



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened in response to applications by the tenants and the landlords.

The tenants' application is seeking orders as follows:

1. Return double the security deposit and pet damage deposit; and
2. To recover the cost of filing the application.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid utilities;
2. For damages to the rental unit;
3. To keep all or part of the security deposit and pet damage deposit; and
4. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Preliminary matters

It should be noted that the landlord's testimony given at the hearing was interpreted by their agent JZ.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid utilities?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to return of double the security deposit and pet damage deposit?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2013. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$800.00 and a pet damage deposit of \$500.00 (the "Deposits"). The tenancy ended on February 29, 2020.

The parties agreed a move-in condition inspection report was not completed and a move-out condition inspection report was completed.

Tenants' application

The tenants submit they are entitled to double the Deposits because the landlord did not make an application for dispute resolution or return their Deposits within 15 days.

The landlords' application for dispute resolution was filed on March 12, 2020.

Landlords' application

The landlords claim as follows:

a.	Unpaid utilities	\$ 163.34
b.	Glass replacement	\$ 500.00
c.	Refinishing door frame	\$ 500.00
d.	Cleaning and lock replacement	\$ 150.00
e.	Missing microwave and stove	\$ 450.00
f.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$1,863.34</b>

### Unpaid utilities

The parties agreed that the utilities have been paid.

### Glass replacement

The landlord testified that the tenants caused damage to the glass on the balcony as it was cracked. The landlord stated the tenants did not notify them at any time, that it was damaged.

The tenants testified that the glass was cracked in 2015, during a wind storm that brought large branched down cracking the glass. The tenants stated that the landlord was aware of this as they had attended the property. Filed in evidence is a photograph of the landlord at the property cleaning the yard.

The tenants testified that the landlord did not repair the glass and the property was sold as they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

The landlord testified that the sale of the property did not go through as the purchaser breached the sales agreement after all the condition of sale were removed. The landlord stated they have not done the repair; however, they have submitted the estimate. Filed in evidence is an invoice, which I cannot read as it is in a different language and was not transcribed for my consideration.

### Refinishing door frame

The landlord testified that the tenants' caused damage to the door frame as there was extensive chipping in the paint. The landlord stated that the rental unit was newly painted at the start of the tenancy. The landlord seeks to recover the cost of \$500.00.

I asked the landlord how it could cost \$500.00 to paint a door frame. The landlord stated that it also include other items which were damage by the tenants.

The landlord's witness PW testified that they were in the rental unit when the tenancy started and there were no chips in the door frame and that the rental unit was in perfect condition.

The tenants testified that the rental unit was not newly painted when they moved in. The tenants stated that the paint was chipping during their tenancy. The tenants stated they are not responsible for the cost.

#### Cleaning and lock replacement

The landlord testified that they do not have any evidence to give on the issue of cleaning.

The landlord testified that the lock on the basement door was missing and they had to have it replaced. The landlord seeks to recover the cost of \$150.00.

The tenants testified the rental unit was left cleaned. The tenants stated that during the tenancy they had to change the locks, which was an issue at a previous hearing in 2015. The tenants stated that the lock was broken, and they had to replace it, which the landlord did not pay for. The tenants stated that they removed the lock when they vacated the property; however, the old broken lock was left for the landlord.

#### Missing microwave and stove

The landlord testified that they gave the tenants a portable microwave during their tenancy, which was taken at the end of the tenancy.

The landlord testified that the stove in the basement was required to be removed at the start of the tenancy and the tenant's removed the stove and were instructed to place it in the shed. The landlord stated that the stove was missing at the end of the tenancy.

The tenants testified that at no time did the landlord provide them with a portable microwave, and the one they had was their own.

The tenants testified that the landlord removed the stove in the basement when the tenancy started, and they do not know where the stove has gone. The tenants stated that they had to purchase a stove during the tenancy, which was the subject of a hearing in July 2015. The tenants stated if there was a second stove on site, they would not have had to go through the efforts of purchasing a stove.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Tenants' application

The tenants seek the return of double their Deposits; however, the tenancy ended on February 29, 2020, and the landlords' application for dispute resolution claiming against the Deposits was filed on March 12, 2020. I find the landlords made their application within the statutory time limit. Therefore, I dismiss the tenants' application for double their Deposits.

As the tenants were not required to file an application for dispute resolution as the landlords had already made their application claiming against the Deposits, I decline to award the filing fee.

The Deposits will be dealt with later in this decision and is based on the original amounts paid by the tenants.

Landlord's application

Glass replacement

I find the tenants are not responsible for the cracked glass. The damage occurred during a wind storm. This was not from the actions of the tenants. Even if the landlord was not notified, which find highly unlikely, it is still the landlords' responsibility to repair. Therefore, I dismiss this portion of the landlords' claim.

Refinishing door frame

While I accept that the photograph submitted by both parties shows the door frame paint chipped; however, this could be from unreasonable wear and tear or from the deterioration of the paint at it was at least seven years old at the end of the tenancy.

Even if the tenants caused unreasonable chipping to the paint on the door frame, the paint was past its useful life span, which has been determined to be four years, under the Residential Tenancy Branch Policy Guideline #40. I find the landlords would not be entitled to recover the cost as any amount owed, would be fully depreciated by the age of the item. I find the landlords have not suffered a loss. Therefore, I dismiss this portion of the landlords' claim.

Cleaning and lock replacement

In this case, the landlords have presented no evidence that the rental unit needed to be cleaned. Further, the tenants' photographs show the rental unit clean. I find the landlords have failed to prove a violation of the Act. Therefore, I dismiss this portion of the landlords' claim.

I accept the evidence of the tenants that the lock was broken during the tenancy and it was replaced by the tenants. This is support by the testimony of the tenants at a previous hearing on November 19, 2015.

While I accept the tenants should have left behind the lock, as it became an attached fixture of the rental unit; however, the lock was replaced because it was broken and not repaired by the landlord. Therefore, I find the landlord did not suffer a loss as they should have replaced the lock in 2015, which they did not. Further, I am not satisfied that it cost the landlord \$150.00 as this portion of the estimate of repair was for cleaning

and lock replacement. There was no receipt or proof of payment for the lock replacement. Therefore, I dismiss this portion of the landlords' claim.

#### Missing microwave and stove

I am not satisfied that the landlord provided the tenants with a portable microwave during the tenancy. The tenants denied one was received. I find the landlord has failed to prove that a microwave was given to the tenants. There was no supporting evidence, such as a receipt to prove one was purchased. Therefore, I dismiss this portion of the landlords claim.

I am not satisfied that the tenants took the landlords stove. The stove was removed from the basement at the start of the tenancy because the landlord wanted it removed. Even, if I accept the stove was to be stored in the shed and missing. The stove was not the tenant's responsibility as it was not included in the rent. Further, I find if there was a second stove on site, that it would have been reasonable for the landlord to replace the broken stove, which was the subject of a previous hearing, rather than the tenants having to purchase one, which the landlord was ordered to pay for those cost. Therefore, I dismiss the portion of the landlords' claim.

As the landlords have been unsuccessful with any portion of their claim, I find the landlords are not entitled to recover the cost of the filing fee.

Since I have dismissed the landlords' claim. I find the landlords have no further legal right to retain the tenants' Deposits. I find the landlords must return the Deposits to the tenants in full forthwith.

Should the landlords fail to comply with my Order, I grant the tenants a monetary order in the value of their Deposits in the amount of **\$1,300.00**, pursuant to section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

#### Conclusion

The tenants' application for double the Deposits is dismissed. The landlords' application is dismissed. The tenants are granted a monetary for the return of their Deposits.

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: July 22, 2020

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Residential Tenancy Branch