# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNSD, MND, MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for the return of double their security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

### Issue(s) to be Decided

Are the tenants entitled to the return of double their deposit?
Is the landlord entitled to a monetary order as claimed?

### Background

The parties agreed that the tenancy began on August 30, 2006 and ended on October 31, 2008. At the outset of the tenancy the landlord collected a security deposit of $1,850.00. The landlord resides in the province of Quebec. The tenants kept two dogs in the rental unit during the tenancy. An agent of the landlord conducted a condition inspection at the beginning of the tenancy and the landlord himself conducted a condition inspection at the end of the tenancy. The tenants participated in both inspections and a condition inspection report was created and submitted as evidence.

On November 14 the landlord mailed to the tenants a cheque $1,531.03 together with an accounting statement in which he credited the tenants with the amount of the security deposit, $54.65 in interest and a utility overpayment of $136.38. The landlord debited the tenants $510.00 as the cost of repairing damage and cleaning the rental unit. The tenants did not cash this cheque and the landlord has since stopped payment on it.

### Claims, Evidence and Analysis

I address each of the landlord's claims as follows:

1. **Front door damage.** The landlord claims $175.00 as the cost of repairing damage to the outside of the front door and door frame which he alleges was caused by the tenants' dogs. The landlord testified that the metal front door and wooden door frame were marked by the tenant's dogs. The landlord provided photographs showing the door and frame. The landlord testified that the door was last painted 5 years ago and that while he intends to have the door and frame repainted, he will not be able to do so until the Spring due to weather restrictions. When asked how he arrived at the $175.00 figure for his claim, the landlord testified that this was the price he was quoted by the painters he had retained to paint the rest of the rental unit. The landlord provided no written quotation. The tenant acknowledged that there were scratches and nicks on the door and on the frame that had been caused by his dogs, but testified that not all of the damage can be attributed to his dogs as some marks were there at the time he moved in. The tenant also objected to this part of the landlord's claim as on the condition inspection report, the landlord had made a note of the marks on the door but did not mention the door frame as a concern. I do not find the omission of a reference to the door frame on the report to be determinative of anything. It is not uncommon for parties to miss something when first viewing a premises and discover damage when the unit has been vacated. Residential Tenancy Policy Guideline #37 lists the useful life of work one and identifies 8 years as the lifespan of exterior paint. I accept that this would also apply to exterior paint on a door and frame. Having examined the photographs, it is apparent that the scratches on the door are not severe, cosmetic in nature and can be attributed to reasonable wear and tear. The nicks in the door frame are more severe and I find they go beyond what can be considered reasonable wear and tear. As the tenant has acknowledged that at least some of the damage was caused by his dogs, I find that the tenants should be responsible for part of the cost of repairing and repainting the frame. I find that the tenants have deprived the landlord of 3 years of the life of the paint on the frame. I accept the landlord's testimony that he obtained a verbal quotation of $175.00 from his painters. In the absence of any evidence as to how the $175.00 estimate can be divided between the door and frame, I have determined that $100.00 should be considered the cost of repairing and painting the frame. I find that the landlord is entitled to recover 38%, or 3/8, of the cost of repairing the frame and I award the landlord $38.00.

2. **Window sill damage.** The landlord claims $150.00 as the cost of repairing three window sills which he claims were damaged by the tenants' dogs. The landlord provided photographs showing the sills. Two of the sills are beside a window seat in the kitchen nook and the landlord testified that a dog sitting on the seat could easily reach the sills. The third sill is low, beside the front entry. The tenant acknowledged that his dogs damaged the front sill and testified that the sills by the nook were subject to more wear and tear just because they would have been used by whoever was sitting at the window seat. The tenant acknowledged that the dogs may have caused some of the scratches on the kitchen sills. Having reviewed the photographs, I find that only the south sill in the kitchen and the front entry sill are damaged beyond what may be considered reasonable wear and tear. I find that the tenants or their dogs caused the damage to the two sills. The landlord did not give evidence as to when the interior of the house was last painted, so I am assuming that the interior was painted 5 years ago at the same time the exterior was painted. Residential Tenancy Policy Guideline #37 identifies 4 years as the useful life of interior paint. The paint on the sills had outlived its useful life and accordingly I find the landlord can receive only nominal damages. I award the landlord $25.00.

3. **Bedroom door repair.** The landlord claims $60.00 as the cost of repairing a bedroom door from which he had to remove a sticky residue. The landlord testified that it appeared that something had been affixed to the door by means of an adhesive which had not been completely removed. The landlord provided a photograph of the door which clearly shows a substance on the door. The tenants testified that the adhesive was on the door when they moved in. The landlord bears the burden of proving his claim. As the landlord was not present at the move-in inspection, he cannot definitively answer whether the adhesive was already on the door or not. I find that the landlord has not met his burden of proof and I dismiss this part of the landlord's claim.

4. **Wall repair.** The landlord claims $50.00 as the cost of repairing damage to the walls in the rental unit. The landlord provided photographs showing damage to the walls near the stairs and landing. The tenant testified that while they may have caused some of the marks, he specifically recalled that there were marks all over the

walls when they moved in and referred me to the condition inspection report completed at the beginning of the tenancy which made notes of picture hanger marks and drywall damage at various places in the unit. I note that there is no space on the condition inspection report to make note of damage on or near the stairs or landing. Having reviewed the photographs, I accept that the walls are damaged in two areas and find that the damage exceeds what may be considered reasonable wear and tear. However, given my assumption that the interior of the house was painted 5 years ago and the provisions in Residential Tenancy Policy Guideline #37 which identifies 4 years as the useful life of interior paint, I find that the paint had outlived its useful life. I recognize that the landlord will have to perform some drywall repair in those two areas. I find the landlord is entitled to nominal damages and I award the landlord $10.00.

5. **Cleaning.** The landlord claims $75.00 as the cost of cleaning on top of kitchen cupboards and under the kitchen sink. The landlord provided photographs showing that the top of the cupboards were soiled and the cupboard under the kitchen sink was stained. The landlord testified that he spent approximately 90 minutes cleaning those areas. The landlord testified that he set a value of $50.00 per hour on his services and explained that he incorporated the cost of cleaning supplies in that figure. The landlord estimate that if the supplies were costed separately, his hourly rate would work out to approximately $36.00 per hour. The tenants testified that the tops of the cupboards had not been cleaned prior to their move-in. I accept that these areas were not adequately cleaned. Regardless of whether they were cleaned when the tenants moved in, the tenants were responsible to completely clean when they moved out. I accept the landlord's testimony that it took him 90 minutes to clean those areas. However, I am unwilling to accept that the landlord should be entitled to charge professional rates for his services. I find it reasonable to apply a rate of $18.00 per hour, $3.00 of which accounts for cleaning supplies. I award the landlord $27.00 for 90 minutes of cleaning.

6. **General labour.** The landlord claims $800.00 as the cost of 16 hours of labour for cleaning, repairing window coverings, landscaping and removal of pet waste. The landlord testified that further cleaning was required throughout the house, including

blinds and light fixtures and minor repairs were also required throughout the rental unit. The landlord further testified that the lawn was overgrown at the end of the tenancy, leaves needed to be raked and excrement from the tenants' dogs had been left on the lawn. The landlord provided photographs of dog waste on the lawn, dirty light fixtures, blinds and window tracks and a photograph of the sides and interior of the oven and the floorspace underneath the oven. The landlord testified that the oven is on EZ-slide Teflon feet. The landlord also provided a statement from D.R., who stated that he spent 8 hours performing cleaning, repairs and yard work. The landlord testified that he paid D.R. in cash at a rate of $50.00 per hour and did not receive a receipt. The landlord testified that he also spent 8 hours conducting cleaning and repairs. The landlord used the $50.00 per hour value incorporating the cost of cleaning supplies as described in the paragraph above. The tenant argued that minimal cleaning was required and that the landlord specifically told him not to clean the blinds, but to concentrate on the window tracks, which the tenant cleaned thoroughly. The landlord could not recall having told the tenants not to clean the blinds. The tenant further testified that as it had rained continuously prior to the time they vacated the rental unit, they had been unable to mow the lawn. The tenant further testified that because he has a back problem, he did not attempt to move the appliances. The tenant questioned why the landlord had not brought up the need for cleaning at the time the condition inspection was conducted and suggested that he had been unable to clean as thoroughly as the landlord might expect because the landlord arrived and began doing work on the property on October 30, which was one day before the tenancy ended. I have reviewed the photographs, accept that they were taken after the condition inspection report was completed and find that clearly additional cleaning and some minor maintenance was required. However, I do not accept that all of the cost of labour should be borne by the tenant. I accept that the oven could be pulled out with minimal effort and find that the tenants should have moved the oven to clean beside and behind it and find that the tenants failed to clean light fixtures and at least one window track. Although a blind required repair, I find that there is no evidence suggesting that this was caused by negligence of the tenants rather than through normal use. The same can be said of closet doors which required repair. Although the tenants were obligated to maintain the lawn during their tenancy, they cannot be expected to do so in unfavourable weather

conditions. The photographs do not show a lawn which has been neglected for many months, but show that it is slightly overgrown. The obligation to mow the lawn transferred to the landlord at the end of the tenancy. The tenants were obligated to remove the excrement left by their pets. I find that the tenants have not proven that they were relieved of the responsibility to clean the blinds and I hold them responsible for that cost. The landlord provided a breakdown of the time spent by D.R. cleaning and performing repairs, but did not provide a similar breakdown of his own time. I estimate the time spent cleaning and removing dog waste to be 6 hours. I again take issue with the landlord's $50.00 per hour charge. Although the landlord provided numerous receipts for "supplies," it appears that most of those supplies are paint related. I also note that the landlord testified that he paid D.R. $50.00 per hour in cash, which is non-sensical if the landlord purchased all the cleaning supplies. I find it appropriate to again apply an $18.00 per hour rate. I award the landlord $108.00 as the cost of cleaning the rental unit and removing dog waste.

7. **Cheque stop-payment and photocopying.** The landlord claims $52.80 as the cost of putting a stop payment on the November 14 cheque sent to the tenants and for the cost of photocopying documents in preparation for the hearing. As I see no reason why the landlord should have stopped payment on the cheque when he was obligated by the legislation to either repay the deposit or make a claim against it, the cost of the stop payment is dismissed. As for the cost of photocopying, the only litigation related expense I am empowered to award is the cost of the filing fee paid to bring an application for dispute resolution. Accordingly the photocopying claim is dismissed.

In summary, the landlord has been successful in the following claims:

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| Front door damage | $ 38.00 |
| Window sill damage | $ 25.00 |
| Wall repair | $ 10.00 |
| Cleaning | $ 27.00 |
| General labour | $108.00 |
| **Total:** | **$208.00** |

I address the tenant's claims as follows:

1. **Utility overpayment.** The tenants claim $136.38 as the cost of a utility overpayment. The landlord agreed that the tenants overpaid utilities by that amount and accordingly I award the tenants $136.38.

2. **Double security deposit.** The tenants claim that the landlord failed to return the whole security deposit within 15 days of the end of the tenancy and therefore is liable to return double the security deposit in accordance with section 38(6)(b) of the Act. Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. It is clear that the landlord had the tenants' forwarding address as this is the address to which he sent a partial refund on November 14. I find that the landlord was obligated to either return the deposit or make an application for dispute resolution no later than November 15. Although the tenants did not receive the landlord's partial refund until November, 19, because the landlord mailed the cheque on November 14, I find that the landlord complied with the time frame provided for in section 38(1). I have reached this conclusion because in my view, the clear purpose of the section is to allow the landlord sufficient time to assess damages and either make repairs or obtain estimates before having to file for dispute resolution while balancing the need of tenants to know when they can expect to receive their deposit or know a claim has been made against them. I note that section 38(1)(b) refers to the date the landlord receives the forwarding address and uses the receipt of the address as the landmark. The fact that legislators did not use receipt of the deposit as a landmark in section 38(1)(c) has persuaded me that they intended that the deposit must have left the landlord's hands within the 15 days although the tenants may receive the deposit outside that period. I find that the tenants cannot claim double that part of the deposit which the landlord had attempted to refund. However, the landlord failed to return $318.97 of the deposit on November 14, having arbitrarily withheld this amount without having first obtained the written consent of the tenants or having made an application for dispute resolution. Pursuant to section 38(6), which provides that a landlord who fails to act within the prescribed timeframe must pay double the amount of the deposit, I find the tenants are entitled to an award of double the amount withheld, or $637.94, as well as the interest which was due. On

that part of the deposit which was returned to the tenant, the landlord was obligated to pay $45.97 in interest, calculated to the date of its return. On that part of the deposit which was withheld, the landlord was obligated to pay $10.20 in interest, calculated to the date of this judgment. I award the tenants $2,281.31 which represents the $1,531.03 the landlord attempted to return on November 14, $694.11 as double the amount that withheld and $56.17 in interest.

Conclusion

Having made an award in favour of both parties, it is appropriate that one award be set off as against the other. The landlord has been awarded a total of $208.00, while the tenants have been awarded the sum of $2,281.31. I therefore issue a monetary order in favour of the tenants in the amount of $2,073.31. The parties will each bear the cost of their own filing fees.

Dated January 15, 2009.