



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenants: MNSD FF

Landlord: MND MNSD FF

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 19, 2019. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenants both attended the hearing and provided affirmed testimony. The Landlord acknowledged receipt of the Tenants’ application package and evidence. The Tenants acknowledged receipt of the Landlord’s application package and evidence.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

#### *Tenant*

- Are the Tenants entitled to the return of double the security deposit held by the Landlord?

#### *Landlord*

- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

## Background and Evidence

Both parties agree that:

- monthly rent was \$6,000.00 and was due on the first of the month.
- The tenants moved in on or around September 1, 2020, and moved out at the end of August 2021. The fixed term lease was set to end on September 1, 2021.
- The Landlord still holds a security deposit and pet deposit in the amount of \$6,000.00
- The Tenants provided, and the Landlord received, the Tenants' forwarding address in writing on September 14, 2021.

### *Tenants' Application*

The Tenants have applied for the return of their security and pet deposit, which total \$6,000.00. The Tenants stated that at the start of the tenancy the parties did a move-in inspection, and the Landlord completed a move-in inspection report, which was provided into evidence. The Tenants stated that they provided their one month Notice, on July 31, 2021, that they would be ending the tenancy at the end of their 1 year lease. The Landlord acknowledged getting the Tenants' Notice on that date, and agrees he was given one month's notice, in accordance with the Act. The Tenants stated that although the Landlord knew they would be leaving at the end of August, he didn't communicate and arrange a specific time to do the move-out inspection.

The Tenants stated that they had a moving truck come on August 26, 2021, and one of the Tenants and her children left the unit on this date, with the second Tenant vacating the following day, after the move was complete. The Tenants stated that they hired a cleaner to come on August 28, 2021, and after she left, she put the keys in the mailbox. The Tenants stated that the Landlord didn't put any effort into arranging a formal time for the move-out inspection, and he also never offered them a Notice of Final Opportunity for Inspection.

The Landlord acknowledged that he did not proactively schedule a move-out inspection, and he assumed that he could perform the inspection with the Tenants at the end of August sometime, or on September 1, 2021. The Landlord stated that he showed up to the rental unit on August 31, 2021, after the movers and cleaners had left, and noticed that there were still some boxes and garbage laying around in the garage, as well as oil stains on the floor of the garage. The Landlord also noticed dog feces in the yard. The Landlord stated that he and his family spent a few days cleaning up the property, and

on September 5, 2021, he noticed the damage to the hardwood floors (more on this below). The Landlord stated that at this time he took some photos, and did a brief inspection on his own, and contacted the Tenants via text message about his dissatisfaction with the damage and the debris. The Tenants suspected that the Landlord was going to try to keep their deposits at this point, which is why they filed this application.

### *Landlord's Application*

The Landlord provided a monetary worksheet which shows he is seeking the following items:

#### 1) \$12,232.50 – Hardwood Floor Repair

The Landlord stated that he noticed the hardwood floor damage on September 5, 2021, and he took several photos at that time. The Landlord pointed to the move-in condition inspection report to show that there was no damage to the wood flooring at the start of the tenancy. Both parties signed this move-in inspection report. The Landlord stated that this home is a new, high end home, and the floors were in very good condition when the Tenants moved in. The Landlord stated that there was damage (deep grooves, and large scratches) to the hardwood flooring in the entryway, living room, and family room. The Landlord provided copies of the photos into evidence which show many areas of scratching and damage to the hardwood.

The Landlord stated that he obtained two quotes from flooring experts for the repair of the floors. The first quote was for \$18,500.00 plus GST to refinish the floors with the best grade of finish. This contractor also opined that the floors could not be spot refinished, as it would not match the existing flooring tints, and that a full refinish would be required.

The second flooring contractor offered a quote of \$12,232.50 including GST for a full refinishing job using the medium quality finish. This contractor also opined that the floors could not be spot repaired, as the colors would not match, and would not look right.

The Tenants stated that any damage that was caused to the flooring is reasonable wear and tear, and they should not be liable for the repairs. The Tenants do not believe they should have to pay for the refinishing of floors.

2) \$500.00 – Cleanup costs

The Landlord explained that he had to spend a week cleaning the house with his family because the Tenants failed to sufficiently clean up, and left behind some items. The Landlord provided some photos into evidence which were taken after the Tenants left, to show that the Tenants left behind paint cans, boxes, luggage, debris, and dog feces. The Landlord did not specify how many hours it took, or how he arrived at \$500.00 for this item. The Landlord stated it took a long time to remove the oil spots from the concrete in the garage. No oil stains on the garage floors were noted on the move-in condition inspection from the start of the tenancy.

The Tenants did not deny leaving behind the above noted items. The Tenants expected that their movers would move all their items, but some items appear to have been left behind.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

*Tenants' Application*

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

I note the Landlord acknowledged receiving at least one full month's notice that the Tenants would be vacating towards the end of their 1 year lease. There is no evidence to show that the Landlord took any proactive steps to formally arrange a move-out inspection. I do not find it reasonable to assume that an inspection can be done on the last day of the tenancy, without any clear communication on this matter (specifically attempting to arrange a mutually acceptable time). The Landlord had been communicating with the Tenants via text message, so it is reasonable to expect that there should have been more effort to arrange a time to meet for the inspection. Further, the Landlord also needs to offer a 2<sup>nd</sup> opportunity for inspection, if the first inspection does not work out.

This requirement is highlighted in the Regulations, as follows:

**Two opportunities for inspection**

- 17** (1)A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2)If the tenant is not available at a time offered under subsection (1),
- (a)the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b)the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

I find the Landlord failed to offer at least 2 opportunities for the inspection, which is a breach of section 17 of the Regulations, and a breach of section 35(2) of the Act:

**Condition inspection: end of tenancy**

- 35** (1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a)on or after the day the tenant ceases to occupy the rental unit, or
  - (b)on another mutually agreed day.
- (2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

I turn to the following portion of the Act:

**Consequences for tenant and landlord if report requirements not met**

**36** (2) Unless the tenant has abandoned the rental unit, 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

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I do not find the Tenants abandoned the unit, as the Landlord was aware the Tenants would be moving out in the last few days of August. At least one month's Notice was given, and little if any efforts were made to confirm the actual date of the move, and when an inspection should occur. As a result, I find the Landlord extinguished his right to claim against the security deposit or pet damage deposit by failing to arrange a move-out inspection.

I turn to the following portions of Policy Guideline #17 – Security Deposit and Set off:

## **B. SECURITY DEPOSIT**

*7) The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if<sup>9</sup>:*

- *the landlord does not offer the tenant at least two opportunities for inspection as required<sup>10</sup> (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

[...]

*9) A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*

- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

[...]

### **C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit<sup>15</sup>:*

- *if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act<sup>16</sup>;*
- *if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*
- *if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

I note the Tenants have not waived their right to the doubling of the deposits and the Landlord has filed this claim for damage to the rental unit, to claim against the deposits. However, the as noted above, this right to file the claim was extinguished. As a result, and as outlined above in the Guidelines, I order the Landlord to return double the security and pet deposit (2 x \$6,000.00). The Tenants are awarded \$12,000.00 for this item.

#### *Landlord's Application*

Next, I turn to the Landlord's claim for monetary compensation.

First, I turn to the first item the Landlord is seeking, the hardwood floor repair in the amount of \$12,232.50. I note the parties conducted a move-in inspection, and a copy of related report was provided into evidence. This condition inspection report shows some

other minor issues (some minor water damage). However, there was no indication of any scratches or indentations or any other material damage. I find the move-in condition inspection report is a reliable indicator as to the condition of the floors at the start of the tenancy, as it was completed and signed by both parties. Although no move-out inspection was completed, I turn to the photographic evidence to highlight the condition of the rental unit at the end of the tenancy. I note the photos, taken on or around September 5, 2021, show some heavy scratching, indentation, and hardwood damage in multiple areas of the floor. I do not find the quantity and severity of the damage is considered normal wear and tear. I find the damage goes well beyond reasonable wear and tear in several areas of the hardwood floors. I find it more likely than not that the Tenants caused this damage, and ought to be responsible for the remediation of the damage.

I note the Landlord obtained a couple differed quotes, and is seeking compensation based on the lower of the two quotes. I accept that it would not be appropriate or proper to refinish a small patch of flooring, and I accept that the only way to repair the floors properly, was to refinish all the flooring, so that color continuity could be maintained. I find this is reasonable given the quality and finish of the rental unit. I find the Tenants are responsible for the full amount of this item, \$12,232.50.

Next, I turn to the Landlord's second item. I note the Landlord is seeking \$500.00 for cleanup and disposal of several items left behind. I note the Tenants did not deny that they left behind several items, or that they left some oil stains on the garage floor. I find the Tenants ought to be responsible for these issues. I accept that this would have taken time to remedy and clean up. However, I find the Landlord has done a poor job explaining how he arrived at \$500.00, and how much time and expense it actually took to remediate the issues.

I note that an arbitrator may 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.

In this case, I find the Landlord's failure to sufficiently detail the value of this loss, and how it was calculated, warrants a nominal award. I award a nominal award of \$250.00 for this item.

I decline to award the recover of either filing fee as both parties were partly successful.



The Tenants are entitled to \$12,000.00. The Landlord is entitled to \$12,482.50. After offsetting these amounts, the Landlord is entitled to a monetary order in the amount of \$482.50.

### Conclusion

The Landlord is granted a monetary order in the amount of **\$482.50**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that 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: April 21, 2022

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Residential Tenancy Branch