



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, OLC, FF

### Introduction

This conference call hearing was re-convened following an adjournment dated October 13<sup>th</sup>, 2011, in response to two applications for dispute resolution as follows:

By the landlords: as an application for a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee associated with his application.

By the tenants: as an application for the return of the security deposit, and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the landlords entitled to a Monetary Order, and if so for what amount?

Are the landlords entitled to recover the filing fee?

Are the tenants entitled to the return of their security deposit?

Should the landlords be issued an order to comply with the Act, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee?

## Background and Evidence

The rental unit consists of a fully furnished, single detached home. There were two tenancy terms between the parties in dispute; the first one was based on a verbal agreement, starting on August 28<sup>th</sup>, 2010 and ending December 27<sup>th</sup>, 2010. The second one was in writing; it started January 4<sup>th</sup>, 2011 and ended June 30<sup>th</sup>, 2011. New tenants occupied the rental unit between December 27<sup>th</sup> and January 4<sup>th</sup>. The rent was \$2400.00 per month and the tenants paid a security deposit of \$1200.00. Condition inspection reports were completed at the start of the first term of the tenancy, and the end of the second term of the tenancy on June 30<sup>th</sup>, 2011. This dispute pertains to damages claimed to have occurred during the second term of the tenancy.

The parties were at complete odds in every aspect of this dispute. I will summarize the salient portions of their testimony as follows:

In their documentary evidence, the landlords provided 44 photographs in support of their claim for damages, showing in part but not limited to; scuffs, stains and dimples on wood finishes and flooring, frayed carpeting, burn marks and scratches to pots and pans, cutlery and other household items improperly arranged in drawers, bent or missing cutlery, nails in wood decking, and a missing roll from two tape dispensers.

The landlords' monetary claim is as follows:

- |                                   |           |
|-----------------------------------|-----------|
| - Bedside tables replaced:        | \$ 200.00 |
| - Cedar railing repaired:         | \$ 400.00 |
| - Door frame gouged:              | \$ 75.00  |
| - Front door repair and lock set: | \$ 450.00 |
| - Bathroom door repair:           | \$ 100.00 |
| - Lagostina pots and pans:        | \$ 178.07 |
| - Silverware replacement:         | \$ 76.00  |
| - Cleaning:                       | \$ 95.00  |

- Relocate furniture: \$ 60.00
- Additional cleaning: \$ 485.00
- Total: \$2119.07

The landlord testified that the tenant did not report any problems with the condition of the unit at the end of the tenancy, and that a number of these problems were not identified at the time that the parties completed the move-out inspection. The landlord stated that it was only when she took a closer look, to a finer level as she put it, that she noticed the damages filed in her claim, which explains why the damages to the front door, the gouged door frame, and the damage to the bathroom door were not captured in the inspection report. She stated that it would appear as if the wooden door was hammered around the handle, and she pointed to deep, long gouges on the cedar railing. She said that the wood was worn but not dented at the start of the tenancy.

Concerning the additional cleaning, this claim pertains to cleaning performed at the end of the first tenancy when the tenants moved out for one week. The landlord said that she advised the tenant about the condition of the unit but that the tenant refused to pay.

Concerning their claim, the landlord stated that repairs to the wood was only quotes and was not yet completed.

The tenant argued that there were pre-existing dents in the wood from the start of the tenancy. The tenant stated that it would not have been possible to identify every deficiency from the start, and that any additional damage amounts to nothing more than wear and tear. In their documentary evidence, the tenants provided 34 photographs taken on November 5<sup>th</sup>, 2010, with several photographs showing gouges and scratches on the wood and finishes. The tenant stated that she unit was cleaned thoroughly before leaving.

#### Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. In this matter that burden was on the landlord to prove his claim against the tenant.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. With this in mind, I examined all the documentary evidence, including photographs and various email exchanges between the parties. The following findings are confined to the landlords' monetary claim for damages set out in the itemized sheet of their application.

The condition inspection reports and the oral evidence indicate that some wear and tear already existed at the start of the tenancy. I heard that some markings on the wood were pre-existent, which is confirmed by the tenants' photographic evidence. As such the condition inspection reports are of limited value as they do not allow me to determine if the unit was in any better condition when the tenants moved in than when they moved out, or to ascribe a monetary value for damages beyond reasonable wear and tear caused by this tenant. The tenant stated that any additional damage was normal wear and tear. Cedar is a soft wood that can be easily damaged. I accept that the tenants did cause additional markings to the wood; however since most of this aspect of the claim was not captured initially upon inspection, I am unable to determine the extent of that damage, or to assess an accurate monetary value. I also take into account that other tenants occupied the unit for a brief period, and that the landlord had to take a closer look to discover new damage. Accordingly, in the absence of more substantive evidence I grant the landlords a nominal compensation totalling \$450.00 to repair the damaged wood and to replace the lock.

Concerning the replacement of bedside tables, I accept that they may have lost a cosmetic value, however the landlord presented no evidence on whether they could

have been repaired or why there is no other alternative than to replace them. Nor were they identified in the condition inspection reports; accordingly I dismiss this aspect of the landlords' claim for complete replacement and grant the landlords nominal compensation of \$50.00.

Concerning the cleaning claim of \$95.00, the replacement of silverware, pots and pans, and \$60.00 to relocate furniture; I find that the landlord should expect that upon the end of a tenancy, some work will be required. This is a part of the cost for doing business as a landlord and I find that these costs are not compensable as it is open to recover them when the landlord determines the rent payable. Further, the silverware and kitchen utensils were not listed in the condition inspection reports. Therefore I dismiss this aspect of the landlords' claim.

Turning to the claim for additional cleaning; this cleaning occurred when the tenants left the unit in December 2010. The tenants stated that they left on short notice a day after Christmas; that the landlord agreed to clean the house; and that in the circumstances felt that they should not have been charged. In the absence of a tenancy agreement specifying any details concerning this aspect of the tenancy I find insufficient evidence to prove that the tenants breached the Act and I dismiss this portion of the landlords' claim.

### Conclusion

The landlords established a claim of \$500.00. Since they were partially successful, the landlords are entitled to recover \$25.00 as partial recovery of the filing fee for a claim totalling \$525.00. Since the landlord kept the tenant's \$1200.00 security deposit, pursuant to Section 72 of the Act, I set off the amount awarded to the landlord against the tenant's security deposit and grant the tenant a monetary order for the balance of \$675.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

Since the tenancy has ended, it is not necessary that I order the landlord to comply with the Act, regulation, or tenancy agreement.

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: November 8, 2011.

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Residential Tenancy Branch