# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and a cross-application by the tenants for a monetary order. Both parties also claim the security deposit. Both parties participated in the conference call hearing.

The tenants' originally claimed $32,195.00. At the hearing, I explained that the jurisdiction of this tribunal is $25,000.00 and advised the tenants that if they wished to pursue their claim in this forum, they would have to abandon that part of the claim that was over the jurisdictional limit. The tenants confirmed that they wished to proceed through the Residential Tenancy Branch and specifically abandoned that part of their claim that exceeded $25,000.00.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on February 1, 2010, at which time the tenants paid a $525.00 security deposit. They further agreed that on or about August 10, 2012, the tenants gave written notice advising that they would be vacating the rental unit on October 1, 2012. The parties entered into a verbal agreement whereby the landlords would return half of the rent paid for September if the tenants vacated the unit by September 15. The tenants vacated the unit on September 10 and a condition inspection of the unit was performed on September 11. The parties entered a copy of the condition inspection report into evidence and the report shows that the tenants did not agree that the report accurately represented the condition of the rental unit at the end of the tenancy.

At the hearing, the landlord reduced by one half the amount claimed to repair the bathroom and main doors and withdrew his claim for the cost of repairing the bedroom door. I have addressed the claims and my findings around each as follows:

**Landlord's Claim**

1. **Cleaning.** The landlord seeks to recover $135.00 as the cost of cleaning the suite and the draperies in the rental unit. The landlord testified that the oven, burners, draperies, refrigerator and kitchen floor required additional cleaning. He stated that this was a flat rate charged for cleaning which represented 3-4 hours of work and testified that the time involved with cleaning the draperies included taking down the drapes, washing, ironing and re-hanging them. The tenants testified that when they conducted the final move-out inspection with the landlord and learned that additional cleaning was required, they offered to perform the cleaning but the landlord demanded that they surrender the keys immediately.

   Typically, a move-out inspection is performed after the tenants have vacated the unit and are prepared to surrender possession to the landlord. However, in this case, the tenants had paid rent until the 15th of the month and as the inspection took place on September 11th, I see no reason why the landlord should not have given the tenants the opportunity to clean the unit. The landlord had the obligation to mitigate his losses and it is clear that the easiest means of mitigation in this case was to allow the tenants to perform the cleaning as they were willing to do so and were not required to surrender possession of the unit for another 4 days. For this reason, I dismiss the claim.

2. **Carpet cleaning.** The landlord seeks to recover $72.80 as the cost of cleaning the carpet at the end of the tenancy. The landlord provided evidence that the tenancy agreement specifically provides that the tenants are required to pay for the landlord to have the carpet professionally cleaned. The tenants did not claim to have cleaned the carpet at the end of the tenancy, but merely argued that the carpet had not been cleaned at the beginning of the tenancy, implying that this absolved them of the need to clean the carpet.

   The tenants had opportunity during the tenancy to advise the landlord that they believed that the carpet was not adequately cleaned. The condition of the carpet at the outset of the tenancy does not absolve the tenants from meeting their obligations under the contract. Even if the tenancy agreement had not provided that the tenants had to pay for professional cleaning, I note that Residential Tenancy Policy Guideline #1 provides that when tenants occupy a rental unit for at least a year, they

should shampoo the carpet. I find that the landlord is entitled to recover the cost of carpet cleaning and I award him $72.80.

3. **Bathroom door repair.** The landlord seeks to recover $37.50, which is one half of the original amount claimed, as the cost of repairing and repainting the bathroom door. The landlord testified that the tenants installed a coat hook on the door which created holes which had to be repaired. The tenants claimed that the coat hook was in place at the outset of the tenancy.

   Although the coat hook is not mentioned in the move-in condition inspection report, I find it likely that if it had been already in place, the parties would have assumed that it represented a convenience rather than indicated damage which would later have to be repaired. I find that it is entirely possible that the coat hook was in place at the beginning of the tenancy and I find that the landlord has not proven that the tenants should be responsible for the cost of repairs. I dismiss the claim.

4. **Bedroom window sill repair.** The landlord seeks to recover $100.00 as the cost of repairing a window sill. The parties agreed that the tenants installed a safety device on the window to prevent their daughter from opening or falling out of the window.

   I find that because the tenants caused the damage to the window sill, they must be responsible for the cost of repair. I award the landlord $100.00.

5. **Kitchen tile repair.** The landlord seeks to recover $75.00 as the cost of replacing a kitchen tile. The landlord testified that there is no mention on the move-in condition inspection report that a kitchen tile was cracked, but that the tile was discovered cracked at the end of the tenancy. The tenants claimed that the tile was cracked prior to the commencement of the tenancy, but that they did not notice it until they had already moved into the unit, at which time they advised the landlord's agent of the damage and were told not to worry about it. The landlord's agent denied having been so advised.

   Because the move-in report does not reflect damage to the tile and because the tenants have no evidence to corroborate their claim that they advised the landlord's agent of pre-existing damage early in the tenancy, I find it more likely than not that the damage occurred during the tenancy. I find that the landlord is entitled to recover the cost of repairs and I award him $75.00.

6. **Apartment door repair.** The landlord seeks to recover $50.00, which is one half of the original amount claimed, as the cost of repairing the door to the rental unit. The landlord claimed that the tenants caused damage to the door and acknowledged that

part of that damage was reasonable wear and tear. Because the landlord acknowledged that part of the damage was reasonable wear and tear, I am not satisfied that any part of it can be characterized as having gone beyond reasonable wear and tear and for that reason I dismiss the claim.

7. **Carpet repair.** The landlord seeks to recover $200.00 as the cost of repairing the carpet. The parties agreed that the tenants had cut a piece of carpet from the floor of a closet and placed the carpet over an area in the front room which was worn. The tenants claimed that they had asked the landlord's agent to change the carpet, but he did not respond, so they made the change themselves. They further claimed that they offered to have it professionally repaired at the end of the tenancy, but the landlord did not agree. The landlord denied any knowledge of a request to repair the carpet during the tenancy and testified that the carpet in the front room and the bedroom closet was repaired using spare pieces. The parties agreed that the carpet was approximately 10 years old.

   When tenants encounter a repair issue during a tenancy which is not an emergency, they have an obligation to request that the landlord perform the repair and if the landlord fails to do so, they may file a claim with the Residential Tenancy Branch requesting that the landlord be ordered to perform the repair. The tenants have no record of the request they claim to have made and in the absence of that corroborating evidence, I am unable to find that they made a request of the landlord. Although the tenants offered to have a professional repair the carpet, I find that this offer differs significantly from their offer to clean the rental unit as the landlord would have needed to assure himself that the purported professional could indeed perform repairs to a reasonable standard. I find that the landlord is entitled to recover the cost of repairing the carpet. Considering that the carpet is 10 years old and most of its useful life has expired and considering that the landlord was able to use spare carpet pieces, I find the $200.00 claim to be excessive. I find that an award of $100.00 will adequately compensate the landlord and I award him that sum.

8. **Filing fee.** The landlord seeks to recover the $50.00 filing fee paid to bring this application. As the landlord has been substantially successful, I find that the landlord should recover most but not all of the filing fee and I award him $40.00.

**Tenants' Claim**

1. **Garage door opener deposit.** The tenants seek to recover double the $80.00 paid as a deposit for the garage door opener. The parties agreed that although the tenants had paid an $80.00 deposit and had returned the garage door opener, the

landlord had not returned the deposit to the tenants. The tenants argued that they were entitled to receive double the deposit pursuant to section 38(6) of the Act.

I find that as the tenants have returned the garage door opener, they are entitled to receive the deposit back in full. As section 38(6) deals exclusively with security and pet deposits, I find that the tenants are not entitled to receive double their garage door opener back. I award the tenants $80.00.

2. **Recovery of rent for additional occupant.** The tenants seek to recover $1,175.00 paid during the course of the tenancy for their child who was charged as an additional occupant. The tenancy agreement lists 2 tenants as the sole occupants of the rental unit and clause 6 provides in part as follows:

> Subject to clause 13, Additional Occupants, the tenant agrees that for each additional tenant or occupant in the rental unit, not named in Clause 1 or 2 above, the rent will increase by $50 per month, effective from the date of his occupancy.

Clause 13 which is referred to in the above, provides that the number of occupants is a material term of the tenancy. Clause 6 was initialled by the parties.

The tenants paid the $50.00 in additional charges each month for 23 ½ months and now seek to recover those payments as they were pregnant at the time they signed the tenancy agreement.

The tenants were aware at the time that they signed the tenancy agreement that they would be having a baby in 5 months, yet they specifically identified only themselves as occupants and initialled a clause which allowed the landlord to charge for additional occupants. While I find the clause distasteful when applied to children, I do not find it unconscionable as the tenants were well aware of their position at the time they signed the tenancy agreement. Further, the tenants paid the additional charge for almost 2 years and did not dispute it until the tenancy had ended, which suggests that they agreed with the charges for that period of time. For these reasons, I find that the clause is effective and that the tenants are not entitled to recover what was paid for the additional occupant. I dismiss the tenants' claim.

3. **Loss of right to quiet enjoyment.** The tenants seek an award of $4,500.00 in compensation for loss of quiet enjoyment. The tenants claim that they repeatedly requested that A.M. address problems with the heat and that he failed to address those problems, he was late for appointments, he asked the tenants for entry in the evening without giving prior notice and he generally showed a lack of respect.

As addressed above, I find that the tenants have not proven on the balance of probabilities that they made service requests which were not addressed by the landlord. Pursuant to section 29(1), landlords are entitled to ask tenants for entry without prior notice and tenants are entitled to refuse entry upon such a request. Both parties exercised their rights in that regard. I am not satisfied on the balance of probabilities that A.M. being late to appointments or showing a lack of respect was to such a degree that compensation is warranted. I therefore dismiss the tenants' claim

4. **Moving expenses.** The tenants seek to recover $500.00 in moving expenses. The tenants testified that they learned that the landlord wanted to repaint the unit and because they had possession of their new home on September 10 and although they had paid rent up to September 15, they agreed to vacate the unit on September 11 to provide the landlord opportunity to repaint. They claimed that they had to hire a mover in order to move by September 11 and seek to visit the cost of that move on the landlord.

   The tenants were free to enter into an agreement with the landlord whereby they would be reimbursed or in some way compensated for moving out a few days before September 15. They chose not to do so and instead chose to offer to vacate the unit early. They cannot now unilaterally turn that generous offer into a liability for the landlord. I dismiss the claim.

5. **Travel expenses.** The tenants seek to recover travel expenses incurred during January 2012 because the heat was not working in the rental unit. The tenants claimed that the unit was so cold, the female tenant and their infant daughter traveled to Vancouver Island via ferry to spend time with a family member in order to escape the cold.

   Although the tenants claimed that they made repeated requests of the landlord to fix the heat, the landlord has no recollection or written record of those requests and I am not satisfied on the balance of probabilities that those requests were indeed made. The tenants did not retain copies of those requests and the landlord's records do not show that requests were made during January 2012. I find that the tenants have not proven their claim on the balance of probabilities and the claim is dismissed.

6. **Carpet cleaning.** The tenants seek to recover $64.06 as the cost of renting a steam cleaner to clean carpets at the beginning of the tenancy. The tenants testified that

when they moved into the rental unit, the carpets were not adequately cleaned. As evidence that the carpets were not cleaned, the tenants referred to the notation on the move-in condition inspection report which indicated that there were red marks on the carpet. The tenants testified that they were able to remove the marks by renting a steam cleaner.

Although the tenants have delayed more than 2 years in making their claim to recover the cost of cleaning, I can find no evidence that the delay has prejudiced the landlord and as the cleaning clearly benefited the landlord in that the marks were removed, I find that the landlord should bear the cost of the cleaning. I award the tenants $64.06.

7. **Child endangerment.** The tenants seek a substantial award for child endangerment. The tenants testified that their child was in danger of injury from nails which were exposed when the carpet in the front room was pulled back and because the knob from the radiator was missing for a period of approximately 24 hours and the parents, not realizing that A.M. had the knob, feared that their child would find the knob, which they felt was a choking hazard.

   The tenants are not entitled to compensation for being exposed to what they believe were hazards, particularly when they acted responsibly to minimize the danger and thereby ensure their child's safety to prevent injury. The claim is dismissed.

8. **Filing fee.** The tenants seek to recover the $100.00 filing fee paid to bring their application. As the tenants have been substantially unsuccessful in their claim, I find that they should bear the filing fee and I dismiss the claim.

Conclusion

In summary, the landlord has been awarded the following:

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| Carpet cleaning | $ 72.80 |
| Kitchen tile repair | $ 75.00 |
| Carpet repair | $100.00 |
| Filing fee | $ 40.00 |
| **Total:** | **$387.80** |

The tenants have been awarded the following:

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|---|---|
| Garage door opener deposit | $ 80.00 |

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| **Total:** | **$144.06** |

Setting off the claims as against each other leaves a balance of $243.74 payable by the tenants to the landlord. I order the landlord to retain this sum from the $525.00 security deposit and to return the balance of $281.26 to the tenants forthwith. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and 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: December 17, 2012

Residential Tenancy Branch