



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company and both tenants attended the conference call hearing, and each gave affirmed testimony. The landlord also called a witness who gave affirmed testimony, and the landlord provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenants. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a claim as against the tenants for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2010 and ended on July 18, 2012. Rent in the amount of \$1,100.00 per month was payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

A move-in condition inspection report was not completed when the tenants moved into the rental unit, and the landlord's agent is not able to state why because the landlord's agent was not employed by the landlord company at the outset of this tenancy. However, a move-out condition inspection report was completed with one of the tenants present on July 18, 2012, and a copy was provided for this hearing. The landlord's agent testified that the tenants were given a list of cleaning required prior to the tenants vacating the rental unit.

The landlord's agent also testified that the tenants gave notice to end the tenancy effective July 15, 2012 and the landlord's agent told one of the tenants that they would have to pay for the full month due to the lateness of the notice. The tenant advised the landlord's agent that it was agreeable that the other half of the rent could be taken out of the security deposit. A copy of the tenants' notice was provided for this hearing, and it is dated June 15, 2012 and signed by both tenants. The landlord claims one month's rent in the amount of \$1,100.00 in addition to a late fee of \$25.00. A copy of the tenancy agreement was provided for this hearing, and the landlord pointed out that paragraph 7 provides for a late fee of \$50.00, however the landlord claims half that amount.

The landlord also provided a document entitled "Security Deposit Refund," which is signed by one of the tenants and dated July 18, 2012. The document has been filled out indicating that outstanding rent is \$1,125.00, carpet cleaning \$160.00, \$1,000.00 for painting, and \$155.00 for general cleaning, for a total cost to the tenant in the amount of \$2,440.00. After deducting the \$550.00 security deposit paid, the total balance due from the tenant is recorded on the document as \$1,890.00.

The landlord also testified that the laundry room, bathroom and hall were painted by the tenants a bright turquoise colour without the landlord's knowledge or permission. Also, a wall in the laundry room was wall-papered by the tenants without the landlord's knowledge or permission. The landlord provided a quote in the amount of \$1,150.00 plus HST. The quote includes 2 coats and primer for the entrance hallway, painting walls in the living room, 4 bedrooms and stairway (one coat), 2 coats of paint and primer in the bathroom, touch-up paint on doors, repair and paint 2 bedroom doors broke, 2 coats of paint and primer on 3 walls in the laundry room, remove the heater and install 220 volt plug for the dryer, 2 coats of paint and primer for the sky light, and touch up paint on ceilings. The quote also states that materials will be provided by the owner.

The landlord's agent further testified that general cleaning by the maintenance workers employed by the landlord company is \$120.00 and carpet cleaning is \$160.00. General cleaning includes cleaning drapes, which was noticed after the move-out condition inspection report was completed.

The move-out condition inspection report states that the ceiling in the bathroom required repair at the end of the tenancy. The landlord testified that the tenants didn't open the bathroom window and mould was growing on the ceiling.

The tenant provided a forwarding address in writing on the move-out condition inspection report which is dated July 18, 2012.

The landlord's witness testified that the witness attended the rental unit at the end of the tenancy and witnessed a broken bedroom door at the door knob.

The first tenant testified that the tenant told the landlord's agent to keep the security deposit to cover half a month's rent and gave the key for the rental unit to the landlord's agent on July 15, 2012. It was agreed at that time that the tenant would keep a key for cleaning for 2 days, and the tenant cleaned. The landlord took possession of the rental unit on July 18, 2012, but the tenants did not receive a copy of the move-out condition inspection report until August 20, 2012 with the Landlord's Application for Dispute Resolution.

The tenant further testified that the landlord added markings on the Security Deposit Refund form after the tenant had signed it. The tenant had only agreed to the landlord keeping the security deposit for half a month's rent.

The tenant testified that the landlord's general cleaning was not the responsibility of the tenant; the tenants cleaned the rental unit and anything else is normal wear and tear.

The other tenant testified that the landlord's agent is incorrect with respect to the growing mould in the bathroom. The tenants used the fan, and there is no window in that bathroom.

### Analysis

Firstly, with respect to the landlord's claim for unpaid rent or utilities, the *Residential Tenancy Act* requires a tenant to give a landlord one month's written notice to end a tenancy, and that notice must be provided to the landlord the day before the day rent is payable under the tenancy agreement. In this case, rent is payable on the 1<sup>st</sup> day of each month and the tenants gave the landlord written notice on June 15, 2012 to vacate the rental unit effective July 15, 2012. The tenants are liable for rent for the month of July, 2012 as specified by the *Residential Tenancy Act*. Therefore, I find that the landlord is entitled to a monetary order for one month's rent. The tenancy agreement

also provides for a fee for late rental payments of \$50.00 and I find that the landlord's claim for \$25.00 is reasonable in the circumstances.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

The *Act* also states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of the tenancy. A tenant is not expected to leave a rental unit in a pristine condition that a landlord might prefer for future tenancies; that is the responsibility of the landlord.

The tenants do not dispute that the walls were painted without the knowledge or consent of the landlord. However, the quotation provided by the landlord contains numerous additional painting, touch-ups and repairs. I do not accept that the tenants are responsible for painting ceilings or removing the heater and installing a plug for a dryer, nor has the landlord established that the tenants caused damage to the walls in the 4 bedrooms rendering them in need of paint at the tenants' expense. There is no way of determining from the quotation what the cost for painting the laundry room, bathroom and hallway would be. Therefore, I find that the landlord has failed to establish element 3 in the test for damages. Further, in the absence of a move-in condition inspection report, I cannot ascertain the condition of the broken doors at the commencement of the tenancy, and therefore, I find that the landlord has failed to establish element 2 in the test for damages.

With respect to general cleaning by the maintenance workers employed by the landlord company, I have reviewed the move-out condition inspection report, and in the absence of a move-in condition inspection report, it is difficult to ascertain what damages existed at the commencement of the tenancy. The tenant testified that the keys to the rental unit were returned to the landlord on July 18, 2012 even though the tenants vacated on July 15, 2012, so that the tenant could continue to clean. I find that the landlord has failed to establish that the tenants left the rental unit in a state that was not reasonably clean and the landlord's claim for \$120.00 is dismissed.

With respect to the landlord's claim for carpet cleaning in the amount of \$160.00, I refer to the Residential Tenancy Policy Guidelines which state that if a tenant resides in a

rental unit for in excess of a year or if a tenant has pets that are not caged, the tenant is generally responsible for cleaning the carpet. Therefore, I find that the tenants are liable for that cost.

With respect to the security deposit, the *Residential Tenancy Act* requires a landlord to return the security deposit in full or apply for dispute resolution to keep the deposit within 15 days of the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. The *Act* further states that if a landlord fails to do so, the landlord must be ordered to repay double the amount of such security deposit. In this case, the parties agree that the tenants provided a forwarding address in writing on July 18, 2012 on the move-out condition inspection report, and the tenancy ended on July 15, 2012, although the tenants still had access to the rental unit until July 18, 2012. The landlord's application was filed on August 15, 2012 which is beyond the 15 days provided in the *Act*. Therefore, I find that the landlord holds in trust double the amount, or \$1,100.00.

In summary, I find that the landlord has established a claim in the amount of \$1,125.00 for unpaid rent and a late fee, and \$160.00 for carpet cleaning. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord currently holds a \$550.00 security deposit, and doubled is \$1,100.00 which I find should be set off from the amount due to the landlord. I therefore order the landlord to keep the security deposit and I grant a monetary order in favour of the landlord for the difference in the amount of \$235.00.

### Conclusion

For the reasons set out above, I order the landlord to keep the security deposit and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$235.00.

This order is final and binding on the parties and may be enforced.

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 06, 2012.

---

Residential Tenancy Branch