



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FFL

### Introduction

On October 18, 2019, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for a monetary order for damage to the unit; for a monetary order for unpaid rent; for money owed or compensation for damage or loss; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords and Tenants attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they have exchanged the documentary evidence that I have before 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

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to a monetary order for damage to the rental unit?
- Are the Landlords entitled to money owed or compensation for damage or loss?

### Background and Evidence

The Landlords and Tenants testified that the tenancy began on July 10, 2016 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,800.00 was to be paid to the Landlords by the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$1,400.00. The parties testified that the tenancy ended on June 30, 2019 when the Tenants moved out of the rental unit.

The Landlord is seeking compensation for loss of rent and damage to the rental unit.

### July 2019 Rent \$2,800.00

The Landlords are seeking compensation of \$2,800.00 from the Tenants for July 2019 rent. The Landlords testified that the Tenants moved out of the rental unit on June 30, 2019; however, since they did not give them proper notice to end the tenancy the Landlord wants compensation for July 2019 rent. The Landlords confirmed that they re-rented the unit to new Tenants and received rent for July 2019 from new tenants.

### Loss of Future Rent \$3,600.00

The Landlord testified that because the rental unit was left unclean by the Tenants, the Landlord reduced the rent from \$2,800.00 per month to \$2,500.00 per month for the new tenants. The Landlord is seeking to recover the amount of \$300.00 per month for a 12-month period of time.

In reply, the Tenants testified that the rental unit was left reasonably clean with only normal wear and tear and that it was the Landlords choice to enter into a tenancy agreement for 12 months at \$2,500.00 per month. The Tenants submitted that the Landlord did not do what is reasonable to minimize loss. The Tenants referred to their video evidence.

In reply the Landlord submitted that the Tenant's video evidence only shows a portion of the rental unit.

### Dishwasher Repair \$232.54

The Landlord testified that the new tenants reported a problem with the dishwasher. The Landlord testified that the door latch would not close properly and there was a piece of cardboard in the latch.

The Landlords testified that the dishwasher was seven years old at the time when the Tenants moved out. The Landlord testified that they had the dishwasher repaired and provided an invoice for the cost. The Landlord testified that they did not perform an inspection and complete an inspection condition report at the start and end of the tenancy.

In reply, the Tenant, Mr. S.N testified that the dishwasher was used twice a day and is subject to normal wear and tear. He testified that dishwashers have useful life of approximately 10 years. He also testified that the tenancy agreement had a term that the Landlord is responsible for appliance repair costs above \$200.00.

Carpet Cleaning \$280.00

The Landlord testified that it appeared that the Tenants did not have the carpet cleaned at the end of the tenancy because there were black marks on the edges of the carpets and heavy soil on high traffic areas that needed to be cleaned after the Tenants moved out of the unit. The Landlord testified that they had the carpet washed on December 5, 2019. The Landlord testified that the carpet on the stairs, hallway and bedrooms had to be cleaned. The Landlord provided photographs showing the condition of the carpet. The Landlord provided an invoice for the cost of cleaning.

In reply, the Tenant, Mr. S.N. testified that there were black color marks around the baseboards at the start of the tenancy. He testified that the Tenants had the carpet cleaned by a professional company two days prior to moving out. He submitted that the useful life of carpet is 10 years. He referred to his documentary evidence of a carpet cleaning invoice.

The Landlord replied that the carpet required more than one cleaning.

Painting Costs \$5,795.00

The Landlord testified that due to the presence of smoke, mold, and odor, the Landlord had to paint the entire interior of the rental unit after the Tenants moved out. The Landlord testified that the main walls of the rental unit had been painted in June 2016 prior to the when the Tenants moved into the unit. The Landlord testified that the other areas within the unit had been painted in 2007 when the house was built. The Landlord testified that the home is approximately 2000 square feet and 1000 square feet was painted in June 2016. The Landlords referred to their documentary evidence of an invoice from a painting company dated August 18, 2019 for the amount of \$5,795.00.

In reply, the Tenant, Mr. S.N. testified that the Landlord was aware that the Tenants regularly burned incense and took no issue with them doing so. He submitted that the Tenants should not be held responsible for painting costs due to insufficient ventilation in the unit. Mr. S.N. testified that mold could be attributed to showering, washing clothes and cooking. He testified that they used a fan and useful life of paint is four years and it was time for the Landlord to repaint the unit.

In reply, the Landlord clarified that the Landlord is not saying that burning incense is illegal; however, any damage caused due to burning incense is the responsibility of the Tenants. The Landlord testified that there are numerous windows that the Tenants could have opened to deal with smoke and moisture.

The Tenant, Mr. S.N. responded that the Tenants are not required to have their windows open.

#### Move Out Cleaning \$560.00

The Landlords submitted that after short move out inspection and after the Tenants had left, the Landlord conducted a more thorough inspection of the unit and found cobwebs, mold, dirty carpets and unclean appliances. The Landlord testified that the shower/ tiles and mirror in the bathroom required cleaning. The Landlord testified that behind the fridge and stove required cleaning and every window had mold. The Landlord provided photographic evidence of the condition of the rental unit. The Landlords photographs show dirty blinds, windows and window frames as well as a door, molding and missing lightbulbs.

The Landlord provided a sworn statement dated January 30, 2020 from the tenants who moved into the rental unit on July 1, 2019 stating that they noticed the rental unit was left unclean.

In reply, Mr. N.D. provided testimony confirming that the Landlord mentioned the presence of cobwebs at the end of the tenancy and the Tenant submitted that the cobwebs were present at the start of the tenancy. He testified that they regularly cleaned mold from the window tracks and cleaned the window tracks during the last week of the tenancy. The Tenants submitted that they left the rental unit reasonably clean and are not responsible to pay for cleaning the property at a higher standard than reasonably clean. The Tenants referred to their documentary evidence including a video recording showing the kitchen and Livingroom.

Loss of Wages \$500.00

The Landlord is seeking compensation because her husband missed time at work in order to perform cleaning of the rental unit. The Landlord is seeking \$500.00.

Security Deposit

The Landlords submitted that the parties dealt with the security deposit prior to the hearing. The Landlords submitted that they returned the amount of \$1,200.00 to the Tenants.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*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.*

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

*Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.*

Sections 23 and 35 of the Act provides 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. Each section also requires that the Landlord complete the condition inspection report; 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 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord does not perform an inspection and complete an inspection report in accordance with the regulations.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that 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. A tenant is not responsible for reasonable wear and tear to the rental unit or site. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications and determining damages. When applied to damage(s) caused by a Tenant, or the Tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. The Guideline provides that the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

Residential Tenancy Branch Policy Guideline #5 Duty to Minimize Loss provides the following information:

*If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service.*

Based on the evidence before me, the testimony of the Landlords and Tenants, and on a balance of probabilities, I make the following findings:

While there may have been a walkthrough of the unit, the Landlords testified that they did not complete a move in condition inspection report with the Tenants and provide them with a copy of the report. Pursuant to section 24(2) of the Act the Landlords right to claim against the security deposit for damage to the unit is extinguished. In addition, a properly completed condition inspection report is considered evidence of the state of repair of the rental unit at the start and end of the he tenancy. The Landlord may have other documentary evidence showing damage at the end of the tenancy; however, this is not evidence showing the condition of the rental unit at the start of the tenancy.

July 2019 Rent \$2,800.00

The Landlords re-rented the unit to new tenants and received full rent for July 2019. The Landlords have not suffered a loss of rent and therefore the claim is dismissed without leave to reapply.

Loss of Future Rent \$3,600.00

The Landlords are claiming compensation for costs to clean the rental unit and are also seeking compensation for reducing the monthly rent for the new tenants. The Landlords claim for \$3,600.00 is dismissed without leave to reapply. I find that the claim is not reasonable. If the rental unit was left unclean to the degree that a new tenant could not occupy it for the month of July 2019; then it may be reasonable for the Landlord to seek compensation for a loss of rent. I find that the Landlord has a duty to minimize the loss being claimed. The new tenants moved in to the unit for July 2019 and paid rent. I find that the Tenants are not responsible to compensate the Landlords for their choice to rent the unit to new tenants at a lower monthly rent.

Dishwasher Repair \$232.54

Landlords are responsible to maintain appliances in a rental unit. Appliance regularly break down with age and normal use. I find that there is insufficient evidence from the Landlords to prove that the Tenants intentionally damaged or used the dishwasher in a negligent manner. The Landlords claim for compensation to repair the dishwasher is dismissed without leave to reapply.

Carpet Cleaning \$280.00

The Tenants testified that they cleaned the carpets at the end of the tenancy and that there were marks were present at the start of the tenancy. The Tenants provided a photograph of the carpet being cleaned and an invoice dated June 28, 2019 for the cost of carpet cleaning. There is insufficient evidence from the Landlord to show that there were no marks on the carpet at the start of the tenancy, or that the Tenants failed to clean the carpets at the end of the tenancy.

The Landlords claim for carpet cleaning costs is dismissed without leave to reapply.

Move Out Cleaning \$560.00

Regardless of how clean a rental unit is at the start of a tenancy, tenants are expected to leave a rental unit reasonably clean at the end of a tenancy. I find that it is reasonable to accept that moisture will be created due to cooking, showering and washing clothes and when moisture is present and is not vented outside it presents an environment for the growth of mold. I find that Tenants are responsible to ensure that they were using fans where available and that they ventilated rooms that were becoming moist. When a tenant notices the growth of mold from these day to day activities it is the Tenant's responsibility to clean it up.

The Tenant acknowledged that they regularly cleaned mold from the window tracks; therefore, I find that the moisture was regularly present in the unit. While I accept the testimony from the Tenant that they are not required to have their windows open, I find they are responsible for any cleaning costs resulting from any failure to ventilate the unit and any resulting mold growth. In addition, the Tenant acknowledged there were cobwebs present at the end of the tenancy which were present at the start of the tenancy. I find that leaving cobwebs is not an example of leaving the unit reasonably clean.

I have reviewed the Landlords' and Tenants' documentary evidence. I find that the short panorama video recording provided by the Tenants appears to show that the kitchen area and Livingroom was left reasonably clean. I note that the video recording pans the rooms quickly and only shows the kitchen and Livingroom. I find that the Landlords photographic evidence shows dirty blinds, windows, and what appears to be mold growth on window frames.

I find that the Landlords have provided the stronger evidence that the Tenants are responsible for leaving areas of the rental unit unclean. I find that the Tenants are responsible to compensate the Landlords for their time to clean the rental unit.

I award the Landlords the amount of \$560.00 for cleaning costs.

Painting Costs \$5,795.00

I have reviewed the tenancy agreement and one-page addendum. I note that the addendum provides that there is no smoking. While I acknowledge that burning incense is different from smoking cigarettes, I find it is reasonable to accept that regularly burning incense over a three-year tenancy would result in smoke damage to the paint on walls. I find that the Tenants are partially responsible for painting costs to the rental unit due to burning of incense.

I find that some walls of the interior of the rental unit had been painted in June 2016 just prior to the start of the tenancy. The useful life of the interior paint is four years and this paint was three years old and approaching its useful life. I find that the Tenants regularly burned incense and are responsible for  $\frac{1}{4}$  of the cost for the paint and labor to paint the ceilings, walls and baseboards in the unit where the paint was only three years old. I accept the Landlords' testimony that the area painted in June 2016 was 1000 square feet.

I award the Landlord the amount of \$724.37 for painting costs [ $\$5,795.00 / 2 = \$2,897.50 / 4 = \$724.37$ ]

Loss of Wages \$500.00

The Landlord applied for compensation for cleaning costs. An Arbitrator can award compensation when a party breaches the Act and a loss occurs. The Landlords claim for loss of wages is not compensable under the Act. The Landlords time to deal with the tenancy is a cost of doing business as a Landlord. The Landlord claim for lost wages of \$500.00 is dismissed without leave to reapply.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords had some success with their application, I order the Tenants to repay the \$100.00 fee that the Landlords paid for the hearing.

I find that the Tenants owe the Landlords the amount of \$1,384.37 for cleaning costs, painting costs and the filing fee.

I grant the Landlords a monetary order in the amount of \$1384.37. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Landlords were partially successful with their claims for cleaning and damage costs.

I grant the Landlords a monetary order in the amount of \$1,384.37.

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 17, 2020

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Residential Tenancy Branch