



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid and/or loss of rent; damage to the rental unit; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenants' security deposit. 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.

This hearing was held over two dates and an Interim Decision was issued after the first hearing date. The Interim Decision should be read in conjunction with this decision.

### Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenants under the Act, regulations or tenancy agreement in the amounts claimed?
2. Are the landlords authorized to retain the tenants' security deposit?

### Background and Evidence

The tenancy started on October 1, 2013 on a month to month basis. The tenants paid a security deposit of \$750.00 and were required to pay rent of \$1,500.00 on the first day of every month.

A move-in inspection was conducted, a move-in inspection report was prepared by the landlords and the tenants signed it. A move-out inspection report was prepared by the landlords without the tenant's present. The landlords acknowledged that they did not invite the tenants to participate in a move-out inspection with them.

The rental unit was described as being a two level house. The upper floor had two bedrooms, a bathroom, living room, dining room and kitchen. The basement had three bedrooms, a bathroom and the laundry room.

On June 1, 2016 the tenants paid one-half of the monthly rent and the second half of the rent was to be paid on June 15, 2016 but it was not. On June 16, 2016 the lower floor of the house was contaminated by a sewer back-up that affected the rental unit and other houses in the area. The tenants did not carry tenant's insurance despite the landlords giving the tenants letters encouraging the tenants to get insurance since the area was prone to sewer back-ups during heavy rainfall. Given the number of houses affected by a sewer back up in the area, the restoration companies were busy. The landlords were unsuccessful in getting a restoration company to the property in a timely manner; however, the tenant managed to get a restoration company person to the house on or about June 23, 2016.

On June 24, 2016 the tenants gave the landlords a letter giving notice of their intention to move out of the rental unit by July 1, 2016. According to the tenants they had to move out because the restoration company inspector told them the rental unit was not inhabitable and because their child was getting ill. According to the landlords only the lower floor was not useable but that the upper floor was still inhabitable. The landlords speculate that the tenants were using the sewer back-up as a means to give short notice to end tenancy since they were already behind in rent.

The tenants did not give up possession on July 1, 2016 as expected. According to the landlords the tenant sent a text message on July 6, 2016 to inform the landlords that the keys were let in the rental unit. The landlords went to the rental unit on July 6, 2016 and found the keys. The landlords also requested the tenants return to remove the remainder of their property, including a large television. The tenant returned and the landlord helped the tenant remove the television. According to the tenants they were delayed in giving up possession because their daughter had been in the hospital twice. The tenants recalled giving up possession and removing the last of their items on July 4 or 5, 2016.

After the tenants moved out the landlords were able to get the basement restored by the third week in July 2016. They then commenced advertising the rental unit for rent after that and re-rented the unit starting on September 1, 2016.

I heard and was provided a considerable amount of submissions and evidence from the parties with respect to the landlords' monetary claims; however, with a view to brevity in

writing this decision I have only summarized the landlords' submissions and the tenants' responses below.

#### Unpaid Rent – June 2016

The landlords applied for unpaid rent of \$750.00 for June 2016; however, in recognition of the sewer back up on June 16, 2016 which rendered the basement level largely uninhabitable, the landlords were agreeable to reducing their claim to 50% of that for the period of June 16 – 30, 2016.

The tenants conceded that one-half of the balance owing was fair since they used one-half of the rental unit in the latter part of June 2016 and they agreed to compensate the landlords \$375.00.

#### Loss of Rent – July 2016

The landlords applied for \$1,500.0 in unpaid rent for July 2016; however, in recognition of the sewer back up and the basement level being largely uninhabitable the landlords were agreeable to seeking compensation of 50% of the rent for the month of July 2016. The landlords' basis for seeking loss of rent for the month of July 2016 largely revolved around the tenant's failure to give one full month of notice and the tenants remained in possession of the unit into July 2016.

The tenants were of the position that the sewer back-up left them with a rental unit they could not use. The tenants submitted that they had six people living in the house when the sewer back-up occurred and that they could not all remain on the upper floor only. The tenants also submitted that their child was getting ill from mould. The tenants pointed out that the landlords rented them a five bedroom, two bathroom house; not a two bedroom, one bathroom house.

The landlords countered that position by pointing out that had the tenants carried tenant's insurance as they encouraged them to do they could have had the benefit of alternative accommodation while the remediation was underway and return to the property when the restoration was complete.

The tenants acknowledged they did not carry tenant's insurance, citing affordability as the reason for not obtaining coverage.

Water bills -- \$202.14 and \$1,315.16

The landlords submitted that the tenants were required to pay for water during the tenancy and they failed to do so in 2015 and 2016. As a result the water bills were transferred to the landlords' property tax account. The landlords provided copies of letters that were sent to them by the city to inform them of the transfer of water bill arrears to their property tax account.

The tenants acknowledged responsibility for paying the amounts claimed for water bills.

Electrician -- \$250.00

The landlords submitted that they sent an electrician to the property to investigate the tenants' complaint that the hydro bills were high. The landlords did not present a copy of the invoice or receipt for these services.

The tenants acknowledged they had complained about the high cost of electricity to the landlords and an electrician was sent to the property by the landlords; however, the tenants do not take responsibility or paying this bill. The tenant explained that she was home when the electrician attended the property and the electrician inspected a number of areas of the electrical system and found frayed wiring which he repaired while he was there. The tenant stated they did damage the wiring. The tenant also stated that the electrician was making notes of his findings and the services he provided.

Dishwasher -- \$500.00

The landlords submitted that a new dishwasher was installed in the property during the tenancy and since a dishwasher was not included as part of the tenancy agreement, this amounted to a "personal loan" to the tenants. The landlords acknowledged that they gave the money for the dishwasher to the retailer for the cost of the dishwasher; had the dishwasher installed in the rental unit; and, the dishwasher remains part of the rental unit. The landlords did not indicate the tenants were responsible for damaging the old dishwasher. The landlords did not provide a copy of the receipt or invoice in support of the amount claimed.

The tenants stated that there was an old dishwasher in the property when their tenancy started and when it broke down they notified the landlords. The landlords installed a new dishwasher on their own volition.

Cleaning -- \$450.00

The landlords submitted that the rental unit was left very dirty at the end of the tenancy and that they hired a cleaner who cleaned the rental unit for three days at a cost of \$450.00. The landlords provided photographs of the rental unit as the tenants left it and an email from the cleaner in support of this claim.

The tenants acknowledged that they did not clean the kitchen and did not vacuum the carpeting in one of the bedrooms. The tenants were of the position that three days for cleaning was excessive. The tenants submitted that the landlords' photographs included multiple angles of the same dirty areas. The tenants submitted that 2 to 3 hours of cleaning would be adequate.

Repairs/Damage -- \$800.00

The landlords did not provide a breakdown of this claim with their filings; however, during the hearing the landlords explained that this claim consists of \$125 for a new tub surround and \$675.00 to repair wall damage.

Tub surround:

The landlords submitted that the tub surround was coming away from the wall at the bottom, where it meets the tub, and that no amount of caulking would fill the gap so a new tub surround had to be installed. The landlords suspected that a very overweight person using the tub or someone pushing on the wall caused the damage. The landlords provided a photograph of the tub surround and receipts to show the purchase of materials related to installing a new tub surround. The landlords submitted that they had installed the damaged tub surround approximately six years prior.

The tenants stated they informed the landlords a number of times about the tub surround coming away from the wall and the landlords' response to them was to apply more caulking. The tenants stated the tub surround appeared as though it was improperly installed or had come away from the wall before their tenancy started.

Wall damage:

The landlords submitted that there was a lot of wall damage that occurred during the tenancy, including hitting a wall with furniture right in front of him when the tenants were moving in. The landlords provided photographs of a number of areas of the walls that appear to show chips in paint at corners and some nail holes. The landlords stated the

rental unit had been painted just prior to the tenancy starting. As for the amount claimed, the landlords indicated the landlords patched the walls themselves.

The tenants were not agreeable to compensating the landlords the amount claimed for wall damage. The tenants were of the position that the walls required patching and painting due to age and wear and tear. The tenants acknowledged hitting a wall downstairs when they were moving in but pointed out that the downstairs walls were undergoing repairs due to the sewer back up anyways. The tenants doubted the rental unit had been painted just prior to the start of their tenancy. The tenants recalled that the landlords had told them the rental unit had been painted prior to the previous tenants.

Painting -- \$2,000.00

The landlords seek to recover the cost to repaint the upper floor of the house based on an invoice dated August 25, 2016 and photographs. As stated above, the landlords submitted that the walls had been painted just prior to the start of the tenancy.

As stated above, the tenants were of the position that wall painting was due to age and wear and tear but not damage.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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

### **Unpaid rent – June 2016**

The landlords and the tenants were in agreement that the tenants should pay the landlords \$375.00 for rent for the second half of June 2016 after taking into account that one-half of the rental unit was largely unusable between June 16 and June 30, 2016. Therefore, I award the landlords \$375.00 for unpaid rent for June 2016.

### **Unpaid/loss of rent – July 2016**

The parties had a month to month tenancy agreement. Pursuant to section 45 of the Act, a tenant must give the landlord one full month of written notice to end tenancy to bring their tenancy to an end. The tenants gave the landlords written notice dated June 24, 2016 which is insufficient to end their tenancy effective June 30, 2016 and bring their obligation to pay rent to an end. Accordingly, the tenants were in breach of the Act with respect to giving sufficient notice to end tenancy. Also of consideration is that despite trying to bring their obligation to pay rent to an end in June 2016 the tenants remained in possession of the rental unit for a number of days in July 2016. Furthermore, for reasons provided later in this analysis, I also find the tenants left the rental unit very dirty and a considerable amount of time was required to clean the unit after the tenants vacated. Therefore, I find the tenants are liable for unpaid and/or loss of rent for July 2016.

Despite the foregoing, the landlords were also in breach of their tenancy agreement and the Act since they did not provide the tenants with full use and enjoyment of the rental unit due to the sewer back up. Although the sewer back up was no fault of the landlords the landlords have a contractual and statutory duty to provide the tenants with use and enjoyment of the rental unit in exchange for the rent payable by the tenants. Given the tenants' inability to use the basement level in July 2016, I find it appropriate to limit the landlords' award to one-half of the rent payable for July 2016.

As for the tenants argument that they could not continue to reside in the unit with only one-half of the space available to them, I am of the view that the loss was temporary of use was temporary and the tenants were advised a number of times by the landlords, including written notification, that the area was prone to sewer back up during heavy rainfall and that they should get tenant's insurance. Accordingly, I am of the view that their decision to not carry tenant's insurance contributed significantly to the tenant's losses.

In light of all of the above, I award the landlords one-half of the monthly rent payable for July 2016, or \$750.00.

### **Water bills**

The parties were in agreement that the tenants were responsible for paying water bills during their tenancy and I award the landlords recovery of \$1,517.30 for water bills that were transferred to their property tax account by the city.

### **Electrician**

The landlords did not produce a receipt or invoice in support of this claim and did not establish that the tenants violated the Act, regulations or tenancy agreement.

A tenant is not in violation of the Act by raising concerns to the landlord's attention. Upon receipt of a complaint from a tenant the landlord is expected to take appropriate action to investigate and/or repair the issue. The landlords chose to send an electrician to inspect the electrical system at the property. This was probably a wise decision given the age of the house and the landlords' ongoing obligation to repair and maintain the property. However, it does not create a liability on part of the tenant unless there was a violation of the Act, regulations or tenancy agreement on part of the tenant. Therefore, I find the landlords failed to establish an entitlement to recover \$250.00 from the tenants for the electrician's inspection and/or repairs made at the property.

### **Dishwasher**

The landlords did not produce a receipt or invoice to support the amount claimed. Nor, did the landlords indicate the tenants violated the Act by damaging the old dishwasher.

The landlords argued that the tenancy agreement did not provide for inclusion of a dishwasher and that they installed one so the tenants should pay for that. If the tenancy agreement did not require the landlords to provide a dishwasher to the tenants and the landlords chose to install one at the property they cannot ascribe the cost to do so to the tenants unless the terms of the tenancy agreement were changed. It is possible to change the terms of a tenancy agreement, such as adding a dishwasher as an included appliance in exchange for increasing the monthly rent; however, all changes to a tenancy agreement must be accomplished by way of mutual consent. I find there is insufficient evidence that the parties mutually consented to change the tenancy agreement to reflect the provision of a dishwasher in exchange for additional rent.



As for the landlords' argument that paying for installation of a new dishwasher amounted to a "personal loan" to the tenants I do not have jurisdiction to resolve disputes concerning "personal loans" between two individuals. Rather, my jurisdiction is limited to disputes concerning obligations under the *Residential Tenancy Act*, its regulations and tenancy agreements.

All the above considered, I make no award to the landlords with respect to installing a dishwasher at the property.

### **Cleaning**

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. There are no exceptions to this obligation.

Upon review of the photographs provided by the landlords, I accept their position that the rental unit was left very dirty. I note that the landlords included photographs of areas other than the kitchen, such as the laundry room, the downstairs fridge, entrance way, and hallway. I also note that the kitchen cupboards, kitchen walls and ceiling appear exceptionally dirty. I reject the tenants' submission that 2 to 3 hours would be adequate to clean the rental unit as being completely unreasonable. Rather, I find the landlords' request for compensation of \$450.00 to be very reasonable. Therefore, I grant the landlords' request to recover cleaning costs of \$450.00 from the tenants.

### **Repairs/damage**

Under section 32 and 37 of the Act, a tenant is required to repair damage caused by their actions or neglect, or that of persons they permit on the property. Section 32 and 37 also provide that normal wear and tear is not damage. Accordingly, a landlord may pursue a tenant for compensation for damage to a property but not wear and tear. Also of consideration is that awards for damages are intended to be restorative. Where a fixture, appliance or other building element is so damaged it requires replacement, it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of a replaced building element, I refer to Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

It was undisputed that the tub surround was coming away from the wall during the tenancy and the tenants reported this to the landlords and the landlords' response was

to apply more caulking, or tell the tenants to do that. At issue was the reason the tub surround was coming away from the wall.

Both parties provided me with reasons that may have caused the bottom of the tub surround to detach from wall. The landlords speculated that happened because a very overweight person used the tub or pushed on the wall. Whereas the tenants speculated that the tub surround had not been adequately adhered to the wall.

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. I find improper installation is just as likely, if not more so, than use by an overweight person, as being the reason the tub surround detached from the wall. Therefore, I find the landlords did not meet their burden to prove the tenants are responsible for this damage.

### **Wall damage**

The photographs provided to me show the walls were banged and chipped at a few corners and the ceiling leading to the downstairs areas. I accept that the corners of the walls were damaged beyond wear and tear.

There are also photographs of nail holes and one larger hole in one wall. Residential Tenancy Policy Guideline 1 provides that landlords should expect some nail holes in walls as normal wear and tear. Holes in walls may be considered damage where there are an excessive number of holes or the holes are large. I do not see sufficient evidence to show that there were very large or an excessive number of nail holes with the exception of one wall shown on page 62 of the landlords' evidence. Therefore, I accept that the tenants are responsible for patching this one larger hole but not the nail holes.

The difficulty in awarding the landlords compensation for patching wall damage is that I was not provided a breakdown as to how the landlords arrived at a claim of \$675.00 for this damage. I appreciate the claim reflects the landlords' efforts to patch the walls; however, without a breakdown I am unable to determine the time associated to patching larger holes and corner bead damage versus filling small nail holes the tenants are not liable for. Rather, than dismiss the claim outright I make a nominal award to the landlords in recognition of the tenants' damage. I provide the landlords a nominal award of \$250.00 for wall damage.

## Painting

The landlords are claiming for repainting the upstairs rooms and the entrance way but not the basement walls. Accordingly, I have focused on the condition of these walls and the need for repainting these walls only.

Residential Tenancy Policy Guidelines 1 and 40 provide that landlords should expect to repaint from time to time and that interior paint has an average useful life of 4 years, which is equivalent to 48 months.

The parties were in dispute as to whether the walls had been painted just prior to the start of the tenancy. I turn to the move-in inspection report which was signed by the tenants. It reflects that some rooms had been freshly painted: namely the living room, dining room, bedroom #1 and bedroom #2. Other rooms indicate the walls were good but there no indication they were freshly painted: namely, the bathroom and kitchen. The entrance way is noted as being in good condition with age appropriate wear. Accordingly, I accept that some of the rooms had just been painted just prior to the tenancy but that other walls were not painted as recently.

Considering the evidence does not support that the kitchen, bathroom and entrance way were freshly painted at the start of the tenancy, and considering the tenancy was 33 months in duration, I am of the view that these rooms were likely due to be repainted given the age of the paint and wear and tear.

I accept that the living room, dining room and two bedrooms upstairs were freshly painted prior to the start of the tenancy and were re-painted again in August 2016. However, wall damage for which I found the tenant's responsible did not include all of these rooms. Accordingly, I find I cannot conclude the repainting of these rooms is the result of the tenants' damage.

Also of consideration is that to apportion the painters' bill to particular rooms or particular damage is impossible given the lack of detail on the invoice.

In light of above, and in recognition that I did find the tenants responsible for some wall damage, which would require repainting to rectify, I find it appropriate to award the landlords a nominal award for painting. I award the landlords \$250.00 for painting over the areas the tenants damaged.

### **Filing fee and security deposit**

Since the landlords' claims had merit and I award the landlords' recovery of the \$100.00 filing fee.

I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlords with this decision.

In recognition of all of my findings and awards above, I provide the landlords with a Monetary Order to serve and enforce upon the tenants calculated as follows:

Unpaid rent – June 2016	\$ 375.00
Loss of rent – July 2016	750.00
Water bills	1,517.30
Cleaning	450.00
Repairs/damage	250.00
Painting	250.00
Filing fee	<u>100.00</u>
Total award	\$3,692.30
Less: security deposit	<u>(750.00)</u>
Monetary Order	\$2,942.30

### **Conclusion**

The landlords are authorized to retain the tenants' security deposit and have been provided a Monetary Order for the balance of \$2,942.30 to serve and enforce upon the tenants.

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: March 2, 2018

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**Residential Tenancy Branch**