



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to keep the tenants security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties attending agree that this tenancy started on February 15, 2011 and ended on March 15, 2012. This was a fixed term tenancy which was due to expire on February 15, 2012 and was extended after this date. Rent for this unit was \$1,600.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$800.00. The landlord and tenants conducted a move in inspection of the property at the start of the tenancy and the landlord conducted a move out inspection in the tenants' absence. The tenants gave the landlord their forwarding address on March 27, 2012.

The landlord testifies that the tenants gave notice to end the tenancy effective on March 31, 2012. The landlords and tenants then agreed to mutually end the tenancy and signed this document which has an effective date of March 15, 2012.

The landlord testifies that the tenants failed to pay rent from March 01, to March 15, 2012 to the sum of \$800.00. The landlord states the male tenant asked the landlord to deduct the rent from the tenants' security deposit however the landlord states he was not able to do this as the security deposit is held in trust for damages to the unit and cannot be applied to unpaid rent.

The landlord testifies that when he went into the house the tenants had left a lot of belongs both inside and outside the house, such as garbage, appliances, paint pails and general junk. The landlord testifies that the house and yard did not appear to have been cleaned by the tenants, the walls were covered in hand prints, smudges and dirt, some cupboards were unclean, the floors were dirty the carpets had not be cleaned, the bathroom was dirty and there was cobwebs and dust everywhere. The landlord testifies that he had to employ a cleaning company, Molly Maid, to clean the house and the landlords have provided a letter in evidence relating to the level of cleaning that this

company carried out. The landlord seeks to recover the sum of \$225.75 for Molly Maid. The landlord has provided the invoice from Molly Maid for this work in evidence.

The landlord testifies as the new tenants were waiting to move into the house the female landlord had to leave work to help the male landlord clear up some of the items left behind. The landlord testifies that his wife lost \$117.28 for this day off work and they seek to recover this from the tenants.

The landlords seek to recover the sum of \$334.64 from the tenants for cleaning supplies and items purchased to repair and paint the unit. The landlord has provided receipts for these items in evidence.

The landlord testifies that he spent 17 hours in the unit doing additional clean up and painting and repairs. All of the socket and switch covers had to be put back on along with the closet doors and door knobs. The landlords claim the sum of \$17.50 per hour for this work to a total sum of \$297.50.

The landlord testifies that they had to have all the tenants' belongings and garbage removed from the property before the new tenants moved in. The landlord agrees that the male tenant said the tenant would come back on the following Saturday to remove these items however the landlord testifies the new tenants were waiting to move into the property. The landlords have provided the invoices to remove the garbage and items left at the unit and the landlords seek to recover the sum of \$400.00 from the tenants.

The landlord testifies that the new tenants were not able to move into the unit on March 15, 2012 in accordance with their tenancy agreement as they were waiting for the rest of their belongings to arrive. However due to the level of work required in the unit the new tenants could not move into the unit the day after either so the landlord had to pay \$113.10 for the new tenants to stay in a hotel overnight. The landlords seek to recover this cost of the hotel from the tenants and have provided a copy of the invoice in evidence.

The landlords seek to recover the cost of sending documentation to the tenants by registered mail. The landlords seek to recover the sum of 22.38 plus another undisclosed sum.

The landlords request an Order to keep the tenants security deposit of \$800.00 to be offset against the unpaid rent and damages. The landlords also seek to recover the \$50.00 filing fee from the tenants.

The tenant attending testifies that they do not dispute the landlords claim for unpaid rent for March of \$800.00. The tenant states they had asked the landlord to deduct this amount from their security deposit.

The tenant testifies that they had to do a lot of cleaning when they moved into the unit. The tenant testifies that the carpet fitter broke the clips on the closet doors when they moved into the unit and the tenant kept asking the landlords to repair the doors but as the landlords failed to do so, the tenant removed the doors. The tenant testifies that the covers for the sockets and switches were removed because they were going to paint the unit.

The tenant testifies that she did do some cleaning of the unit but agrees there was some cleaning not completed such as the walls and dust. The tenant testifies that her husband was going to remove the garbage on the Friday after they moved out but the landlord was not happy about this because the new tenants were moving in.

The tenant testifies that her husband also had a conversation with the landlord about the painting and testifies that her husband was going to return to the unit the next day but the landlord told her husband that the landlord had done the work.

The landlord disputes the clips for the closet doors were broken. The landlord testifies that the tenants left all the clips in a bag for the landlord and the landlord was able to re-hang the closet doors.

The landlord agrees that the male tenant did want to return to the unit to paint and remove garbage however he could not allow the tenant back into the unit the next day as the new tenants had possession of the unit from March 15, 2012 and the new tenants movers were coming on that day.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent for March, 2012; Section 26 of the Act states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant agrees that they did not pay rent for the period of March 01 to March 15, 2012 therefore I find the landlord is entitled to recover the sum of **\$800.00** from the tenants and the landlords will receive a Monetary Order for this amount pursuant to s. 67 of the Act.

With regard to the landlords claim for damages to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists

- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

It is my decision that the landlords have provided sufficient evidence to show that the tenants did not leave the rental unit in a reasonably clean condition as required under s. 32 of the *Act*. I further find the tenants failed to remove all of their belongings and any garbage at the end of their tenancy and the tenants failed to complete the painting and repairs required under s. 32 of the *Act*. The landlords have provided copies of the move in and move out condition inspection report showing the condition of the unit at the start and end of the tenancy and the landlord has provided photographic evidence of the condition of the unit at the end of the tenancy. The landlord has also shown the actual cost for this work including invoices and receipts. I further find the landlords have also mitigated some of the loss by doing a lot of the work in this unit themselves.

Consequently, I find in favor of the landlords claim for cleaning, repairs and garbage removal to the sum of **\$1,040.53** and for the landlords claim for cleaning and repair supplies of **\$334.64**. A Monetary Order has been issued for these amounts pursuant to s. 67 of the *Act*.

With regard to the landlords claim for hotel fees for the new tenants; the tenants had agreed to vacate the rental unit on March 15, 2012. However the tenants did not comply with the *Act* with regard to leaving the rental unit in a condition that was suitable for new tenants to move into and the landlord had to clean, repair and paint the unit before the new tenants could move in. Therefore, I find the cost of putting the new tenants into a hotel for an extra night would not have been incurred by the landlords had the tenants complied with s. 32 of the *Act*. Consequently, it is my decision that the landlord is entitled to recover the sum of **\$113.10** from the tenants for this loss.

With regard to the landlords claim to recover registered mail fees; I deem these fees to be the cost of doing business as a landlord and as such find the landlord is not entitled to recover these fees from the tenants.

I find the landlords are entitled to keep the tenants security deposit pursuant to s. 38(4)(b) of the *Act* and the deposit of \$800.00 has been offset against the outstanding monies owed to the landlords. As the landlord has been successful with the majority of their claim I find the landlords are also entitled to recover the **\$50.00** filing fee from the tenants. A Monetary Order has been issued for the following amount:

Unpaid rent	\$800.00
Damages, garbage removal and cleaning	\$1,040.53
Supplies for cleaning and repairs	\$334.64
Hotel fees for incoming tenants	\$113.10
Filing fee	\$50.00
Less security deposit	(-\$800.00)
Total amount due to the landlords	\$1,538.27

### Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,538.27**. The order must be served on the respondents and is enforceable through the Provincial Court 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: May 29, 2012.

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Residential Tenancy Branch