



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlords' application for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order allowing the landlords to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both the landlords and the tenants attended the hearing. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both the landlords and the tenants confirmed receipt of each other's evidentiary packages, while the tenants confirmed receipt of the landlord's application for dispute. All parties are found to have been duly served in accordance with the *Act*.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award?

Can the landlords recover the filing fee?

Can the landlords retain the tenants' security deposit?

### Background and Evidence

Testimony provided to the hearing by both parties explained that this tenancy began in October 2013 and ended in July 2017. Rent was \$1,250.00 per month and security and pet deposits of \$625.00 were collected at the outset of the tenancy. The landlords continue to hold the tenants' security deposit, but returned the pet deposit.

The landlords are seeking a monetary award as follows:

<b>Item</b>	<b>Amount</b>
Repair of flooring	\$3,776.76
Hydro Seeding of lawn	420.00
Yard Maintenance	468.13
Replacement of mature hedge and trees	500.00
Cleaning of unit	150.00
Replacement of fruit trees and other mature plants	500.00
Repair of wall	150.00
<b>Total =</b>	<b>\$5,964.89</b>

The landlords explained to the hearing that upon the tenants' move out, they discovered that numerous aspects of the home and property had been damaged and they sought a monetary award to recover their alleged loss under the tenancy. Specifically, the landlords argued that the tenants had damaged the flooring in some areas of the home, had allowed numerous shrubs and trees on the property to die, and had neglected to properly care for other plants on the property. In addition, the landlords argued that they had to spend a great deal of money to repair damage to the lawn and to repair some holes which were made when wifi was installed in the rental home.

As part of their evidentiary package, the landlords submitted several invoices, along with an estimate for repair of the wooden floor. The landlords explained that the floor was installed on September 30, 2013, shortly before the tenants took possession of the rental unit. The landlords said that the wear and tear went beyond what could normally be expected of a rental home, and said that they strongly suspected the tenants' pets had damaged the floor. In addition, the landlords said the flooring person who had come to provide them a quote for repair had told them he suspected the floor might have been subject to water damage.

The tenants acknowledged that some marks were on the floor because of computer chairs and general wear and tear but they denied that there was any water damage associated with the floor and they explained that they took steps to mitigate the scratches by laying down carpets. In addition, they disputed that the landlords should be entitled to any award for the floors because they remarked that the home had been sold and that the floors were not replaced prior to the sale.

The second portion of the landlords' application for a monetary award involves alleged damage to the various plants, shrubs and trees on the property. The landlords argued that the tenants were not charged market rent because part of their reason for agreeing to house the tenants was the tenants' claimed gardening experience. The landlords argued that much of the grass and lawn was cut up and that approximately  $\frac{1}{4}$  of the turf had been taken away, and a 2-3" trench had been cut out from the top layer of grass. The landlords said that extensive lawn maintenance was required to fix this and they said that the tenants had no permission to dig up this portion of the lawn. In addition to the alleged damage to the lawn, the landlords are seeking a monetary award for shrubs and trees they said died from neglect and lack of watering by the tenants.

The tenants disputed the above described aspects of the landlords' application for a monetary award. They argued that they were in the process of repairing the lawn and argued it was 85% complete when the landlords took control of their project. They said that their plan was to re-seed the lawn and they explained they informed the landlords of their intentions. The tenants acknowledged that some shrubs and trees had suffered from a lack of water but they said a severe drought during the summer of 2016 (the time for which the landlords are seeking compensation) had prevented them from adequately caring for this aspect of the property. They argued that a water ban and water restrictions had prevented them from adequately watering the plants for 4 months, and that numerous signs were posted in town advising people to adhere to water restrictions.

### Analysis

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 their entitlement to a monetary award.

I will begin by analyzing the landlords' application for compensation related to flooring and then will proceed to examine the other issues for which the landlords are seeking compensation.

The landlords have applied for a monetary award of \$3,776.76 related to flooring which they say was damaged by the tenants. The landlords argued that the tenants damaged hardwood flooring which had recently been installed and that the damage went beyond "normal wear and tear." The tenants disputed this portion of the landlords' application, arguing that no loss was suffered as the home had been sold and the landlords did not ever have the flooring replaced.

I find that the landlords have failed to demonstrate that a loss of \$3,776.76 was suffered. The landlords submitted an estimate which was given to them by a flooring expert/technician. This cost represented what it would have cost to replace the floors had they been repaired and replaced, but it did not represent an actual monetary amount of the loss or damage. Furthermore, no evidence was presented at the hearing showing that the landlords suffered a loss in value of the above cited figure, when their home was sold. For these reasons, I dismiss this portion of the landlords' application.

A large portion of the landlords' application concerned items related to garden work and the replacement of shrubs and trees which the landlords argued were damaged from neglect on behalf of the tenants. Furthermore, the landlords argued that the tenants had failed to properly care for the lawn, and had in fact caused a great deal of damage to the lawn.

*Residential Tenancy Policy Guideline #1* examines the issue of a landlord and tenant's responsibilities related to responsibility for residential premises. It says, "generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds." This *Guideline* continues by explaining that, "the tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed...unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate."

Much testimony was presented by both sides explaining their version of events. The landlords argued that the tenants dug a deep trench in the front lawn without their permission and allowed the various shrubs and trees to die from neglect, while the tenants argued that the landlords took over the landscaping prior to the completion of the lawn re-seeding. The tenants did not dispute that some shrubs and trees had died but argued that a severe drought and a municipal ban on watering had prevented them from adequately caring for the plants.

Based on a reading of the *Guidelines* and the photo submitted to the hearing, along with the testimony of the parties, I find that the tenants fulfilled their obligation related to property maintenance as the terms of the tenancy agreement called for the tenants to maintain the yard in a “clean and orderly fashion.” I find that the parties had a difference of opinion regarding the state of the yard and the quality of the landscaping. I accept the tenants’ explanation that a severe drought and accompanying watering restrictions in the summer of 2016 had prevented them from watering and maintaining the landscape to a degree which they normally would have, and I find that landlords pre-emptively took over maintenance of the lawn before the tenants had a chance to re-seed the lawn as they had intended. I find that the trench which the tenants purportedly dug in the lawn to be a reasonable part of a repair plan, and note, as per the *Residential Tenancy Guidelines*, that the tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, only when *where no garden previously existed*. From all accounts, I find that a garden previously existed and the tenants were taking steps to rectify an issue with the lawn, steps with which the landlords had a different opinion.

For these reasons, I dismiss the landlords’ application for a return of the funds related to yard work and replacement of shrubs and trees.

The final portion of the landlords’ application concerns cleaning of the rental unit and repairs to walls which were needed following the installing of wifi in the rental home.

Section 37(2) of the *Act* states, “when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear,” while section 32(4) of the *Act* states, “A tenant is not required to make repairs for reasonable wear and tear.” I find that the landlords failed to demonstrate that the tenants left the premises in a state which could be considered unreasonable or that the two wifi installation holes in the wall went beyond ‘reasonable wear and tear.’ Photos submitted to the hearing did not display any large piles of garbage or other such debris,

and showed only up-close photos of areas of concern which I find to show only normal wear and tear.

Furthermore, *Residential Tenancy Policy Guideline #1* states, "The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left damage to the walls." I find that two holes drilled for wifi do not meet the definition of an "excessive number" nor can they be found to have been attributed to large nails, screws or tape. For these reasons, I dismiss this portion of the landlords' application.

The landlords' application for a monetary award is dismissed. As the landlords were unsuccessful in their application, they must bear the cost of their own filing fee.

### Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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 14, 2018

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Residential Tenancy Branch