



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDL-S

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; for 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.

The hearing was adjourned to allow further exchange of evidence, and my Interim Decision was provided to the parties. The landlords were represented at the hearing by an agent on both scheduled dates. One of the tenants also attended, accompanied by a Legal Advocate on both scheduled dates. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

All evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing it was determined that the tenants had filed an Application for Dispute Resolution and was granted a monetary order for recovery of double the amount of the security deposit. Since that matter has already been adjudicated, I decline to deal with it again, and I dismiss the landlords' application for an order permitting the landlords to keep the security deposit.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on June 1, 2017 and ended on February 28, 2018. Rent in the amount of \$1,200.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlords collected a security deposit in the amount of \$600.00, and no pet damage deposit was collected. A hearing was held in mid-July, 2018 wherein the Arbitrator ordered that the landlords re-pay the tenants double the amount of the security deposit, but no one for the landlords attended that hearing.

The rental unit is a basement suite, and a copy of the tenancy agreement has been provided for this hearing. The landlords purchased the rental home in May, 2017 and the tenants were already there. According to the purchase agreement, the tenants were supposed to be out before the landlords moved in on May 31, 2017. A move-in condition inspection report was completed on June 1, 2017 while the tenants were already there. The tenants gave notice to vacate the rental unit on February 14, 2018, effective March 1, 2018.

At the end of the tenancy, the tenants refused to sign the move-out condition inspection report and refused to return the keys, wanting the security deposit back right away. During the inspection, the landlords told the tenants they weren't satisfied with the condition of the rental unit and the tenants said they were still cleaning and would call the landlords, then give back the key when they get the security deposit back.

The landlords claim damages totalling \$2,100.00 and the landlords have provided a copy of an undated estimate in that amount. The landlords' agent testified that 3 walls needed painting in the bedrooms, and kitchen. There was a hole about 5 or 6 inches left in the kitchen drywall above the counter next to the stove. It was mudded, and the hole was cut out and re-fixed. The hole was not there when the landlords viewed the home prior to purchase. No one resided in the rental home at that time, but the tenants were placed there by the seller to avoid taxes on the sale of the house. No one lived in it prior to the tenants. Photographs have also been provided for this hearing, which the landlords' agent testified were taken on February 28, 2018.

The landlords have also provided receipts for a space heater, silicone, keys, a rekey kit, and cleaning supplies.

The rental unit was re-rented for March 2, 2018.

During cross examination the landlords' agent was questioned about the validity of the condition inspection reports and the tenancy agreement. The landlords' agent testified that he wasn't there at the time, but it was a brand new house and the tenants were

there before, so the landlords' agent has no knowledge of that. The landlords' agent was present when the move-out portion was completed.

The landlords wrote a letter to the tenants seeking damages in the amount of \$2,100.00. A copy has been provided and it is dated July 6, 2018.

The landlords do not claim unpaid rent for the tenants giving late notice to vacate.

**The tenant** testified that the photographs provided by the landlords showing a 6 inch scratch was already present when the tenants entered, and the tenant believes that perhaps it was due to construction. The landlords' photographs are blown up, however at move-out, the landlord said it was fine; just a scratch. The photograph showing a 5 or 6 inch hole above the counter is actually paper hanging on the cabinet above.

The tenant also disagrees that a move-in condition inspection report was completed by the parties; the landlords' daughter gave the tenant some papers to sign. The tenants left the rental unit on February 27, 2018 and no inspection report was completed. The parties completed a "walk-through" and the landlord said it was fine. The tenant told the landlords that the landlords had to return the security deposit within 15 days and wrote a letter with the tenants' forwarding address on February 27, 2018. The tenant tried repeatedly to return the keys and phoned the landlords asking them to attend; then eventually the tenant said he would drop the keys at the landlords' door, and the landlord said to go ahead and do so. The tenants had also tried to talk to the landlords about heat and the dryer, but they continuously lied to the tenants. Also, the landlords and their daughter yelled at the tenants, so the tenants gave notice to end the tenancy on February 14, 2018.

With respect to the landlords' photograph of the closet showing that the floor had not been cleaned, the landlords were aware that construction worker put tiles there, and the landlords left them stored there.

The tenants have also provided photographs for this hearing which the tenant testified were taken on February 27, 2018.

**Landlords' Submissions:** The landlords' agent submits that the tenants' allegations of not having heat or use of the dryer are simply not true and the landlords have provided a letter from the new tenants stating there have been no such issues since the beginning of that tenancy.

**Tenants' Submissions:** The landlords' application should be dismissed for not serving the tenants in accordance with the *Act* and Rules of Procedure.

Further, the landlords' claim is exaggerated, extremely high and the condition inspection report is fraudulent. The photographs of the landlords are taken very close-up, and the tenants' photographs were taken from a further distance away.

### Analysis

When a party makes a monetary claim for damages against another party, 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.

I have reviewed all of the evidentiary material of the parties.

The tenants have provided the first page only of the move-in/out inspection report, showing the names of a landlord and of a tenant and the address of the landlord. The landlords have provided a 4-page report, and the handwriting on the first page is different entirely.

The tenant testified that he wrote the forwarding address on a piece of paper and gave it to the landlord, and the move-in/out condition inspection report provided in the landlords' material shows a forwarding address of the tenants. I am satisfied that the landlord wrote the forwarding address onto the move-out condition inspection report.

The copy of the first page of the report provided by the tenants has the same handwriting of the landlord, which is not the case for the copy of the report provided by the landlords.

Having reviewed and compared the reports, I am not satisfied that either of them can be relied upon.

The landlords' agent testified that the home was brand new at the beginning of the tenancy and the tenant did not dispute that. The landlords have provided a single invoice in the amount of \$2,100.00 which is not dated, but itemizes 3 walls for \$1,200.00; and \$900.00 for drywall and mentions 1 bedroom and kitchen. I have compared the photographs provided by the parties, and I agree that a long scratch appears in the drywall of one wall. However, the landlords didn't know the tenants had moved in, and any type of inspection was obviously done much later. It is just as

possible that contractors or persons permitted into the home by the realtors caused damage to the walls. Further, the invoice is generic and lacking information, and I do not accept that the invoice is a true cost of damage caused by the tenants.

The landlords have also provided a copy of a receipt marked “receipt for bulbs and cleaner” but it contains several items, including strawberries, what appears to be orange juice, a plastic bag and other items that are codes only, and I have no way of knowing what part of the receipt pertains to light bulbs.

However, the landlords provided letters to the tenants seeking costs prior to the first hearing, and claimed 5 hours of cleaning at \$30.00 per hour, or \$150.00. The landlords’ photographs show lack of cleaning in several areas, including the oven. The tenants’ photographs are taken from a distance and do not show the spots in the oven or the dust on baseboards. A tenant is required to leave a rental unit reasonably clean at the end of a tenancy, and I find that the landlords have established the \$150.00 claim.

Silicone replacement is normal wear and tear.

The landlords’ agent testified that the tenants refused to leave the key to the rental unit and have provided receipts for 2 new keys for \$10.04 as well as a rekey kit for \$16.78. The tenant testified that the landlord told him to drop the keys at the landlords’ door, but didn’t testify when that may have been done, and could easily have done so during the “walk-through” that he testified took place on February 27, 2018. Rather, the tenant changed the subject in his testimony to lack of heat and use of the dryer. I accept the testimony of the landlords’ agent that the tenants did not leave the keys and the landlords had to re-key the entry. I find that the landlords have established the claim of \$26.82.

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

### Conclusion

For the reasons set out above, I hereby 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 \$276.82.

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: November 30, 2018

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Residential Tenancy Branch