



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

Landlord MG, while holding the security deposit, applied on January 18, 2019 for:

1. A Monetary Order for damage to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

Tenant EA applied on January 31, 2019 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on January 1, 2019. Rent of \$1,800.00 was payable prior to the first day of each month.

At the outset of the tenancy the Landlord collected \$900.00 as a security deposit. The Tenants paid the rent for January 2019 and moved out of the unit on January 6, 2019. The Tenants provided their forwarding address on January 8, 2019. No move-in inspection with a completed report was done.

The Tenant states that they moved out of the unit due to smoking by the lower tenants. The Tenant states that at the outset of the tenancy they were told that there was no smoking in the unit. The Tenant states that the Landlord was informed that smoke was present in the unit on January 1, 2019. The Tenant states that they were informed by the Landlord, and given a copy of, a warning letter delivered to the lower tenants on January 3, 2019 in relation to the smoking. The Tenant states that after this date the smoke continued and that the Landlord was again informed. The Tenant states that the Landlord verbally agreed with the Tenants to end the tenancy for January 6, 2019 and to refund the full January 2019 rent to the Tenants. The Tenants state that they lost enjoyment of the unit and claim return of the January 2019 rent of \$1,800.00 along with return of their security deposit.

The Landlord confirms that the entire house is non-smoking. The Landlord confirms that when they were informed by the Tenants of the smoke the Landlord took steps to resolve the problem with the issuance of the warning letter to the lower tenants. The Landlord states that the lower tenants have since moved out of the unit. The Landlord confirms that there was an agreement to end the tenancy and to refund the rent but that at the end of the tenancy the Tenants damaged the garage door with its vehicle so the Landlord kept both the rent payment and the security deposit to cover the damage as the Tenants were not willing to pay for the repair of the door. The Landlord confirms that they did not claim lost rental income in their application.

The Landlord states that the unit was subsequently rented out for February 1, 2019 at the same rental rate. The Landlord states that while the Tenant did attempt to make repairs, the work was insufficient and the mechanical working of the door could undergo

damage if used as it was left. The Landlord states that the damage was repaired prior to the start of the next tenancy by another company to ensure the safety and the ongoing work mechanical work of the door but that the entire panel still requires replacement as it is unsightly. The Landlord states that this temporary repair cost \$94.50. The Landlord states that the door is 30 years old and states that it was in near new condition at the start of the tenancy. The Landlord states that they are not seeking costs for the entire garage door but only one panel. The Landlord claims \$964.95 for this cost.

The Tenant states that the Landlord has greatly exaggerated the damage to the door, that the door was old, that the Tenant did make repairs to the damage to ensure safety, that the Tenant tested the door after to ensure that it was safely working, and that it was not possible that the door would cause any mechanical damage with its ongoing use.

#### Analysis

Section 44(1) of the Act provides that a tenancy ends only if, inter alia, the tenant gives a month's notice in writing, or the tenant vacates the rental unit. When a tenancy ends rent is no longer payable however a landlord may seek lost rental income to the date upon which the tenant could have legally ended the tenancy. Based on the agreed facts that the Tenants vacated the unit on January 6, 2019 I find that this is when the tenancy ended and that rents were not payable past that date. The Landlord did not make any claim for any lost rental income that may have arisen after January 6, 2019. As such, and based on the undisputed monthly rental amount of \$1,800.00, I find that the Tenants are entitled to a return of rents paid for the period January 7 to 31, 2019 inclusive (25 days) in the amount of **\$1,451.50**. This amount is based on a per diem rent of \$58.06 per day times 25 days.

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other

for damage or loss that results. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the Tenants' undisputed evidence that the presence of smoke in the non-smoking house was a disturbance. However given the undisputed evidence that the Landlord gave the lower tenants a warning letter and accepting the Landlord's evidence that they were taking the steps necessary to resolve the smoke disturbance I find that the Tenant has not substantiated that the Landlord either failed to act or acted negligently to stop the disturbance. As a result I find that the Tenants have not substantiated any compensation for the period January 1 to 6, 2019 inclusive.

Section 37(2)(a) of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The Residential Tenancy Branch (the "RTB") Policy Guideline # 40, "Useful Life of Building Elements", sets out the useful life of a garage door at 10 years. Based on the undisputed evidence that the garage door is 30 years old I find that there was no useful life left to the garage door at the time of the tenancy. As such I find that the Landlord has not substantiated the amount claimed as reflective of the loss of value or damage. As there is no dispute however that the Tenants left the door damaged and I consider that damage to be beyond reasonable wear and tear, I find that the Landlord has substantiated a nominal entitlement of **\$100.00**.

As the Landlord's claim has met with minimal success I decline to award recovery of the filing fee leaving the Landlord's total entitlement at **\$100.00**. Deducting this amount from the security deposit of **\$900.00** plus zero interest in full satisfaction of the Landlord's claim leaves **\$800.00** to be returned to the Tenants.

As the Tenant's application has been primarily successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee. The Tenant is therefore entitled to the following:

- \$800.00 return of remaining security deposit;
- \$1,451.50 compensation; and
- \$100.00 filing fee.

This amounts to a total of **\$2,351.50** to be paid to Tenant EA as this is the only party named on the Tenant's application. I make this amount payable by Landlord SG as this is the only party named in the Tenant's application.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,351.50**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: March 13, 2019

---

Residential Tenancy Branch