "self-cleaned."

The parties also provided conflicting testimony, written and photographic evidence regarding the landlords' claim for repairs to the balcony.

The landlords maintained that the extensive damage to the specialty concrete on the balcony of this rental unit was caused by the tenant's dogs, which they maintained were routinely allowed to urinate on pads placed on the balcony. They entered into written

evidence two separate copies of estimates they had obtained from a contractor to repair this damage. As the tenant had objected to a lack of detail on the original estimate (including the absence of a unit number and address), the landlord obtained a more detailed estimate. In that estimate, the contractor added that "this damage quite possibly has been caused by dog urine (high acidity)."

The tenant denied the landlord's claim that she allowed her dogs to urinate on the balcony. She also presented a written statement from a concrete contractor who was asked by the tenant to provide her with a quote on the cost of repairing the deck on the balcony and to identify a reason for the damage to her deck and to other concrete deficiencies in this complex. His written statement maintained that the person who undertook the original concrete work in this complex applied the release powder on the surface when the surface was still moist, which had led to spalling. He asserted that this damage "was NOT caused from dog urine and was like that when (the tenant) moved in" (emphasis as in original). He estimated the repair cost to be $3,400.00.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must "leave the rental unit reasonably clean , and undamaged except for reasonable wear and tear."

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful.

I will address the landlords' claim in essentially the same order that they identified them in the Monetary Order Worksheet they attached to their application for dispute resolution.

Analysis - Blinds

The parties provided conflicting sworn testimony, written evidence and photographic evidence regarding the condition of the blinds at the end of this tenancy. The landlords' photographs revealed damage to the blinds in both the living room and the master bedroom. The tenant's photographs were less detailed, but showed little of the same evidence regarding damage to the blinds.

Residential Tenancy Branch (RTB) Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage. In this case, the useful life of blinds in a residential tenancy is set at 10 years. The tenant claimed that this strata building was constructed in 2007; the landlords maintained it was built in 2008. Since this rental unit has had a series of short term renters residing there for a number of summers, it would be anticipated that the condition of furnishings in this rental unit would be exposed to even more depreciation than would be the case in a more standard residential tenancy. As I find that the blinds had little if any remaining useful life by the end of this tenancy, I dismiss the landlords' application for cost incurred in replacing the blinds without leave to reapply.

Analysis – Replacement of Locks and Fob

The landlords applied to recover the locksmith costs of rekeying the front door key and the mailbox key, as well as the strata's charge for the replacement of the swimming pool fob.

The tenant entered into written evidence a copy of section 25 of the *Act*, which reads as follows:

***25*** *(1) At the request of a tenant at the start of a new tenancy, the landlord must*

*(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and*

*(b) pay all costs associated with the changes under paragraph (a)…*

There is undisputed sworn testimony that the tenant did not return her keys to the rental unit and the mailbox, as well as the fob to access the strata's swimming pool, directly to the landlords. Rather, the tenant testified that she left the keys and fob in an envelope with the strata's front desk. The landlords testified that they never received these items. Although the landlord confirmed that the landlords had their own key to access the rental unit, she testified that the tenant had the only key to access her mailbox.

Under these circumstances, I find that the landlords are only entitled to recover the $100.80 in rekeying costs they incurred for the mailbox, as the tenant did not take adequate precautions to ensure that the landlords were provided with the key to that mailbox.

As the landlords already had their own keys to the tenant's front door, I dismiss their application to recover these locksmith costs without leave to reapply. Section 25(1) of the *Act* establishes that they are responsible for these costs before a new tenancy commenced.

I allow the landlords' application to recover the strata's $50.00 charge for replacing the fob to access the swimming pool, again as the tenant did not take adequate care to ensure that this fob was returned directly to the landlord at the end of her tenancy.

Analysis – Deck Repairs

In considering the landlords' claim for a monetary award to repair the deck on the balcony, I have taken into account a number of factors.

Although I have reviewed the RTB's Policy Guideline 40, there is no specific category for concrete on an outside balcony. However, guidance is provided on the following items, which have some relevance to this claim. For example, concrete on parking lots, driveways and walkways are estimated to have a 15 year useful life. Concrete slab floors are estimated to have a 10 year useful life, which would appear to be the most

similar item identified in Policy Guideline 40. As these floors would be assumed to be within buildings and the concrete flooring on this balcony is outside the building on the second floor and exposed to the elements, it is possible that the useful life would be even less than 10 years.

There is conflicting evidence as to whether the spalling damage to the deck of the balcony resulted from deficiencies in the original construction of this flooring or as a result of dog urine. The contractor who provided the estimate to the landlord indicated on the second estimate that "this damage quite possibly has been caused by dog urine (high acidity)." The landlord testified that this additional information was provided by her contractor in response to her question as to whether this damage could have occurred as a result of dog urine. By contrast, a letter from the contractor contacted by the tenant maintained that the spalling on this deck and other concrete areas and patio units in this strata complex resulted from substandard work done by the original contractor who performed this work and was not as a result of dog urine. While statements from these two contractors were entered into written evidence by the parties, neither party produced these contractors as witnesses for this hearing. Based on the statements from the two contractors and based on a balance of probabilities, I find that the account provided by the tenant's contractor supports the tenant's assertion that this damage was not caused by dog urine to a greater extent than the qualified statement of the landlord's contactor who only offered that it "quite possibly" resulted from dog urine.

As was noted earlier, section 67 of the *Act* places the burden of proof of damage or loss on the party advancing the claim, in this case, the landlords. In deciding whether a claimant is entitled to a monetary award, the claimant must demonstrate that there has been a loss. In this situation, the landlord freely admitted that no repairs have been undertaken to the deck, and no expenses have been incurred. She also stated that the strata is responsible for repairs to outside structures such as the deck on the balcony. Although the strata council may hold the landlords responsible for any repair costs that the strata believes resulted from negligence on behalf of the landlords or their tenant, the landlords have not submitted evidence that this is indeed the case. Given the written statement of the tenant's contractor and the tenant's assertion that spalling is occurring elsewhere in this complex, it is unclear as to whether the strata would hold the landlords responsible for any of the damage which the landlords are claiming in their application for a monetary award for repair of the balcony deck.

Finally, I have also taken into account that the landlords have re-rented this suite to new tenants who took possession of the rental unit on September 2, 2017. The landlord testified that the monthly rent for this unit has increased from the $1,600.00 that was being paid by the tenant to $2,000.00. Although the rest of the premises have been

repaired and cleaned, the deck has not been repaired, and the landlords have still been able to obtain $400.00 in additional rent each month from this new tenancy.

Under these circumstances, I find that the landlords have not met the required standard of demonstrating that they have suffered any loss as a result of the tenant's actions. The landlords have not incurred any repair costs, do not know if the strata will, in fact, hold them responsible for repairs to the outside of the building, which, by their own admission would normally be underwritten by the strata, and have failed to demonstrate that it has resulted in any form of loss in rent to their new tenants who are now paying considerably more than was the tenant. For these reasons, I dismiss the landlords' application for a monetary award to repair the deck on the balcony without leave to reapply.

Analysis – Carpet Cleaning

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must "leave the rental unit reasonably clean , and undamaged except for reasonable wear and tear."

Based on the evidence before me, including the photographs and the inspection reports, and given the length of this tenancy, I find that the tenant is responsible for the costs the landlords incurred to have the carpets professionally cleaned at the end of this tenancy. I allow the landlords' application to obtain $120.00 in carpet cleaning.

Analysis – Application for Unpaid Rent June 2017

I find that the tenant was in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the June 30, 2017 date specified in that agreement. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*. There is undisputed evidence that the tenant's closure of their account prevented the landlords from cashing the tenant's June 2017 rent cheque. Thus, the tenant did not pay any rent for June 2017, the last month of their fixed term tenancy.

However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Under these circumstances, and as the landlords received little notice that the tenant would not be leaving the rental unit in a condition whereby the landlords could find renters who would be able to take

possession of the rental unit for the last half of June, I allow the landlords' application for a monetary award of $1,600.00 for unpaid rent owing for June 2017.

Analysis – Damage to Shelf, Sofa Table and Drawer

Although there was some evidence that the tenant did attempt to repair the kitchen drawer a number of times, I find that the landlords' claim for these items was substantiated to the extent required. In this regard, I find the landlords' photographs demonstrated that damage had occurred that likely resulted from this tenancy. I allow the landlords' claim for $40.00 for the missing shelf in the laundry room and $40.00 for the repair of the broken drawer in the kitchen. I allow only one half of the landlords' $200.00 claim for water damage to the sofa table, as it appears that this was a somewhat subjective estimate of the loss in value of this table, which was no doubt used at the time of the commencement of the tenancy.

Analysis – Photos and Costs of Photocopies Associated with this Hearing

As the landlords were successful in this application, I find that the landlords are entitled to recover the $100.00 filing fee from the tenant in accordance with section 72 of the *Act*. The only cost associated with this hearing which the landlords are entitled to recover from the tenant is the landlords' $100.00 filing fee. I dismiss without leave to reapply the remainder of the landlords' application to recover the photographic, photocopying and mailing costs of the landlords.

Analysis – Cleaning and Cleaning Products

I find that the joint move-in condition inspection report of September 2014 is of limited relevance to the landlords' claim because there was a period during the summer of 2015, when the landlords rented these premises to short-term vacation renters. Without an uninterrupted tenancy in place since September 2014, it is difficult to assess the extent to which damage claimed by the landlords occurred as a result of the tenant's actions. The landlords' failure to send the tenant written requests to schedule a joint move-out inspection presents challenges to using the move-out condition inspection report provided by the landlords as an accurate reflection of the condition of the rental unit at the end of this tenancy. While the landlords provided many photographs of the condition of the rental unit after this tenancy ended, the tenant maintained that the "before" photographs included some of her own furniture, which she only started bringing into the rental unit during the course of her tenancies.

As was noted above, paragraph 37(2)(a) of the *Act* requires the tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In the absence of a properly completed joint move-in inspection at the beginning of the tenant's exclusive possession of the rental unit and a joint move-out condition inspection at the end of this tenancy, I am confronted with two very different versions of the extent to which the tenant should be held responsible for the landlords' claim for cleaning.

The landlords provided details as to extent of the cleaning the landlord and her daughter undertook to restore this rental unit to a proper state of cleanliness. The tenant submitted that the landlords' 65 hour cleaning claim was excessive and unreasonable.

I have given consideration to the statement provided by the tenant's cleaner, who the tenant maintained last cleaned the rental unit in May 2017, shortly before the end of this tenancy. By the tenant's own admission, a number of the items identified in the landlords' claim for cleaning would not normally have been included in the monthly cleaning that her cleaning person undertook. For example, no cleaning would have occurred behind the fridge or stove. Similarly, cleaning of the dryer and various ducts and fans would not normally be undertaken in a monthly cleaning. It was also unclear as to whether the tenant's cleaner routinely accessed a room that the landlord maintained the tenant had sublet to another person. The landlord also admitted that she may have higher cleaning standards than the tenant's cleaner.

I find some validity to the tenant's assertion that the landlord's claim for 65 hours of cleaning at a rate of $25.00 per hour seems excessive for the amount of cleaning required at the end of this tenancy. However, I also find that the estimate provided by the tenant and her cleaner is significantly less than what would have been required to conduct a proper cleaning of the rental unit, given the photographs provided by the landlords and the landlords' detailed written account of what needed to be done. For these reasons, and without sufficient information regarding the true state of the rental unit when the tenant obtained exclusive possession of the premises, I allow the landlords' claim for three full eight-hour days of cleaning at a rate of $20.00 per hour, a rate I find more reasonable under the circumstances. This results in a monetary award of (3 x 8 hours @ $20.00 = $ 480.00). I also allow the landlords' application for a monetary award of $217.06 to recover costs incurred to purchase cleaning products for this rental unit.

I allow the landlords to retain the tenant's security and pet damage deposits in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary Order under the following terms, which allows the landlords to recover unpaid rent, damage, losses and their filing fee, and to retain the tenant's security deposit:

| **Item** | **Amount** |
|---|---|
| Locksmith -Mailbox | $100.80 |
| Strata – Fob Replacement | 50.00 |
| Carpet Cleaning | 120.00 |
| June 2017 Rent | 1,600.00 |
| Missing Shelf – Laundry Room | 40.00 |
| Sofa Table – (50 % of Landlords' Claim for Water Damage) | 100.00 |
| Broken Drawer - Kitchen | 40.00 |
| Cleaning and Repair Products | 217.06 |
| Cleaning (3 x 8 hours @ $20.00 per hour = $480.00) | 480.00 |
| Less Security Deposit and Pet Damage Deposit | -1,000.00 |
| Filing Fee | 100.00 |
| **Total Monetary Order** | **$1,847.86** |

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.
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: January 04, 2018

Residential Tenancy Branch