



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LANDLORD: MND, MNSD, MNDC, FF  
TENANT: MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on November 30, 2012, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on December 27, 2012, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is there loss of damage and is the Landlord entitled to compensation for that loss or damage?
4. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to recover the security deposit?

### Background and Evidence

The Tenants moved into the rental unit in July, 2009 and this tenancy agreement started on September 1, 2012 as a fixed term tenancy with an expiry date of August 31, 2013. Rent was \$1,075.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$500.00 on August 15, 2009.

The Tenant said she gave the Landlord's agent written notice to end the tenancy on October 1, 2012. The Landlord said he received the Tenant's Notice to End the Tenancy on October 3, 2012 and the Tenants' Notice to End the Tenancy was accepted for October 31, 2012. The Tenant continued to say that a move in condition inspection was completed but no move out condition inspections was done and they gave the Landlord their forwarding address in writing on November 19, 2012. The Tenant said they kept the unit in good condition throughout the tenancy. The Tenants said the rental unit was in poor condition when they moved in and they have the move in condition report to show this. The Tenant said there were holes in the walls, the kitchen cabinets were old and the rental unit was in poor condition and needed painting. The Tenant said they did not send the condition inspection report in with their evidence. The Landlord said they have misplaced the move in condition inspection report so they have not provided it in their evidence. The Tenants continued to say they cleaned the rental unit before moving and left the rental unit in much better condition than when they moved in. The Tenants said they have not received their security deposit back and as a result they have made their application for the return of their security deposit in the amount of \$500.00 and the cost to make this application of \$50.00.

The Landlord said the Tenants left the unit in poor condition and the Tenants did not do a move out inspection with the Landlord's agent. The Landlord's agent said he gave the Tenants two opportunities to do the move out inspection, September 27, 2012 and November 1, 2012. The Tenants said there was only one opportunity for the inspection that was on Sunday October 27, 2012, when the Landlord's agent came to the rental unit and they were cleaning the carpet so the inspection was not completed at that time. The Landlord's agent said he then made an appointment for November 1, 2012 for the move out inspection. The Tenants said no appointment was made for November 1, 2012.

The Landlord said he tried to have the Tenant and the Agent negotiate a settlement, but it did not happen so the Landlord said he has made the following application. The Landlord said he has labour costs of \$500.00 and material costs of \$283.77 for repairs to the unit. These repairs include holes to the walls, repairing the kitchen cabinets, replacing doors and other miscellaneous repairs to the unit. The Landlord said he has included paid receipts for these items in his evidence package. In addition the Landlord said he is claiming liquidated damages of \$500.00 that he paid to the Landlord's agent

to re-rent the unit. The Landlord said the liquidated damages clause is in the tenancy agreement as clause # 5 and he has included a paid receipt in his evidence.

The Landlord continued to say he is also claiming \$31.00 for a landfill expenses, because he haul items of the Tenants' to the landfill. The Landlord said he included a ledger which indicates he made this payment to the municipality. The Tenant said the Landlord was hauling his own things to the landfill and so he took some of their items too. The Landlord agreed that he was hauling his items to the landfill and added the Tenants' items.

The Landlord said his total claim is for \$1,314.77 and for the filing fee of \$50.00 for the application cost. The Landlord said he has also provided 21 pictures as evidence of the damage to the rental unit.

### Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit for damage to the unit is extinguished. I find the Landlord may have completed a move in condition inspection report, but as it was not submitted into evidence I cannot examine the contents. The move out condition report was submitted, but it does not comply with the Act or regulations on how a move out condition report must be completed. The move out condition report was not done with all parties present, it is not signed by the Tenants and the Tenants did not receipt a copy of the report within 15 days of the end of tenancy and/or the Landlord receiving the Tenant's forwarding address. Therefore, I find the condition inspection reports have not been completed as required by the Act and regulations. Consequently the Landlord's right to claim against the Tenants' security deposit for **damage to the unit is extinguished.**

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has not established a base line to measure the damage to the unit as there is no acceptable move in condition inspection report or other acceptable evidence of the condition of the unit on move in. As well the Tenants said

the unit was in poor condition on move in and all parties agreed there were at least 2 holes in the wall at the start of the tenancy. Consequently, I find the Landlord has not established grounds to prove the amount of damage if any to the rental unit. I dismiss the Landlord's damage claims in the amount of \$500.00 for labour and \$283.77 in materials without leave to reapply.

With respect to the Landlords claim for hauling costs to the landfill both parties agreed the Landlord was hauling his own items to the landfill and the Landlord took some items for the Tenants. I find this is not a cost that the Landlord incurred solely because of the Tenants actions; therefore I dismiss the Landlord's claim for \$31.00 for hauling costs without leave to reapply.

In regard to the Landlord's claim for liquidated damages clause #4 of the Policy Guidelines says:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

This tenancy was a fixed term tenancy from September 1, 2012 to August 31, 2013 and the Tenants ended the tenancy on October 31, 2012; therefore I find the Tenants have breached the tenancy agreement. As well clause 5 of the tenancy agreement clearly states a liquidated damage fee of \$500.00 will be paid by the Tenant to the Landlord if the Tenant ends the tenancy before the expiry date of August 31, 2013. In addition the clause state the liquidated damage fee is not a penalty and is a pre-estimate to re-rent the unit in the case of a breach of the tenancy agreement. I find that clause 5 of the tenancy agreement is enforceable, it is not a penalty and it was agreed to by both the Tenants and the Landlord at the start of the tenancy. Consequently I find for the Landlord with respect to the Landlord's liquidated damage claim of \$500.00. Pursuant to section 38 and 67 of the Act I order the Landlord to retain the

Tenants security deposit of \$500.00 as full payment of the liquated damages claimed by the Landlord.

With respect to the Tenants application for the return of the \$500.00 security deposit I find that the Tenants are responsible for the Landlord's liquidated damage claim and pursuant to section 67 of the Act I order the Tenant to offset the \$500.00 owed to the Landlord with the security deposit. Consequently I dismiss the Tenants' application without leave to reapply.

As the Landlord was only partially successful in this matter, I order the Landlord to bear the costs of the application in the amount of \$50.00 that he has already paid.

As the Tenants were unsuccessful in this matter, I order the Tenants to bear the costs of the application in the amount of \$50.00 that they have already paid.

### Conclusion

I order the Landlord to retain the Tenants' security deposit of \$500.00 as full payment of the liquidated damages.

I dismiss the Landlord's claims for damage to the unit without leave to reapply.

I dismiss the Tenants application without leave to reapply.

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: March 05, 2013

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Residential Tenancy Branch

