



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MND, MNSD, FF

### Introduction

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

The landlords' application is seeking orders as follows:

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

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and pet damage deposit; and
2. 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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Are the landlords entitled to monetary compensation for cleaning and damages?  
Are the landlords entitled to retain the Deposits in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on December 15, 2018. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00 and a pet damage deposit of \$200.00 (the "Deposits"). The tenancy was ordered to end on October 15, 2020 by an order of possession issued at a previous hearing.

The parties agreed a move-in condition inspection report was not completed. The landlords were not at the rental unit when the tenants took possession.

The landlords claims as follows:

a.	Yard repair and disposal	\$1,470.00
b.	Cleaning	\$ 596.40
c.	Damage to rental unit	\$2,940.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$5,106.40</b>

### Yard repair and disposal

The landlords testified that the dog cause damage to the lawn as the grass was yellow, which is cause by their dog's urine. The landlords stated that the tenants' dog had also dug holes in the lawn. The landlords stated that they had to bring in soil to repair the holes and repair the lawn. The landlords stated that the tenants also installed fencing between the front and back of the house to contain their dog, which had to be removed.

The landlords testified that the tenants had also installed planter boxes on the gravel at the front of the house, which were removed; however, the post holding the boxes caused damage to the landscape fabric and the gravel was missing. The landlords stated that they had to have the landscape fabric repaired and bring in more gravel.

The landlords testified that the tenants belonging blew over in a windstorm causing damage to the fence. The landlords stated that the tenants repaired the damage; however, they did not dispose of a large concrete block. The landlords stated that they had to have the concrete block removed.

Filed in evidence are photographs and an invoice in the amount of \$1,470.00 in support of the landlords' application.

The tenants testified that the prior renter had dogs and when they moved into the rental unit the lawn was already damaged and had some holes. The tenants stated that during their tenancy they had re-seeded the lawn. The tenants stated that they did not install the fencing between the front and back of the house as it was left behind by the previous renter.

The tenants testified that they did install planter boxes at the front of the house; however, they were lined with landscape fabric and would not impact the landscape fabric or gravel that it was placed upon.

The tenants testified that their belongings blew over in a windstorm causing damage to the neighbour fence. The tenants stated that when they fixed the fence, they had to remove the post fastened with concrete. The tenants stated they did not dispose of the concrete block which was approximately 50lbs.

The landlords argued that the fencing between the front and back of the house was not there when they inspected the property in June 2019. The landlords stated that the post that held the planter boxes were large and they had to be pounded into the ground, causing the damage to the landscaping fabric.

### Cleaning

The landlords testified that the tenants refused to sign the move-out condition inspection report.

The landlords testified that the rental unit was not properly cleaned. The appliances needed to be cleaned. The kitchen cupboards were dirty, bathrooms needed cleaning, the windows were dirty and there were large cobwebs and the blinds and window coverings were left dirty.

Filed in evidence are photographs and a receipt for cleaning and carpet cleaning in support of the landlords' application.

The tenants testified that they did not refuse to sign the move-out condition inspection report. The tenants stated they were supposed to get a digital copy to sign. However,

the copy that has been provided as evidence by the landlords was not what was discussed at the move-out inspection.

The tenants testified that the only item that they forgot to clean was the windows; however, they had sent their pastor to the rental property to clean the windows the next day and the pastor said the locks had been changed.

The tenants submits that the photographs the landlord provided are not dated and they believe they were taken a month earlier when the landlord attended to take pictures so they could post pictures to advertise the rental unit.

The landlords argued that the photographs were taken after the tenants had vacated the premise.

### Damages

The landlords testified that the doorbell at the front and back door had both been disconnect and had to be repaired.

The landlords testified that the based board in the main bathroom was damaged by water overflowing the tub, and the baseboard had to be replaced and that the countertop was damage by bleach which had to be repaired.

The landlords testified the one of the kitchen cabinet doors was removed and it was broken at the hinge and it appeared the tenants had attempted to repair; however, the screws were going through the other side. The landlords stated that the cabinet door was probably 20 years old.

The landlords testified that the bedroom bi-fold closet door was removed from the closet. The landlords stated that the door had to be re-installed; however, is was missing the door hinge.

The landlords testified that the tenants removed the flooring in the bedroom without their consent and they had to replace the flooring.

The landlords testified that they had to pay to have the above repairs made in the amount of \$2,940.00. Filed in evidence are photographs and an invoice in support of the landlords' application.

The tenants testified that as far as they knew the front doorbell was working when they left. The tenants stated that the backdoor bell was never used. The tenants stated they did not disconnect the doorbells and they were in the same condition when the tenancy commenced.

The tenants testified that they did not notice any damage to the baseboards in the main bathroom and the stain on the countertop was there when the tenancy commenced.

The tenants testified that they did not damage the kitchen cabinet door. The tenant stated it was not off when they vacated the rental unit.

The tenants testified that when they moved into the rental unit that the bi-fold door had already been removed by the previous renter. The tenants acknowledged that they remove the bottom track mechanism when they removed the carpet; however, they had placed the track on the closet shelf.

The tenants testified that they did remove the carpet in the bedroom because it smelled of cat urine. The tenants stated that the landlord agreed that they would be responsible for the cost. The tenant read at the hearing the email exchange between the landlord and tenant.

The landlords argued that they agreed to pay for the flooring, only because they had no option because the tenants had already removed the flooring. The landlords stated that they do not know if it really required to be removed because they were not given the opportunity to see if it could be cleaned.

### 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, the landlords have the burden of proof to prove their claim.

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.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

#### Yard repair and disposal

I accept the evidence of the landlords over the tenants on the damage to the backyard lawn because the tenants had admitted it was re-seeded during their tenancy, which I accept; however, the photographs show that the lawn is damaged by pet urine and there are holes dug by a dog which show no seeded grass. This damage would not have been visible if the lawn was reseeded during the tenancy as claimed by the tenants, if it was not caused by their own dog. I find the tenants breached the Act when they failed to repair the lawn at the end of the tenancy, and this caused losses to the landlord.

However, I am not satisfied that the tenants are responsible for all the soil purchased to fill the holes, as there may have been some holes dug by the previous renter's dog. I cannot determine based on this; what holes were related to this tenancy. Therefore, I dismiss the landlords claim for soil replacement.

I am not satisfied that the landlords has met the burden of proof on the matter of the fencing installed between the front and back of the house, which was to contain a pet. There was no move-in inspection completed and the landlords were not at the rental property between the outgoing renter and the incoming tenant. While the landlord stated it was not there during a later inspection. However, there is no supporting evidence, such as photographs. I find due to insufficient evidence; I cannot find that the tenants breached the Act. Therefore, I dismiss this portion of the landlords' claim.

The tenants acknowledge that they installed planter boxes in the front yard, and they were simply laid over the gravel and would not cause damage to the landscaping fabric. I do not accept that testimony as the photographs show large post in the corner of the boxes. The only way for such large posts to be stabilized would have to be by penetrating the ground. I find the tenants' breached the Act when they failed to repair the landscaping fabric.

However, I am not satisfied that the tenants are required for new gravel, due to the planter boxes. No photographs were provided to support the gravel was removed by the tenants. I find due to insufficient evidence; I cannot find that the tenants breached the Act. Therefore, I dismiss this portion of the landlords' claim.

I accept the evidence of both parties that the fence was damaged by the tenant's personal property falling over during a windstorm. I accept the evidence that the fence was repaired by the tenants; however, they did not dispose of the concrete that they removed during the repair. I find it was the tenant's responsible to have the concrete disposed. I find the tenants breached the Act, when they failed to dispose of the concrete that was removed from the ground when they repaired the fence.

I am not satisfied that the landlord has met the burden of proof on the matter of the damage caused to the main bathroom based board or to the bathroom countertop. No move-in condition inspection report was completed, nor were there any photographs taken prior to this tenancy commencing and there were no photographs taking during later inspections. I find due to insufficient evidence; I cannot find that the tenants breached the Act. Therefore, I dismiss this portion of the landlord's claim.

As the landlords have been successful with a part of their claim for yard damage and the invoice filed in evidence does not breakdown the cost, which is not uncommon for work done such as this. I find it reasonable for the invoice to be equally shared. Therefore, I find the landlords are entitled to recover the cost of **\$735.00**.

### Cleaning

I am not satisfied that the landlords have met the burden of proof that the rental unit was left unreasonably clean at the end of the tenancy. While I accept there were minor deficiency it does not support on the totality that it was left unreasonably clean. There were no photographs submit of the interior of appliances, the interior of kitchen cupboards, nor where there any photographs showing an entire room. I find the

landlords have failed to provide sufficient evidence to prove their claim. Therefore, I dismiss this portion of the landlords' claim.

### Damages

I am not satisfied that the landlords have met the burden of proof that the rental unit was damaged as claimed by the landlords. The tenants denied they caused damage to the rental unit. The landlords did not do a move-in inspection condition inspection report, nor does it appear the landlord did any inspection of the property between the outgoing renter and the incoming tenant.

While I accept the landlords have done other inspections during the tenancy, which they state the damage was not there at the time. There were no photographs of the rental unit taking during these inspections to support this.

Further, I accept the tenants may have removed the carpet in the bedroom without the consent of the landlords. However, if this was a true concern of the landlord at the time, they would have told the tenants to replace it; rather, the landlord agreed to pay for their replacement. I find the tenants had the right to rely upon the action of the landlords.

Based on the above, I find the landlords have failed to prove their claim for damages. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$835.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the above amount of \$835.00 for the tenants Deposits in full satisfaction of the claim. As there is a balance of \$365.00 remaining of the deposits, I find this amount must be returned to the tenants forthwith.

As the tenants gave the landlords their forwarding address to the landlords on October 13, 2020, sent by registered mail, I find the landlords were deemed serve 5 days after it was mailed, October 19, 2020. The landlords' application was made on November 1, 2020, which was within 15 days. As a result, there was no requirement for the tenants to make their application as any balance due would have been returned through the landlords' application. Therefore, I find the tenants are not entitled to recover the cost of the filing fee.



I grant the tenants a monetary order for the balance due of their Deposits. Should the landlords not return the balance due. This order may be filed in the Provincial Court that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlords are granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim and the tenants are granted a formal order for the balance due 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: March 3, 2021

---

Residential Tenancy Branch