



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MND MNDC MNSD FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords attended the hearing, one of whom gave affirmed testimony. Both tenants also attended, and both gave affirmed testimony. The parties were given the opportunity to question each other and give closing 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.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for fees for late payments of rent and loss of rental revenue?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on February 1, 2016 and the tenants moved out April 15, 2017. The tenant had emailed or phoned the landlords early in April, 2017 saying that the tenants had parted ways and the tenant could not afford the rent. The tenant and the landlord agreed to an end date of the tenancy of April 15, 2017.

Rent in the amount of \$1,600.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$800.00 as well as a pet damage deposit in the amount of \$800.00, both of which are still held in trust by the landlords. A copy of the tenancy agreement has been provided for this hearing.

The tenants had fallen into arrears of rent which accumulated, and the landlords are owed \$7,450.00. The tenants had made the following payments:

- May, 2016 - \$0;
- June, 2016 - \$0;
- July, 2016 - \$0;
- August, 2016 - \$1,600.00;
- September, 2016 - \$2,000.00;
- October, 2016 - \$800.00;
- November 2, 2016 - \$1,000.00;
- November 18, 2016 - \$600.00;
- December, 2016 - \$1,600.00;
- January, 2017 - \$0;
- February, 2017 - \$1,000.00;
- March 1, 2017 - \$2,000.00;
- March 13, 2017 - \$500.00;
- April, 2017 - \$0.

The tenancy agreement also contains an Addendum that specifies a fee of \$25.00 for each rent payment made late, and the landlords claim late fees.

The landlord further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy and a move-out condition inspection report was completed by the parties at the end of the tenancy. A copy of the report showing the move-in and move-out condition has been provided for this hearing. The

landlord testified that the tenant agreed in the report that the landlords should keep both the security deposit and the pet damage deposit.

The landlords were unable to re-rent the rental unit for May 1, 2017 and secured a new tenancy effective July or August.

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

- \$236.91 to repair a patio door;
- \$708.00 for cleaning the house and carpets;
- \$50.00 cleaning gum from inside the dryer;
- \$210.00 for cleaning up dog poop and the yard;
- \$300.00 for repair and repainting damaged walls and doors;
- \$1,903.24 purchase of carpet in bedrooms;
- \$1,001.70 for installation of carpets;
- \$750.00 itemized house repairs;
- \$572.67 itemized house repairs;
- \$170.74 for materials needed for repairs;
- \$635.00 estimated for the landlord's labor;
- \$1,600.00 loss of rental revenue;
- \$8,138.26 total;
- - \$1,600.00 deposits;
- - \$1,500.00 depreciation of carpets;
- \$5,038.26 is the landlord's total monetary claim for damages.

The landlord testified that the patio door had been totally replaced after the departure of the previous tenant.

The original cleaning bill was \$708.00, and the landlords had to call the cleaner back to get gum out of the dryer for an extra cost of \$50.00.

The tenancy agreement specified that the yard was to be maintained by the tenants.

The doors in the half-bath and a bedroom were broken and appeared to have been forced, and one downstairs was off its hinges. The tenant bought one but it hadn't been painted and didn't fit.

The carpets were damaged by the dogs and couldn't be cleaned. The landlord testified that her husband had to rip it out, however the cost was \$1,903.24 plus \$1,001.70 for installation, but the Monetary Order Worksheet deducts \$1,500.00 because the carpets were not new. The tenancy agreement specified that carpets had to be professionally cleaned. The tenants removed carpet and underlay in one room and didn't replace it. The

landlords purchased the home 5 years ago, and although the landlord does not believe they are the original carpets from when it was built, the landlord does not know the age.

With respect to the claims of \$750.00 and \$572.67 for itemized house repairs, the landlord testified that as soon as the tenant moved out, the landlords hired a contractor to complete the work and the itemized invoices of the contractor have been provided as evidence for this hearing. The first sets out dates of April 22 to April 28, 2017 and shows costs as follows:

- \$100.00 for removing garage doors;
- \$100.00 for ensuite door frame repair, bedroom doors repair and removing closet doors;
- \$150.00 for deck stairs tread repair, electrical (switches and plates);
- \$125.00 for installing a new dishwasher and installing deck stair tread;
- \$187.50 for anchoring stair handrail to brick fireplace, repair entrance way closet door, hand entrance way mirror, install outside water shutoff valve;
- \$125.00 for installing hinges and hanging a bedroom door, walking around with the landlord making a list;
- \$87.50 for fixing a door latch on the ensuite and painting new bedroom door and odds and ends.

The total of the Invoice is \$875.00 however the landlords are not claiming the \$125.00 cost for the dishwasher installation, and claim \$750.00 of this Invoice as against the tenants.

The second itemized Invoice is dated May 15, 2017 and shows dates of work for May 8 to 12, 2017 and costs as follows:

- \$50.00 for labor for a door latch bolt;
- \$175.00 for labor;
- \$237.50 for labor and purchasing brush and scraper;
- \$75.00 for labor and spark plug for lawn mower; and
- \$35.17 for parts purchased.

The total of the Invoice is \$572.67, which the landlords claim as against the tenants, and a more descriptive attachment to the Invoice has also been provided for this hearing. The materials were not provided by the contractor which had to be paid for by the landlords, and receipts have been provided as evidence for this hearing.

The landlord further testified that her husband returned to the rental unit from Alberta and assisted with some of the repairs and removing carpets.

With respect to the claim of loss of rental revenue, the landlord testified that a property management company found tenants wanting to move in on May 1, 2017 but the rental unit was not ready. The work took a full month, and the landlord believes the new tenants moved in on June 1, 2017.

**The first tenant** (JB) testified that the patio door had no rips in the screen when the tenant moved out, and the latch on it was there at the time.

The garage door wouldn't open because the floor sunk 3 inches. The home inspector said it had something to do with a post in the crawl space and that the house had shifted. The tenant denies responsibility for paying labor for installing new garage doors. The tenant assumed that the other tenant had told the landlords about it.

The tenant further testified that the landlord's invoices include replacing spark plugs and maintaining the lawn mower, but the tenants never used that lawn mower; the tenants had their own and used their own.

The tenant also disputes the landlords' claim for cleaning up dog feces; all had been picked up, the grass was cut and raked, and there was nothing requiring the tenants to aerate the lawn.

The tenant also disputes gum in the dryer.

**The second tenant** (LB) testified that the tenants never used the landlords' lawn mower so wouldn't know if it was working or not.

The tenant also testified that after moving out, he went and cleaned up all the dog feces in the yard.

Scratches on the walls were normal wear and tear, however the tenant told the landlord that one carpet was destroyed by pets which the tenant removed and agreed that the landlord could keep the pet damage deposit.

The floor in the garage had sunk, and the tenant told the landlord about it, so the garage door problem was not the fault of the tenants. The tenant does not dispute the landlord's claims for unpaid rent.

### Analysis

Firstly, the tenants did not dispute the landlord's testimony of the unpaid rental amounts or the dates of the payments, and the Addendum to the tenancy agreement specifies \$25.00 per late payment. Considering the testimony of the landlord, I am satisfied that

the tenants were late paying rent in May, June, July, October, and November, 2016 as well as January, February and April, 2017, for a total of 8 late payments, or \$200.00. I also find that since the parties mutually agreed to end the tenancy effective April 15, 2017, the landlords are entitled to half a month's rent for that month. I find that the amounts due and payable are as follows:

<b>MONTH and YEAR</b>	<b>AMOUNT DUE</b>	<b>AMOUNT PAID</b>	<b>LATE FEES</b>	<b>BALANCE DUE</b>
May 2016	\$1,600.00	0	\$25.00	\$1,625.00
June 2016	1,600.00	0	25.00	3,250.00
July 2016	1,600.00	0	25.00	4,875.00
August 2016	1,600.00	\$1,600.00	0	4,875.00
September 2016	1,600.00	2,000.00	0	4,475.00
October 2016	1,600.00	800.00	25.00	5,300.00
November 2016	1,600.00	1,600.00	25.00	5,325.00
December 2016	1,600.00	1,600.00	0	5,325.00
January 2017	1,600.00	0	25.00	6,950.00
February 2017	1,600.00	1,000.00	25.00	7,575.00
March 2017	1,600.00	2,500.00	0	6,675.00
April 2017	800.00	0	25.00	7,500.00
<b>TOTALS</b>	<b>\$18,400.00</b>	<b>\$11,100.00</b>	<b>\$200.00</b>	<b>7,500.00</b>

I find that the landlords have established a claim for unpaid rent and late fees in the amount of \$7,500.00.

In order to be successful in a 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 as a result 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 any damage or loss suffered.

The *Act* also states that the move-in/move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the reports and compared them to the other evidentiary material provided by the landlords. The move-out portion of the inspection report shows that the damage to the rental property for which the tenant is responsible are painting and cleaning; replacing carpet and cleaning carpet. That portion shows that the tenant agreed that

the report fairly represented the condition of the rental unit and as such agreed that the landlords should keep the deposits.

I find that the landlords have failed to establish that the gum in the dryer was included in the inspection reports or that the \$50.00 second claim for cleaning was a result of the tenant's failure to comply with the *Act* or the tenancy agreement.

The tenant also testified that he went back to the rental home and cleaned up the dog poop, and the Invoice specifies aerating and sweeping, which I am not satisfied is the responsibility of a tenant before moving out of a rental unit.

The landlords were not able to say how old the carpets were, other than to say that they were not new when the landlords purchased the home 5 years ago, and the landlords have reduced the claim from the actual amounts of \$1,903.24 and \$1,001.70 for installation by \$1,500.00 to a claim of \$1,404.94 as against the tenants. I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the useful life of carpets at 10 years. I find that the landlords have failed to establish that the tenants should be responsible even partially for carpeting that may have outlived its usefulness.

I also accept the testimony of the tenants that the garage floor sunk during the tenancy, and therefore the landlords have not established that removing the garage doors was a result of the tenants' failure to comply with the *Act* or the tenancy agreement. The same applies to the \$150.00 claim for deck stairs tread repair and electrical switches and plates.

The \$125.00 claim for 5 hours charged by the contractor for installing hinges and hanging a bedroom door ought not to have taken more than 1 hour, and requiring a tenant to reimburse a landlord for a contractor walking around for 4 hours making lists of repairs required is not the responsibility of the tenant, and I reduce the claim to \$25.00.

With respect to the claim of \$187.50 for anchoring stair handrail to brick fireplace, repair entrance way closet door, hang entrance way mirror, install outside water shutoff valve, I am not satisfied that all of those items were the responsibility of the tenants or required as a result of the tenants' failure to comply with the *Act* or the tenancy agreement.

I also accept the testimony of both tenants who agree that the landlords' lawn mower was never used by the tenant, and I dismiss the \$75.00 claim for spark plugs and \$4.13 for purchasing them.

I find that the landlords have established the following claims for damages:

- \$236.91 to repair a patio door;
- \$708.00 for cleaning the house and carpets;
- \$300.00 for repair and repainting damaged walls and doors;
- \$170.74 for materials needed for repairs;
- \$635.00 estimated for the landlord's labor;
- \$100.00 for ensuite door frame repair, bedroom doors repair and removing closet doors;
- \$87.50 for fixing a door latch on the ensuite and painting new bedroom door;
- \$50.00 for labor for a door latch bolt;
- \$175.00 for labor;
- \$237.50 for labor and purchasing brush and scraper;
- \$31.04 for materials;
- \$25.00 for installing hinges and hanging a bedroom door **for a total of \$2,756.69.**

The *Act* also specifies that a landlord must either return a security deposit and/or pet damage deposit to a tenant within 15 days of receiving the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period, unless the tenant otherwise agrees in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the tenant agreed in writing on the move-out condition inspection report that the landlords keep both deposits to off-set money owed to the landlords. Therefore, even though the landlords did not apply for dispute resolution or return either deposit within that 15 day period, the doubling provision of the *Act* does not apply.

With respect to loss of rental revenue, the Invoices show that the work was completed by May 12, 2017. Given that the parties agreed to end the tenancy effective April 15, 2017 and the rental unit was likely re-rented June 1, 2017 or earlier, I find that the landlords have established loss of rental revenue for half of a month, or \$800.00.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Having found that the landlords are owed \$7,500.00 for unpaid rent and late fees, \$800.00 for loss of rental revenue, \$2,756.69 for damages and \$100.00 as recovery of the filing fee, I order that the landlords keep the \$800.00 security deposit and \$800.00 pet damage deposit, and I grant a monetary order in favour of the landlords for the difference in the amount of \$9,556.69.

### Conclusion



For the reasons set out above, I hereby order the landlords to keep the \$800.00 security deposit and the \$800.00 pet damage deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$9,556.69.

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: February 06, 2018

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Residential Tenancy Branch