



# 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 landlord 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; for an order permitting the landlord to keep all of part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The hearing did not conclude in the time scheduled and was adjourned to the following day to continue.

The landlord and both tenants attended the hearing on both scheduled dates, and the landlord and one of the tenants gave affirmed testimony. The landlord and the tenants each called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to 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

- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord 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 September 28, 2012 and ended on August 31, 2017. Rent in the amount of \$1,000.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$500.00 as well as a pet damage deposit in the amount of \$500.00, both of which are still held in trust by the landlord. The rental unit is a suite in an addition to a single family dwelling built in 2007, and the landlord resided in the main part during this tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed on September 8, 2012 and on October 3, 2012 the tenants amended it and sent a copy to the landlord. The landlord's habit is to go through the report with the tenant and fill out the report room by room, leave the report with the tenant with instructions to return it in 5 days, so they can add to it if things are noticed by the tenants later. The move-out condition inspection report was completed on September 1, 2017, and the tenants' forwarding address was provided in writing on that form.

The landlord claims:

- \$210.00 for fence repair;
- \$67.60 for City utilities;
- \$24.71 for natural gas utility;
- \$20.31 for electrical utility;
- \$4,558.40 for contractor repairs;
- \$44.93 to replace the stove door trim;
- \$84.34 for replacing or repairing kitchen cabinet doors;
- \$78.51 for replacing or repairing bathroom cabinet doors;
- \$364.00 for replacing the bathroom countertop;
- \$155.57 for replacing blinds;
- \$75.00 for cleaning – 2 hours at \$35.00 per hour, plus \$5.00 for cleaning/disinfecting supplies.

The landlord's total claim is \$5,683.37 in addition to the \$100.00 filing fee for the cost of this application, and testified that the tenants caused excessive wear and tear and damages, beyond normal.

The gate had been installed in 2011 but the frame had been chewed by the tenant's dog. It was in brand new condition at the beginning of the tenancy and the landlord claims \$210.00.

The tenants did not refuse to pay the utilities, but the landlord has included them in the claim.

The stove was about 1 year old at the beginning of the tenancy and the door was rusted at the bottom at the end of the tenancy, and was replaced.

The landlord testified that the kitchen had a lot of water damage from plants or something at the end of the tenancy and the wood and paint on the window sill was damaged, warped and bubbled. The landlord was quoted \$600.00 for the repair. Also the cupboards were damaged and warped and the veneer was chipping, coming apart and the doors don't close properly. Also, the bathroom cabinet was also damaged, and the countertops were discoloured from something.

The landlord had replaced some of the blinds at the request during the tenants, and the landlord claims \$155.00 for replacing them, although the tenants left them in the rental unit at the end of the tenancy.

The landlord completed the cleaning after the tenants had departed to cabinets, walls, baseboards, window sills, the bathroom fan, and washer which had rocks in it. The landlord claims 2 hours at \$35.00 per hour plus \$5.00 for bleach.

The landlord also testified that a post on the patio had dog chewed damage; the deck is old and weathered but the landlord was quoted \$90.00 for door trim scratches and \$120.00 for the upper entrance.

The siding on the deck was warped; the tenants had appliances on the deck and the landlord assumes they were in the same area and has provided an estimate of \$400.00, but the work has not yet been completed.

The subfloor in the bathroom needed to be replaced due to water damage, and the landlord claimed \$1,600.00 however when removed other issues were noticed. The flooring was original to the suite and the flooring may have outlived its useful life, but not the subfloor. The actual cost was over \$2,000.00.

Holes were left where the shower curtain and towel rack had been removed and replaced, but wouldn't have held anything. The landlord had the work completed at a cost of \$80.00.

The landlord was quoted \$150.00 for repair or replacing the baseboard in the bedroom which had a gouge in it. The landlord replaced all baseboards, but is only claiming the \$150.00.

The landlord also testified that 25 or 30 sticker hooks had been applied by the tenants which damaged the closet wall in the main bedroom, for which the landlord claims \$200.00.

Photographs have been provided which the landlord testified were taken August 31, 2017 without the tenants present and September 1, 2017 with the tenants present. Receipts and estimates have also been provided as evidence for this hearing.

**The landlord's witness** testified that she lives next door to the rental unit where she has resided since May, 2011.

The landlord asked the witness to inspect the rental unit after the tenants had departed to give the landlord a non-biased opinion of the level of cleanliness. The walls had not been washed with clean cloths, so smeared in the entry and main living area, and was only done from standing height. It looked like water was not cleaned up on the floors or walls. The witness also saw window sills with water marks and the cupboard doors in the kitchen were warped, didn't align and had water marks. There were lost of marks on floor boards and doors, and damage marks in the bathroom along floor boards.

During the tenancy, the witness saw the tenants' dog unattended on the deck multiple times, and also got out of the yard.

**The tenant** testified that the tenants agree to the \$112.62 claim for utilities.

The tenant also testified that at the beginning of the tenancy the landlord gave the tenants a move-in condition inspection report with some markings on it and asked the tenants to complete it. The tenants did so and added 3 dozen additional notations. Copies of the landlord's version and the tenants' return version have been provided as evidence for this hearing.

The tenants are a family of 4 and resided in the rental unit for 5 years, which was not newly painted at the beginning of the tenancy, and it is not possible that the rental unit was new in 2007. Photographs provided for this hearing were taken during and after the tenancy, but show the age of it. Light fixtures and appliances needed update or repair and were not new. The landlord also made repairs, such as to fill holes that mice entered through under the bathroom sink, kitchen and storage room; ceiling fans swayed and didn't work properly and were replaced; the washer stopped working in 2015 and was replaced. In 2015 and

2016 the fireplace wasn't working and had to be serviced; light fixtures in the kitchen and living room were replaced in October, 2015. The blinds in the kitchen and living room didn't work properly and the landlord agreed to refund the tenants upon providing a receipt and now asks the tenants to pay for them. Feathers and bird nesting materials were found in the dryer duct, which stopped venting completely, and a mass of lint was found 2 months later. The air conditioning stopped working in 2017 which was also old and had to be replaced. The repairs completed by the landlord during the tenancy support the testimony of the tenant that the rental unit could not have been built in 2007.

The window sill was also very old when the tenants moved in, noted as scratched on the move-in condition inspection report. A letter from the mother of the tenant's wife has been provided as evidence for this hearing and she visited the rental unit less than 6 months after the tenancy began, which states: "...long term water damage...beyond time to replace." The tenants also called 2 contractors and provided them with photographs. One contractor said it only needed sanding and painting. The other said it was a simple job with a maximum cost of \$200.00 at \$50.00 per hour. The landlord's \$600.00 claim is dishonest and not supported by a receipt, and the tenant believes that it has outlived its useful life of 15 years.

Cabinet doors had been removed off the hinges at least twice prior to this tenancy as evidenced from the photographs, and the tenants didn't do that. They are made of cheap particle board and were damaged at move-in, and the move-in condition inspection report shows them as being chipped. The doors didn't line up at move-in and got worse over the 5 year tenancy. Contractors that the tenant spoke to said it would take about an hour of labour, which would be about \$100.00 to replace both the bathroom and kitchen doors at \$50.00 per hour.

The stove did not look to be a year old at move-in; was unclean under elements and had a chip in it, and is noted on the move-in condition inspection report. Letters from babysitters have also been provided, and the letter of the landlord's mother-in-law also confirms that.

The tenant also believes the bathroom floor was damaged in the first place, and is noted on the move-in condition inspection report completed by the landlord as poorly sealed at the bathtub. It was an old calking job, discoloured and unsightly. The tenant's mother scraped it off and applied new calking in 2016 and 2017. A slice exists by the transition strip in the linoleum shown in the photographs, and that's what it looked like when the tenants moved in. Contractors quoted to the tenants were \$400.00 to \$700.00 including removal and disposal of the old flooring, new material, labor and plumbing, yet the landlord claims \$1,600.00. It is an old floor and was previously damaged.

The towel rack and curtain rod functioned perfectly at the end of the tenancy except a screw needed to be tightened.

The tenants also dispute the claim for replacing the bathroom countertop due to a small stain. The tenant is not sure when or how that happened, but it's very old and had been there for a long time. The landlord has provided a quote, not a receipt, and the tenant called the same contractor who said that material and labour to remove and install would be \$360.00, plus tax, including installation, yet the landlord claims that in addition to a \$500.00 installation fee.

Door trim had been scratched by previous tenants' dogs and the landlord told the tenants that and noted it on the move-in condition inspection report. The landlord also had 2 dogs as well as the other tenant; all were large dogs. Letters have been provided as evidence indicating that damage had been there for some time previously. The tenants also contacted a handyman who estimated \$40.00 to remove and install new trim at \$40.00 per hour and said it would take 30 to 60 minutes, but the landlord claims \$210.00.

The tenants also disagree that the patio post was damaged from the tenants' dog; the whole deck needs replacing due to moss, and there's no question that it's more than 10 years old. Letters of guests and previous tenants and a neighbour have provided letters for this hearing.

At move-in, the landlord said that a previous tenant had a barbeque by the siding and noted the damage on the move-in condition inspection report. The tenants kept a stand-up freezer against it but that would not melt siding. The tenants contacted a contractor who said that the installation would be about 2 hours totaling \$100.00, and Home Depot shows a cost of \$7.54 to \$15.00 each which would be \$60.00 maximum, yet the landlord claims \$400.00.

The tenant further testified that there was a small gouge on the bathroom baseboards requiring routine plastering but the landlord replaced all trim and completed renovations and has not provided receipts. The bathroom needed painting in any event.

The tenants added plastic hooks to the closet wall but didn't take them off, but the wall had push-pins which were noted on the move-in condition inspection report. Painting and removing the hooks shouldn't cost \$400.00.

The tenants also disagree to the cleaning claim. The tenants cleaned for 3 days and the tenant's mother scrubbed floors to a shine. Everything was cleaned including appliance and inside drawers, but one drawer was missed in the bathroom. The landlord's evidence shows 3 photographs of the same drawer and claims for cleaning all 3. When the tenants

moved in the landlord gave them a cleaning list for when the tenancy ended, but the items were not done when the tenants moved in. The tenants forgot to clean a high window in the bathroom.

The tenants' dog damaged the gate and the tenants tried to work it out during the tenancy with the landlord, offering to do the work, buy the boards and stain, or the landlord could get someone. Finally, the landlord began to refuse the tenants' calls and wouldn't deal with it.

The tenants also tried to get ahold of the landlord's contractor but couldn't find a listing, and the tenant questions the contractor's reputation.

The tenants have also provided a copy of a Decision of the director, Residential Tenancy Branch, stating that any monetary compensation must not put the landlord in a better financial position, which the tenant alleges the landlord is claiming in order to remodel the outdated suite. The tenant also submits that the move-in condition inspection report was returned to the landlord with more than 3 dozen changes to it, and if the parties had gone through each room together, that many things would not have been missed.

**The tenants' witness** testified that she is the mother of one of the tenants and visited the rental unit with her husband in November, 2012. The bathroom floor was quite gross to look at. There was greyish colouring to the flooring where she suspected water was getting through. The witness got down on her hands and knees and scraped and re-sealed. It was in very poor shape at that time. The witness asked the tenant why he didn't ask the landlord to do it, and he said that for the amount of rent they paid, it was reasonable and he didn't want to ask for more repairs from the landlord.

The kitchen cabinet doors were kept shut with elastics; the deck was in very rough shape, weathered and mossy. The witness was concerned of her grandkids' safety because it didn't look like a substantial deck.

The sill in the kitchen was damaged, as well as other things in the rental unit.

The witness recalls asking the tenant about the exterior doors and trim, and the tenant told her at that time that the landlord was aware of it prior. The rental unit had general wear and tear, marks on walls, and at that time the tenant said he might consider painting because it was not in good shape.

The witness did a thorough job and is proud of the cleaning work she did. The fridge and stove were pulled out and cleaned, but the witness made an honest mistake by forgetting to clean one drawer.

### Analysis

Firstly, the tenants do not deny the unpaid utilities, and therefore, I find that the landlord is owed \$112.58.

Where a party makes a claim against another party 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 *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.

Also, a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. The *Act* also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit.

I have reviewed the evidentiary material provided by the parties. The *Act* and the regulations are specific with respect to how those reports are to be done, and giving the report to the tenants to complete and return later is not a method sanctioned by the *Act*.

I agree with the tenant that the kitchen and bathroom cabinets have clearly outlived their usefulness as shown in the photographs. I agree entirely with the Decision provided by the tenants that any monetary amount awarded must not put the landlord in a better financial situation than the landlord would be had no damage occurred. I find that all of the damages claimed by the landlord are either a result of their age or normal wear and tear or both.

I also find that the landlord has inflated the costs with estimates, and have claimed for blinds that the landlord purchased during the tenancy and still has.

I am not satisfied that the landlord has established that the tenants didn't leave the rental unit reasonably clean at the end of the tenancy.

In the circumstances, I am not satisfied that the landlord has established elements 2 or 3 in the test for damages, and I dismiss the claim.

The tenants did not refuse to pay the utilities, and therefore, since the landlord has not been successful with the balance of the application, I decline to order that the landlord recover the filing fee.



The landlord currently holds a security deposit in the amount of \$500.00 and a pet damage deposit in the amount of \$500.00, and I find that the landlord has filed the application for dispute resolution within 15 days of the date the landlord received the tenants' forwarding address in writing. Having found that the tenants owe \$112.62 for utilities, I order that the landlord return the balance of \$887.38 to the tenants within 15 days of today's date. If the landlord fails to do so, the tenants will be at liberty to apply for double the amount.

### Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The landlord's application for recovery of the filing fee is hereby dismissed without leave to reapply.

I hereby order the landlord to keep \$112.62 of the \$500.00 security deposit and \$500.00 pet damage deposit and to return the balance of \$887.38 to the tenants within 15 days of today's date. 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: April 23, 2018

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Residential Tenancy Branch