



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, OPN, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38;
3. An Order of possession - Section 55; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that the claim for an order of possession was not intended to be made as the Tenants had moved out of the unit when the application was made. Given this evidence I find that the Landlord made an error and I therefore dismiss the claim for an order of possession.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord required to repay double the security deposit to the Tenants?

### Background and Evidence

The following are undisputed facts: The tenancy started on May 1, 2014 and ended on June 30, 2017. The Tenants provided their forwarding address to the Landlord on July 13, 2017. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. The Parties mutually conducted a move-in inspection with a report. The

Landlord could not locate the report and the Tenants cannot recall if they received a copy. The Landlord made one offer to conduct a move-out inspection for 1:00 p.m. on June 30, 2017 to which the Tenants agreed to attend however the Landlord could not make this inspection due to a sprained ankle. The Landlord made no further offer for a move-out inspection.

The Landlord states that the Tenants failed to leave the unit clean and undamaged as claims as follows:

\$500.00 for the Landlord's labour to clean the four bedroom, two bathroom, unit. The Landlord claims 20 hours of cleaning at a rate of \$25.00 per hour. It is noted that the Landlord provided a copy of the addendum to the tenancy agreement that provides for a charge of \$195.00 if the tenant does not leave the unit clean. The Landlord did not address this provision. The Landlord provides photos of the unit from pages 2 to 30. The Landlord does not dispute that the photos from 21 forward to the last page were taken during the tenancy. The Landlord states that some cleaning was done by the Tenants such as the bedroom and bathroom, although the cleaning to the bathroom was superficial. The Landlord states that the top of the stove was cleaned. The Landlord states that the kitchen ceiling was left soiled by oil and the walls have children's drawings. The Landlord states that the unit walls were washed in preparation for the painting. The Tenants state that they cleaned the unit as good as was possible, including the windows.

\$486.62 and \$70.93 for the material costs to paint the unit. The Landlord states that the unit interior was last painted in May 2012. The Landlord states that it paints for a living. The Landlord provides the receipts for the supplies but could not locate or identify any receipt for the claimed cost of \$70.93. The Landlord agrees that at least one of the receipts provided for the claim was not in relation to anything being claimed by the Landlord. The Tenants states that the Landlord kept a lot of paint supplies in the unit

and should have been able to use those supplies. The Tenant argues that the walls were left as expected from normal wear and tear.

\$84.00 for the cost of cleaning the carpet. The Landlord provided no photo of the carpet that was taken at the end of the tenancy. The Landlord states that no cost was incurred for this claim. The Tenant states that the carpet was left clean.

\$80.00 for the cost of replacing the fill valve for the upper toilet. The Landlord provides a plumbing bill that exceeds this claim and does not set out the separate cost being claimed. The Landlord states that the claim is for a half hour of the plumber's time. The Landlord states that the Landlord was present for the plumbing repairs and saw the amount of time taken for this repair. It is noted that the invoice sets the plumbers hourly rate at \$80.00 per hour. The Tenant states that the toilet would not flush properly and would constantly run if not manually adjusted. The Tenant states that the Landlord was informed of this problem during the Landlord's inspection on May 23, 2017. The Landlord states that the toilet problem was not pointed out during the inspection. The Landlord states that the toilet in question was new. The Tenant states that it was the other toilet that was new.

\$75.00 for the cost of installing a fan switch at the onset of the tenancy. The Landlord states that at the outset of the tenancy a new bathroom fan had been installed that worked off the light switch. The Landlord states that the Tenants asked for the fan to be on its own switch and the Landlord agreed to make the change.

\$139.00 for the cost of an electric lawn mower. The Landlord states that the Tenants were provided with a gas lawnmower for the tenancy in order to mow the lawn. The Landlord states that towards the end of the summer the Tenants informed the Landlord that the gas lawnmower was leaking and so the Landlord purchased the electric mower. The Landlord states that at the time the gas mower was not inspected by the Landlord or checked to see if repairs could be made. The Landlord states that the after the end

of the tenancy the Landlord discovered that the gas mower did not leak. The Tenant states that the gas mower would not start after several attempts and as they saw a leak at the location of the gas mower they believed the leak came from the gas mower.

\$100.00 for the cost of replacing a stove fan. The Landlord states that the fan was about 3 years old at move-in and that it was not working at the end of the tenancy. The Landlord states that the neighbours informed the Landlord that the Tenants used the fan constantly. The Landlord states that she provides only an estimated cost as she could not find the receipt for the actual cost.

\$100.00 for the cost of purchasing an upgraded version of a new dishwasher during the tenancy. The Landlord states that the upgrade was for the stainless steel interior. The Landlord states that the previous dishwasher was old and worn out and that the walls of this old dishwasher were brown from the Tenant's use. The Landlord states that the stainless steel interior was chosen to alleviate any problems with discoloration by the Tenant's use. The Landlord provides a receipt for the dishwasher. The Landlord does not provide any reference pricing for a similar dishwasher without a stainless steel interior.

\$400.00 for the cost of painting the outdoor deck and stairs. The Landlord states that the steps and deck were last painted in 2012 with deck enamel paint. The Landlord states that the Landlord did not have the time to carry out this painting so the Landlord hired a professional painter. The Landlord provides receipts for this cost. The Landlord states that the scratches and damage to the paint was over wear and tear as the paint should have lasted 7 years. The Landlord states that the damage was caused by the playing of the Tenant's many children, the deck furniture and the chickens that the Tenants allowed to be free of the coop and who pooped on the deck causing stains. The Landlord states that the Tenants were given permission to have chickens as long as they were cooped in. The Landlord states that the children were seen carrying the chickens around. The Tenant states that the deck faces west and was subject to heat

and sun damage the Tenant states that the chickens were only loose a couple of times when the snow created holes in the coop wiring allowing the chickens to be free. The Tenant states that the paint on the deck bubbled perhaps from the heat. The Tenant state that they used the deck for normal purposes with some lawn chairs on the deck.

The Landlord states that another tenancy commenced in the unit on July 15, 2017 at a rental rate of \$1,400.00.

### Analysis

Section 37 of the Act provides 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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. As the Landlord incurred no costs or any loss in relation to the carpet I find that the Landlord has not substantiated that the costs claimed were incurred. I dismiss the claim for carpet cleaning.

Policy Guideline #40 provides that the useful life of interior paint is 4 years. Based on the Landlord's evidence that the unit was last painted in May 2012 I find that by the end of the tenancy the useful life of the interior paint was expired. As the Landlord lost no value in the paint life by the Tenants having left areas of the paint marked up I find that the paint damage was only from reasonable wear and tear. I therefore dismiss the claims in relation to the painting of the interior of the unit.

Policy Guideline #40 provides that the useful life of exterior paint is 8 years. Based on the Landlord's evidence that the deck and stairs were last painted in 2012, and I find

this to be likely in May of 2012 given the evidence of the interior paint, I find that at the end of the tenancy there should have been 3 years of useful life remaining. The Landlord provided one photo of the stairs that appear to show wearing only at the edge of two steps. I would consider this to show normal wear and tear. The photos of the deck on the other hand appears to show significant scratching. As there is no evidence that the deck scratches damaged the use of the deck as a deck, as there is no way to determine the costs of solely the deck painting, as there is no evidence of the number of stairs and noting that the equally proportionate cost of repainting both with a loss of 3 years would be \$150.00 ( $\$400.00/8 \times 3$ ) I find that the Landlord has only substantiated a nominal cost of **\$50.00** for the esthetic damage to the deck.

There is nothing in guideline #40 that sets the life of a stove fan and the Tenants did not offer any evidence of the expected life of a stove fan. Given the evidence of the window grease and the Landlord's oral evidence I find on a balance of probabilities that the stove fan was overused by the Tenants during the tenancy causing the Landlord some cost to replace. However as the Landlord provided no evidence to support the cost claimed I find that the Landlord is only entitled to a nominal sum of **\$50.00** for this loss.

Given the opposing evidence between the Parties about which toilet was new and considering the total bill for the toilet from which the Landlord claims the repair to the valve, I would consider that the toilet with the valve problem was the older of the two toilets. The Landlord also gave contradictory evidence about the time spent on the repair of the valve (one half hour at \$80.00 per hour) and the amount of \$80.00 claimed. The plumbing bill does not identify what portion of the overall invoice was allocated to the valve and does not indicate that the valve was damaged by any act or negligence of the Tenants. For these reasons I find that the Landlord has not substantiated that the Tenants caused the damage or that the costs claimed were actually incurred for the damage. I therefore dismiss this claim.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. There are no condition reports to be considered as evidence of the state of the unit at move-out. The Landlord claims a significant amount of time was taken to clean the unit. Most of the Landlord's photos do not provide sufficient clarity to determine cleaning required to the extent indicated by the amount of cleaning hours claimed. I also note that several of the photos showing an unclean unit were taken some time before the end of the tenancy. I do accept that some cleaning was required to at least one window and to the floors. The Landlord gave evidence that the walls were washed in order to prepare for painting for which the Tenants are not responsible. I found the Tenant's evidence of cleaning to be somewhat credible given the apparent exaggerated evidence of the Landlord. For these reasons I find that the Landlord has only substantiated a minor amount of cleaning was required to bring the unit to a reasonable standard for which I find the Landlord only entitled to a nominal amount of **\$50.00**.

As the Landlord agreed to install the switch for the bathroom fan I dismiss the claim for this cost.

As the Landlord freely chose a preferred version of a dishwasher and there is no evidence that the Tenants were responsible for the loss of the old dishwasher, I find that the Landlord has not substantiated that the Tenants did anything to cause any loss in relation to the new dishwasher. I therefore dismiss the claim for the upgraded dishwasher.

As the Landlord did not inspect the gas lawnmower or attempt to make repairs to the lawnmower I find that the Landlord failed to take reasonable steps to mitigate the costs claimed against the Tenants for the purchase of a new lawnmower. I therefore dismiss this claim.

As the Landlord's application has had some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$250.00**.

Section 35 of the Act provides as follows:

- (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.

Section 36 of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not provide a tenant with at least two opportunities for a move-out inspection. Based on the undisputed facts that the Landlord did not offer a second opportunity to attend a move-out inspection I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section,



the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to claim against the security deposit for damage to the unit was extinguished, I find that the Landlord was required to return the security deposit to the Tenants within 15 days receipt of the forwarding address. As the Landlord failed to return the security deposit I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$1,100.00**. Deducting the Landlord's entitlement of **\$250.00** from this amount leaves **\$850.00** owing to the Tenants.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: February 06, 2018

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Residential Tenancy Branch