



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: MND, FFL

For the tenants: MNSD, FFT

### Introduction

This hearing dealt with cross-applications for Dispute Resolution by both parties under the *Residential Tenancy Act* (the "Act"). The landlord has requested a monetary order for damages to the unit, site or property, for unpaid rent or utilities, for authorization to retain all or part of the security deposit and/or pet damage deposit, and to recover the cost of the filing fee. The tenants have requested the return of their security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

On May 2, 2018 the hearing commenced and after 12 minutes into the hearing, the hearing was adjourned due to the tenants' son being in the hospital. An Interim Decision dated May 7, 2018 was issued which should be read in conjunction with this decision as some preliminary matters were also dealt with. On July 10, 2018, the hearing was reconvened. The landlord's and tenants' late documentary evidence was excluded from the hearing as it was served late and not in accordance with the Rules of Procedure. The other evidence that was not filed late was considered however only the relevant evidence will be referred to in this decision.

### Preliminary and Procedural Matters

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

By consent of the parties the first name of the male tenant was corrected to his given first name pursuant to section 64(3) of the *Act*.

#### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 9, 2017 and was scheduled to end on August 8, 2017 at 1:00 p.m. which resulted in vacant possession on that date. Monthly rent during the tenancy was \$5,500.00 per month and due on the first day of each month. The tenants paid a security deposit of \$2,750.00 and a pet damage deposit of \$2,750.00 at the start of the tenancy. The parties agreed that the landlord has already returned \$2,845.24 to the tenants and that the tenants have cashed that cheque successfully. The landlord filed their application on March 28, 2018. The parties agreed during the hearing that the tenants gave permission to the landlord to withhold \$532.26 from their security deposit which accounts for three days of overholding the rental unit. The landlord continues to hold the remaining security deposit balance of \$2,122.50.

A condition inspection report ("CIR") was submitted in evidence however was not done with the tenants present and was not signed by the tenants and is not a valid CIR as a result. The parties confirmed that an outgoing CIR was not completed.

#### Landlord's claim

The landlord has claimed a total amount of \$2,122.50 and contains an addition error and actually totals \$2,122.20 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Remove debris from heating vent	\$892.20
2. Damage repair estimate	\$780.00
3. Garbage	\$100.00
4. Cleaning fee	\$350.00
<b>TOTAL</b>	<b>\$2,122.20</b>

Regarding item 1, the landlord has claimed \$892.20 for the cost to remove debris dropped into the furnace ducting. The landlord submitted in evidence an estimate dated September 15, 2017 that indicates to "supply labour and miscellaneous material to disassemble the furnace ducting in the basement level to enable removal of baby diaper and other debris dropped from the 3<sup>rd</sup> floor register above the affected area." The estimate is in the amount \$892.50 and is from a plumbing and heating company.

The tenants confirmed that items did fall through from their unit into the furnace ducting but blame a non-fitting heat register cover that fell through as it did not fit and that the landlord did not come until May 31,

2017 to replace the heat register cover. The tenancy began on May 9, 2017. The tenants also stated that they attempted to cover the furnace ducting with a large book; however, that did not work well as the book moved and some items still dropped down into the ducting. There was no dispute that a baby diaper had dropped into the furnace ducting. The tenants did not agree; however, with the landlord's claim in its entirety.

Regarding item 2, the landlord has claimed \$780.00 which is comprised as follows and is listed in an estimate dated September 13, 2017:

- Reinstall one door handle and two bathroom knobs: labour \$65.00; materials \$10.00
- Replace damaged floor vent in living room: labour \$140.00; materials \$100.00; clear coat \$100.00
- Replace damaged back step: labour \$120.00; materials \$60.00
- Paint: \$65.00
- Clean carpet on stairs: \$120.00

The tenants testified that they clean the carpets by hand before vacating that that the other items were not their responsibility as the knobs were not installed correctly when they moved in and that the heating vent cover did not fit properly either.

The landlord was advised that due to unclear photos of the alleged dirty carpet, a lack of a valid incoming CIR and an outgoing CIR, that this portion of her claim fails as the landlord has not met the burden of proof which I will address later in this decision.

Regarding item 3, the landlord has claimed \$100.00 for the cost to remove garbage however this item was dismissed during the hearing as the landlord failed to provide photos of the all of the garbage and instead only included one photo which I advised the landlord did not support a value of \$100.00 as claimed.

Regarding item 4, the landlord has claimed \$350.00 for the cost of cleaning however failed to submit photos for my consideration that would support that the tenants left the rental unit in a dirty condition. The tenants stated that they did clean before vacating the rental unit. As a result, this item was dismissed during the hearing as there were no photos to support that the rental unit was left in a dirty condition or outgoing CIR to support this portion of the landlord's claim.

#### Tenants' claim

The tenants are seeking the return of the \$2,122.50 which is the balance of their security deposit being held by the landlord. The tenants stated that they only sent their forwarding address by email and did not send it by registered mail to the landlord. The landlord stated that she never received the tenants' written forwarding address in writing other than the tenants' application. The parties were advised that I would not be doubling the security deposit balance based on an email that was not submitted for my consideration and as a result, that I would offset any amount owed to the landlord from the remainder of the \$2,122.50 security deposit.

#### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicants did what was reasonable to minimize the damage or losses that were incurred.

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.

Landlord's claim

**Item 1-** The landlord has claimed \$892.20 for the cost to remove debris dropped into the furnace ducting. I have considered that the estimate dated September 15, 2017 indicates to "supply labour and miscellaneous material to disassemble the furnace ducting in the basement level to enable removal of baby diaper and other debris dropped from the 3<sup>rd</sup> floor register above the affected area." I also note that the amount matches the landlord's claim and is from a plumbing and heating company and the tenants did not deny that a diaper was dropped down the furnace ducting.

While it may have been a few weeks before a new furnace cover was installed I do not find that to be an unreasonable time and for which I find the tenants were responsible for the actions of their child and themselves regardless of who dropped the diaper down the furnace ducting. I consider a diaper dropping down a furnace duct to be negligent. I find that I do not need to consider additional items dropped as the diaper would reasonably cause a bad smell in the home and would have to be removed to correct that issue. Therefore, I find the landlord has met the burden of proof and that the tenants owe **\$892.20** s claimed.

**Item 2 -** The landlord has claimed \$780.00 which is comprised as follows:

- Reinstall one door handle and two bathroom knobs: labour \$65.00; materials \$10.00
- Replace damaged floor vent in living room: labour \$140.00; materials \$100.00; clear coat \$100.00
- Replace damaged back step: labour \$120.00; materials \$60.00
- Paint: \$65.00
- Clean carpet on stairs: \$120.00

I find the landlord has failed to meet the burden of proof for item 2 in its entirety as I find the photos to be unclear of the alleged dirty carpet, the lack of an incoming and outgoing CIR for my consideration, and other supporting evidence. I find the landlord has failed to prove all parts of the test for damages or loss as described above and dismiss this item due to insufficient evidence, without leave to reapply.

**Item 3** - The landlord has claimed \$100.00 for the cost to remove garbage and as noted above, this item was dismissed during the hearing as the landlord failed to provide photos of the all of the garbage and instead only included one photo. I find that one photo does not justify a claim for \$100.00 and as a result, I find the landlord has failed to prove part three of the test for damages or loss described above. Consequently, I dismiss this item due to insufficient evidence, without leave to reapply.

**Item 4** - The landlord has claimed \$350.00 for the cost of cleaning however as noted above, this item was dismissed during the hearing as there was no photos to support that the rental unit was left in a dirty condition or outgoing CIR to support this portion of the landlord's claim. Consequently, I dismiss this item due to insufficient evidence, without leave to reapply.

Sections 23 and 35 of the *Act* require both an incoming and outgoing condition inspection report be completed in accordance with the regulation which I find the landlord failed to do. Therefore, I caution the landlord to comply with sections 23 and 35 of the *Act* in the future.

As the landlord's claim had some merit, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Given the above, I find the landlord has established a total monetary claim of **\$992.20** comprised of \$892.20 for item 1 and \$100.00 for the cost of the filing fee.

#### Tenants' claim

The tenants are seeking the return of the \$2,122.50 which is the balance of their security deposit being held by the landlord. The tenants stated that they only sent their forwarding address by email and did not send it by registered mail to the landlord. The landlord stated that she never received the tenants' written forwarding address in writing other than the tenants' application. The parties were advised that I would not be doubling the security deposit balance based on an email that was not submitted for my consideration and as a result, that I would offset any amount owed to the landlord from the remainder of the \$2,122.50 security deposit.

I do not grant the tenants their filing fee as I find there was insufficient evidence that the tenants provided their written forwarding address to the landlord. Providing their address in their application does not suffice under the *Act*.

As the landlord have proven a total monetary claim of \$992.20 I deduct that amount from the tenants' security deposit of \$2,122.50 and I find the landlord must immediately return the tenants' security deposit balance of **\$1,130.30**.

Should the landlord fail to immediately pay the tenants \$1,130.30 as ordered above, I grant the tenants a monetary order pursuant to section 67 and 72 of the *Act* in the amount of **\$1,130.30** which is owed by the landlord to the tenants.

Conclusion

The landlord has established a total monetary claim of \$992.20 which is deducted from the tenants' \$2,122.50 security deposit balance which has accrued no interest to date. The landlord has been ordered to immediately return the tenants' remaining security deposit balance of \$1,130.30.

I do not grant the tenants their filing fee as I find there is insufficient evidence before me that the tenants correctly served their written forwarding address under the *Act*.

The tenants are granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the landlord to the tenants in the amount of \$1,130.30. Should the tenants require enforcement of the monetary order the tenants must first serve the landlord and then the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 20, 2018

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Residential Tenancy Branch