



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: MNR, MND, MNSD & MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. The hearing was adjourned from February 27, 2013 as the landlords had increased their claim without amending their Application for Dispute Resolution and the tenants had recently filed an Application for Dispute Resolution that had not reached my file. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to reimbursement of the cost of the filing fee?
- c. Whether the landlords are entitled to a monetary order and if so how much?
- d. Whether the landlords are entitled to retain all or a portion of the security deposit/pet deposit?

- e. Whether the landlords are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on April 1, 2012. The rent was \$895 per month payable on the first day of each month. The tenants paid a security deposit of \$447.50 and a pet damage deposit of \$223.75 for a total of \$671.25 at the start of the tenancy.

The landlords served a one month Notice to End Tenancy on the tenants dated October 28, 2012 and setting the end of tenancy for November 30, 2012. The landlord testified that she was concerned that the tenants would not leave in accordance with the one month Notice to End Tenancy and that she served a 2 month Notice to End Tenancy on the tenant when the tenant came to pay the rent at the start of November.

The landlords submits the tenant has caused significant damage to their rental unit and claims \$4912. The tenants deny causing damage. They have filed a claim seeking damages in the sum of \$2245.

Tenants' Claim for the equivalent of one month rent pursuant to section 51:

The tenants seek the equivalent of one month rent pursuant to section 51 of the Residential Tenancy Act which provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

I do not accept the submission of the landlords that the tenants have disentitled themselves to receive the equivalent of one month rent when they did not dispute the one month Notice. The triggering event for the obligation to pay the equivalent of one months Notice to End Tenancy is the service of two month notice. As a result I determined the tenants have established a claim in the sum of \$895 pursuant to section 51(1) of the Residential Tenancy Act.

Tenants' claim for double the security deposit and pet damage deposit:

The tenants seek the doubling of the security deposit and pet damage deposit. The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Section 38(5) of the Residential Tenancy Act includes the following statement:

**38** (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

Policy Guideline 17 includes the following statements:

**SECURITY DEPOSIT**

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or
  - having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.
8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.
9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
  - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
  - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy
  - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
  - If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
  - If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
  - If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
  - whether or not the landlord may have a valid monetary claim.

The tenants paid a security deposit of \$447.50 and a pet damage deposit of \$223.75 for a total of \$671.25 at the start of the tenancy. I determined the tenancy ended on December 1, 2012. I further determined the tenants provided the landlord with their

forwarding address in writing on December 7, 2012. The parties have not agreed in writing that the landlord can retain the security deposit. The landlords do not have a monetary order against the tenants. The landlords failed to conduct a condition inspection as required by section 24(2) of the Act and as a result the landlords' right to claim against the security deposit and pet damage deposit has been extinguished even if the tenant failed to participate in a condition inspection at the end of the tenancy as the failure to conduct an inspection took place first in time. As a result I determined the tenants have established a claim against the landlords for double the security deposit and pet damage deposit in the sum of \$1342.50.

**In summary I determined the tenants have established a claim against the landlord in the sum of \$2237.50 plus \$50 for the cost of the filing fee for a total of \$2287.50.**

Landlords' Claim: The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

#### Monetary Order and Cost of Filing fee

With respect to each of the landlords' claims I find as follows:

- a. The landlord claimed the sum of \$2858.69 for the cost of replacing the carpeting, under pad and installation. Much of the work has not been completed. The carpets were 11 years old. Policy Guideline #40 Useful

Life of Building elements sets the useful life of an interior carpet at 10 years. The landlord testified the tenant caused significant damage to the carpets but failed to produce photographs. The tenant disputed the allegation that they damaged the carpets. The landlord failed to conduct a condition inspection at the time the tenant took possession. The photographs produced by the tenant show little in the way of staining. After considering all of the disputed evidence I determined the landlord has failed to prove the tenants caused damage to the carpets or that the landlord is entitled to compensation for the depreciated value of the carpets as the life of the carpets exceeds its useful life. As a result this claim is dismissed.

- b. I determined the landlords are entitled to \$21.22 for the cost of a window blind. I prefer the landlord's evidence on this issue.
- c. I determined the landlords are entitled to \$16.76 for the cost of replacing the toilet seat.
- d. I dismissed the landlords' claim for \$49.95 for the cost of repairing a bathroom tap as this claim was not proven.
- e. The landlords claimed \$193.70 for the material cost of 5 gallons of paint. The landlords failed to prove the tenants caused damage to the rental unit necessitating the painting and failed to provide evidence of the material cost of the paint.
- f. The suite is an illegal suite. The tenants complained to the City and as a result an Inspector told the landlords they would have to dismantle. The landlords claim against the tenants for the cost of dismantling the suite including \$375 being the cost of 3 City Permits @\$125 each that was necessary, \$800 for the cost of a plumber, electrician and contractor and loss of future revenue. The landlord testified that there are over 2000 illegal suites in here community and that only reason for the dismantling of the suite was because of the complaints of the tenants. I do not accept the submission of the landlord. The landlords failed to follow the law and in my view the landlords do not have any claim against the tenants where

the landlords have breached the relevant bylaws. As a result I dismissed these claims.

- g. I determined the landlords are entitled to \$20 for the cost to replacing a towel bar in the bathroom.
- h. I determined the landlords are entitled to \$100 being a reasonable sum to repair and patch drywall damage.
- i. I determined the landlords are entitled to \$75 for the cost to repair and re-seed lawn that was damaged by the tenants' dogs.
- j. I determined the landlords are entitled to \$106.40 for the cost to change the locks when the tenants failed to return the keys.
- k. I dismissed the claim for the cost of registered mail as an arbitrator does not have the jurisdiction to make such an award as it relates to the cost of the litigation.
- l. I dismissed the claim for the loss of future rent as the tenants are not liable for the Municipality taking steps to require the landlord to dismantle the suite.
- m. I dismissed the landlords claim for the security deposit and pet damage deposit as the landlords' right to make that claim was extinguished because they did not conduct an inspection prior to the tenancy. Further, it has been dealt with as part of the tenants claim.

In summary I determined the landlords have established a claim against the tenants in the sum of \$339.38 plus the \$50 filing fee for a total of \$389.38.

### Conclusion

**The tenants have established a claim against the landlords in the sum of \$2287.50. The landlords have established a claim against the tenants in the sum of \$389.38. After setting off one claim against that of the other I ordered that the Landlords pay to the Tenants the sum of \$1898.12**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: May 06, 2013

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Residential Tenancy Branch