



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (“the “Act”).

On November 13, 2018, the Landlord submitted an Application for Dispute Resolution for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

On December 3, 2018, the Tenants filed an Application for Dispute Resolution for the return of the security deposit and to recover the cost of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit?

### Background and Evidence

The parties testified that the tenancy began in June 2015 as a one year fixed term tenancy that continued thereafter on a month to month basis. The Tenants were to pay the Landlord monthly rent in the amount of \$1,900.00 each month. The Tenants paid the Landlord a security deposit of \$950.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that she issued a notice to end tenancy to the Tenants in July 2018, and was granted an order of possession of the rental unit effective October 31, 2018. She testified that the Tenants moved out of the rental unit on November 1, 2018.

The Landlord testified that when the Tenants moved out there was lots of cleaning needed in the rental unit.

The Landlord is seeking compensation for the following items:

Carpets	\$197.40
Door Damage and Painting of Bathroom	\$567.00
Lawn and Grounds	\$209.03
Driveway	\$210.34
Septic Tanks	\$806.35

Carpets \$197.40

The Landlord testified that the carpet was not cleaned by the Tenants at the end of the tenancy. The Landlord testified that the carpet was dirty so she hired a company to clean the carpet.

In reply, the Tenants testified that there is no term in the tenancy agreement requiring the carpet to be professionally cleaned. The Tenants submitted that there were no visible stains and the carpet was left freshly vacuumed.

Door Damage and Painting of Bathroom \$567.00

The Landlord testified that the bathroom door frame near the latch was cracked. The Landlord testified that it appeared someone pushed the door when the latch was closed. The Landlord stated that the door repair cost \$300.00. The Landlord testified that the bathroom door is old as the house was built in 1935.

The Landlord testified that the Tenant replaced a light fixture in the bathroom and moved the fixture to a new location creating a new hole and exposing the old light

fixture hole. The Landlord testified that the bathroom had to be painted and is seeking to recover the amount of \$267.00. The Landlord testified that the bathroom was last painted in 2014. The Landlord provided a photograph of the bathroom wall with a large unpainted patch.

In reply, the Tenants testified that the bathroom door cracked due to the improper foundation for the stairway. The Tenant testified that a floor joist below the door was cut and was not strong which has affected the way the door closes and has resulted in a crack near the latch. The Tenant testified that the door would not close properly. The Tenants provided color photographs of the joists, stairs, and bathroom door.

The Tenants testified that in June 2015, the Landlord gave them permission to change the light fixture in the bathroom. The Tenant testified that he had to patch the wall to cover up the old pre-existing fixture hole. The Tenant testified that there was a noticeable patch job surrounding the light fixture and the Tenant did not paint the patch job.

In reply, the Landlord testified that the floor joists had been cut in order to drop the stairs and an inspector told her to brace it.

#### Lawn and Grounds \$209.03

The Landlord testified that there was lawn and garden debris left on the lawn by the Tenants. The Landlord testified that she hired a company to remove the debris from the rental property. The Landlord provided photographs of the yard. The Landlord provided an invoice dated November 15, 2018, in the amount of \$209.03.

In reply, the Tenants testified that there is a large cedar tree on the property that constantly drops twigs. The Tenants submitted that the Landlord had the tree serviced and the twigs were left behind in the yard. The Tenants submitted that the Landlord's photograph appears to have been taken after they had moved out of the rental unit.

The Tenants testified that they mowed the front and back lawn on October 30, 2018. The Tenants testified that they had no access to the side of the yard because there was a large bush in the way. The Tenants testified that the Landlord removed the bush in the last month of the tenancy. The Tenants testified that they did not mow the side yard area due to debris and rocks that were present.

The Tenants testified that the condition inspection report indicates that the yard was satisfactory at the end of the tenancy.

Driveway \$210.34

The Landlord testified that there was oil stains left on the driveway. The Landlord testified that she asked the Tenant to put cardboard down to prevent further staining. The Landlord testified that she hired a person to pressure wash the driveway; however the oil stains could not be removed. The Landlord provided a photograph of the driveway. The Landlord provided an invoice for the cost of having the driveway pressure washed.

In reply, the Tenant testified that the carport was in poor shape at the start of the tenancy and it had been used as a motorcycle repair shop. The Tenant testified that there were heavy oil stains present in the carport at the start of the tenancy.

The Tenant acknowledged that he parked his car in the driveway and that some oil from his car leaked onto the driveway. The Tenant testified that he power washed the driveway using an oil stain conditioner a couple of days before he moved out of the unit. The Tenant testified that he informed the Landlord that he had power washed the driveway. The Tenant testified that there is no way to know which stains are from his vehicle and which are from previous vehicles.

Septic Tanks \$806.35

The Landlord testified that the septic tank was routinely serviced (pumped) in 2015 a couple months after the Tenants moved into the unit.

The Landlord testified that the Tenants were informed about what is permitted to be disposed of into the septic system

The Landlord testified that in 2017, the Tenants reported that the back lawn was wet. The Landlord testified that she had the septic system serviced and the septic person informed her that there were sanitary napkins, and wrappers, found in the tank. The Landlord testified that the septic person informed her that disposing of such items can damage the septic field by plugging the perforations in the line causing unequal distribution of effluent into the field.

The Landlord testified that the Tenants again reported the back lawn was wet in 2018. The Landlord testified that she had the septic system serviced and the septic person informed her that there were sanitary napkins, candy wrappers, wipes and grease found in the tank.

The Landlord is seeking to recover the cost for having the septic tank pumped out in 2017 and 2018.

In reply, the Tenant testified that the Landlord had the septic tank pumped in 2015 because the sewer line was backing up. The Tenant testified that there a plugged line from the house into the septic tank. The Tenant testified that there was a problem with the plumbing as it is not plumbed properly.

The Tenant testified that in 2017 the same problem occurred and the septic person said it was a problem with the line and the line was replaced with a larger one. The Tenant testified that the blockage was caused by roots in a metal pipe that collapsed in 2017.

The Tenant testified that in 2018 they noticed a sewage smell and notified the Landlord. The Tenant submitted that there was no problem with the pipe or septic tank in 2018.

The Tenants submitted that they are not responsible for the Landlords cost to service the septic system. They submit that the service in 2017 was caused by roots and an old pipe and there was no problem in 2018.

The Tenants testified that they attempted to get the septic service records but the company would not release the records. The Tenants testified that the Landlord is withholding evidence of all the service records.

#### Tenants Application

The Tenants are seeking the return of the \$950.00 security deposit and any accrued interest.

The Landlord's application for dispute resolution asking to keep the security deposit was made within 15 days of the tenancy ending.

The parties testified that they participated in a move out inspection at the end of the tenancy. The Tenants testified that they did not agree to the comments within the

condition inspection report at the end of the tenancy. The Tenant suggested that the Landlord added comments and codes after the Tenants signed the form.

The Tenants provided a copy of a letter and the condition inspection report they received from the Landlord dated December 17, 2018, that indicates the Landlord was providing page three of the condition inspection report that was not previously provided. The Landlord also indicates that she added comments and codes to the top of page three but these additions are not a detriment to the inspection.

The Landlord testified that the condition inspection report was completed in the presence of the Tenants at the end of the tenancy.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations. Section 18 of the Residential Tenancy Regulation provides that the Landlord must give the Tenant a copy of the report within 15 days of the inspection.

Section 26 of the Act provides that the right of a Landlord to claim against a security deposit is extinguished if the Landlord having made an inspection with the Tenant does not complete the inspection report and give the Tenant a copy of it in accordance with the regulations.

Section 21 of the Residential Tenancy Regulation states:

*in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

#### Landlord's Application

I find that the Landlord failed to provide the Tenants with a full copy of the condition inspection report within 15 days of completing the inspection. I find that the inspection took place on November 1, 2018; and the Landlord provided a copy of the full inspection report to the Tenants on December 17, 2018.

I find that the Landlords right to claim against the security deposit is extinguished.

While the Landlords right to apply against the security deposit is extinguished, the Landlord retains the right to make claims for compensation for damage or loss.

#### Carpets \$197.40

The Residential Tenancy Policy guideline #1 Landlord & Tenant – Responsibility for Residential Premises provides:

*The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

I find that the tenancy continued for more than three years and the Tenants did not have the carpet shampooed or cleaned at the end of the tenancy. I find that the Tenants are responsible for the Landlords cost to have the carpets cleaned. I award the Landlord the amount of \$197.40.

Door Damage and Painting of Bathroom \$567.00

The Landlords claim for the cost to repair the bathroom door is dismissed. The door is very old and I accept the evidence that floor joists in a surrounding area were cut away. After considering the age of the house and the photographs and evidence that the floor joists were cut, I find that it is more likely than not that there was settling of the home and the door did not fit properly. There is insufficient evidence from the Landlord that the Tenants are responsible for a \$300.00 repair to the door or frame.

The Landlord is seeking to recover the amount of \$267.00 for painting the bathroom. I find that the Tenant moved the light fixture to a new location on the wall and is therefore responsible for the cost to repair and paint the bathroom wall. I award the Landlord the amount of \$267.00 for the cost of painting the bathroom wall.

Lawn and Grounds \$209.03

The condition inspection report provides that the grounds and walks were in fair condition at the end of the tenancy.

The Landlord's invoice indicates that the lawn service was provided on November 13, 2018 which is 13 days after the tenancy ended. The Tenant testified that the lawn was mowed on October 30, 2018.

I find that the condition of the yard was in fair condition at the end of the tenancy. The Landlords claim for \$209.03 is dismissed.

Driveway \$210.34

The condition inspection report indicates that at the end of the tenancy, oil is not removed from carport. The condition inspection report does not provide the condition of the carport at the start of the tenancy. Without this information at the start of the tenancy it is not possible to determine the condition of the carport at the start of the tenancy. While the Tenant acknowledged responsibility for some of the oil stains in the carport it is not possible to determine how much damage was caused by the Tenant. Nevertheless, I find that the Tenant's vehicle leaked oil on the driveway and the Tenant is responsible for the Landlords cost to have it treated.



I grant the Landlord the amount of \$210.34 for the cost of power washing the carport.

Septic Tanks \$806.35

The Landlord's invoice from 2017 indicates that the tank was pumped and that there was heavy use of wipes, candy wrapper and grease, however; the invoice does not indicate that these items caused an issue with the septic system that required repair.

The Landlord's invoice from 2018 contains no comments from the service provider.

The presence of items in the tank is not determinative of a responsibility to pay for having the septic tank pumped out. There is no evidence of the condition of the septic lines leaving the tank at the start of the tenancy.

There is insufficient evidence from the Landlord to establish that the Tenants are responsible for the cost of having the septic tank pumped out in 2017 and 2018. The Landlords claim is dismissed.

Tenants Application

The Tenants application for the return of the security deposit is successful. The Landlord extinguished her right to apply against the security deposit when she failed to provide a copy of the full condition inspection report to the Tenants within 15 days of the end of tenancy.

I award the Tenants the amount of \$950.00. Pursuant to section 72 (2) of the Act, any awards granted to the Landlord will be deducted from the security deposit.

Section 72 (1) of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As both parties had some success with their applications, I decline to award the cost of the filing fees.

The Landlord has established a monetary award for carpet cleaning, painting, and pressure washing in the amount of \$674.74.

The Tenant has established an award of \$950.00 for the return of the security deposit.

After setting off the amount of \$674.74 against the security deposit of \$950.00 held by the Landlord, I find that the Landlord must return the balance of \$275.26 to the Tenants.

I grant the Tenants a monetary order in the amount of \$275.26. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

### Conclusion

Both parties had some success with their claims.

The Landlord has established a monetary award for carpet cleaning, painting, and pressure washing in the amount of \$674.74.

The Tenant has established an award of \$950.00 for the return of the security deposit.

After setting off the amount of \$674.74 against the security deposit of \$950.00 held by the Landlord, I find that the Landlord must return the balance of \$275.26 to the Tenants.

I grant the Tenants a monetary order in the amount of \$275.26. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

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: May 22, 2019

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Residential Tenancy Branch