



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The original hearing was adjourned and reconvened on today's date to provide additional time for the parties and witnesses to give evidence. The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security and pet deposit?

### Background and Evidence

The parties agree that this tenancy started on June 15, 2012 for a fixed term of six months. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$800.00 per month and was due on the 15<sup>th</sup> of each month. The tenant paid a security deposit of \$400.00 and a pet deposit of \$400.00 at the start of the tenancy.

The landlord testifies that the tenant attended a move in condition inspection of the property with the landlord at the start of the tenancy. At the end of the tenancy the tenant refused to sign the move out report and instead put that he disagreed with the findings on the report. The landlord agrees that she had already completed the move out inspection report prior to the date agreed upon for the inspection to take place and had taken photos of the unit and yard. The landlord testifies that the tenant turned up with two others to do the move out inspection and the other people were asked to step away while the tenant and landlord discussed the inspection.

The landlord testifies that the tenant was allowed to keep one dog in the unit and signed the addendum to the tenancy agreement which states one dog is allowed. The tenant then brought two dogs to the unit one of which was going to be adopted. The landlord agreed the tenant could keep both dogs in the unit while one of them was adopted. However, this did not happen. The landlord testifies that the tenant's dogs caused damage to the landlord's yard by urinating plants and lying on the plants causing damage. The landlord has provided some photographic evidence showing some dead areas of plants in the garden.

The landlord testifies that the tenant's dogs also had access to the landlord's deck and the landlord found one of her shoes and a chair cushion had been urinated on. The landlord testifies that her own dog does not urinate on the furniture. The landlord agrees that she did not see the tenant's dogs do this damage. The landlord testifies that she asked the tenant to build a dog run at the side of the house which the tenant did using scraps of materials. The landlord later built a different dog run for the tenant's dogs in the back yard.

The landlord testifies that the unit came furnished. Part of this furniture was a leather couch. This was in gentle used condition at the start of the tenancy and is indicated as such on the move in inspection report. At the end of the tenancy the landlord found this couch to have many scratches caused by the tenant's dogs. The landlord has provided photographic evidence showing the couch with a blanket covering it at the start of the tenancy and photographs of the scratches on the couch at the end of the tenancy.

The landlord testifies that the cost of replacing the plants in the yard, the shoe, the cushion and the damage to the couch far exceeds the tenant's pet deposit. However, the landlord requests to just keep the pet deposit of \$400.00 to cover this damage.

The landlord testifies that the tenant shared the unit with another tenant and that tenant's nine year old son for a month. The tenants had their own areas and shared the kitchen, bathroom and laundry room. The landlord testifies that at the end of the tenancy the tenant said he had a cleaning person clean the unit however the landlord testifies that she found the unit to be in an unclean condition. The landlord has provided photographic evidence of the dirty entrance door, the kitchen cupboard doors were dirty; and a shelf was left dirty. The dishwasher had not been cleaned; the oven drawer was dirty and there was a dirty black mark on the linoleum floor under the stove where it appeared that oven cleaner had leaked out of the oven.

The landlord testifies that there were some holes in a wall which were not repaired; the brand new counter top was cut and scratched beyond normal wear and tear, and the brand new sink bowl was scratched along with the sink edge. The landlord has provided photographs of these items. The landlord has provided a copy of the move in and move out inspection reports. The move in report lists items as new at move in. This includes the counter top, stove and sink.

The landlord testifies that the tenant also caused damage to the bathroom. The tenants did not use a shower curtain for three weeks. The other tenant informed the landlord that her son had stepped on the shower curtain and had pulled it down. The same day

the landlord was informed of this the landlord put the shower curtain back up. When the landlord was doing laundry one day she went into the tenant's bathroom and found the mat was soaking wet and the shower curtain was not up again. The water had soaked under the linoleum and had caused damage to the wood under the tiles which then caused some of the tiles to crack. The landlord testifies that she asked the tenant why he had not put the shower curtain back up and the tenant responded that he didn't. The landlord testifies that the shower curtain was off for three weeks and this caused water damage to the floor and shower. The grout had to be removed, the tiles were then removed the caulking removed and then these items had to be replaced. The lino had to be lifted and dried out underneath and then put back and re-caulked.

The landlord has provided a receipt for the bathroom repairs. The landlord testifies that these repairs along with the cleaning exceed the security deposit the landlord testifies that she incurred costs of \$1,500.00. However the landlord requests to just keep the security deposit of \$400.00. The landlord also seeks to recover the \$50.00 filing fee from then tenant.

The landlord calls her witness who is the boyfriend of the landlord. The witness testifies that there had been a lot of water on the bathroom floor that lifted the lino and baseboards. Also the step into the shower, which was made of wood, had buckled which cracked the tiles. The witness testifies that he repaired the holes in the wall. The witness testifies that he saw many areas of the unit left dirty when the tenant vacated and there was also damage to the lino floor under the stove from oven cleaner. There was an extensive amount of dog hair on the deck and in the air conditioner which all had to be cleaned. The counter top had some damage on it and looked as if someone had been cutting directly onto it, the sink was all scrapped but the carpet looked good.

The landlord asks the witness to describe what happened at the move out inspection. The witness testifies that he was there with the landlord and the tenant came with two other people. It was all a bit confrontational. The landlord was trying to give the tenant

some paperwork to sign but the tenant refused to take it. The landlord then asked everyone else to leave while the landlord dealt just with the tenant.

The witness testifies that he took garbage to the dump from the unit. The landlord asks the witness to describe the tenants dog run. The witness replies that the dog run built by the tenant was cobbled together from odd bits of wood and stuff. The witness describes the yard and testifies that he did not see the tenant's dogs urinating or rolling on the landlords plants but he does know that the landlord's dog does not do this.

The tenant cross examines the witness and asks the witness that given the condition of the bathroom what kind of time frame would there be for this damage to occur. The witness replies that if you have standing water that seeps into wood the wood will swell in a few days. The tenant asks the witness that in his estimation how many showers would it have taken for this to happen. The witness replies very few showers.

The tenant cross examines the landlord and asks if the unit was shared for a month during the tenancy. The landlord replies that yes the kitchen, bathroom and laundry room were common areas. The tenant asks that during the month the damage occurred in the bathroom was the unit shared. The landlord replies that all three occupants were showering without the curtain but it was the other tenant's son who had stepped on the curtain and pulled it down. It was replaced by the landlord and then must have been pulled down again. The tenant asks the landlord why the landlord is blaming him for this damage. The landlord replies that he should have put the shower curtain back up or informed the landlord.

The tenant testifies that at the final inspection the tenant was not allowed to walk through the unit and was told that the landlord's pictures were all he could see of the suite. The tenant testifies that he was made to stay in the kitchen and the landlord had already filed in the inspection report. The tenant did not agree with anything on the report as he was not allowed to be present.

The tenant testifies that the other tenant was still living there and took responsibility to clean the oven, stove and dishwasher. The tenant refers to his pictures which show that tenant's food still in the fridge. The tenant testifies that he had a cleaner come in who was going to clean the stove, fridge and bathroom however the other tenant had already cleaned the stove. The stove was not on wheels and could not be moved to clean behind it. The tenant refers to his pictures showing the areas being cleaned and that the suite was left in a pristine condition which was better than the condition it was in at the start of the tenancy.

The tenant agrees that there were two holes in the bedroom wall but testifies that he is not aware of any other holes in the walls. The two holes in the bedroom wall were repaired by the tenant. Then tenant refers to his pictures and testifies that these show the racks still on the wall, the landlord had given the tenant permission to put them up and asked the tenant to leave them at the end of his tenancy. The tenant testifies that there were marks on the counter top and food in the fridge at the start of the tenancy along with 31 empty bottles. The tenant testifies he put all that food in a hamper and left it at the landlord's door. The landlord had informed the tenant that there had been a 70 year old man living in the unit before the tenant moved in. The unit was not clean and the tenant had to clean it at the start of the tenancy.

The tenant testifies that the other tenant sharing the unit was a medical doctor from Hong Kong and her style of living was not western her way of cooking was different and she did her dishes in the sink. The tenant testifies that the landlord's dog had full access to the unit and the room with the couch. The tenant put a blanket on the couch and disputes that his dogs caused scratching to the couch as they are not allowed on the furniture. The tenant testifies that his dogs were in either the pet run or the garage when the tenant was not at home.

The tenant disputes the landlord's claim for damage to her shoes, furniture and plants. The tenant testifies that his pictures show other dogs that had a free run of the yard and house. The tenant testifies that on occasion the tenant had come home and found his

dogs had been let out of the dog run and were in the yard, but not with his consent or knowledge.

The tenant disputes the landlord's claim for damage to the bathroom. The tenant testifies that there was damage to the ceiling in the laundry room which shares a wall with this bathroom. There is also a closet wall which shares another wall with the bathroom. The tenant refers to his pictures which show recent repairs in these areas. The tenant testifies that there had been two floods in the basement during the tenancy which left water all over the floor and the bathroom is sandwiched between the closet and laundry room would also have suffered from water damage. The tenant testifies that the landlord had three weeks prior knowledge that the shower curtain had come down before doing anything about it, and did not have direct contact with the tenant concerning this.

The tenant calls his witness. The witness testifies that she was present with the tenant and the tenant's sister when they went to the unit to witness the walkthrough. They were in the kitchen area and the landlord came in and wanted the tenant to sign a document that the witness thinks was a tenancy agreement. The tenant wanted to look at it before he signed it but the landlord would not let him. The tenant's sister asked for the walkthrough to begin but the landlord got annoyed and asked them all to move out. The witness testifies that she had had a chance to have a look around the unit and it appeared to be clean and the carpets had been shampooed. The witness testifies that she did observe someone's belongings in the garage. The witness testifies that the landlord did not do an inspection with the tenant while the witness was there.

The landlord cross examines the witness and asks the witness if the witness saw the tenant do a walkthrough. The witness responds no, you all stood in the kitchen and kept asking the tenant to sign something.

The landlord testifies that the document she was asking the tenant to sign was a copy of the tenancy agreement that the landlord wanted the tenant to sign to say he had

received it. The tenant refused to read the inspection report and signed to say he did not agree with it. The landlord testifies that she did the inspection as the tenant refused to do it.

The tenant calls his witness SM. The witness testifies that she is the sister of the tenant and had hired a cleaning company to clean the unit at the end of the tenancy. A copy of the invoice for this has been provided in the tenant's evidence. This cleaner cleaned the bathroom, fridge and bedroom while the witness and the tenant cleaned all other areas of the unit with the exception of the stove and dishwasher which the other tenant was going to clean. The witness testifies that the unit was left in an immaculate condition far better than when the tenant moved in, as at that time they had to clean and remove food from the fridge and an amount of empty bottles left by the previous tenant. The witness testifies that there was no garbage left in the unit at the end of the tenancy.

The witness testifies that at the start of the tenancy she went with the tenant and sat with the landlord. The landlord knew the tenant had two little dogs and had no problem with this. The witness testifies that these dogs could not do the damage claimed to the landlord's yard and are well behaved dogs. The witness testifies that around the time the tenancy ended there was a bad storm which was documented on the news as having caused damage to yards and planting.

The witness testifies that during the tenancy the unit was also occupied by an elderly lady and then this other tenant and her son. All the tenants shared the bathroom and kitchen facilities. The witness testifies that the leather couch already had some scratches on it when the tenant moved into the unit and the tenants dogs were not allowed to go on the furniture and were in their run or a caret when the tenant was not there.

The landlord cross examines this witness and asks the witness if she has seen the landlord's photos showing that the unit needed to be cleaned for seven hours. The witness replies that she has seen them but testifies that the unit was left immaculate



and it was better than when the tenant moved in. The landlord asks the witness if the witness saw the tenant's dogs causing damage to the yard. The witness responds that the tenant is particular with his dogs and they are kept in a run or the garage. The witness testifies that she has seen other dogs at the unit and on the landlord's deck and the landlord's boyfriend also has a dog.

The tenant calls his witness LS. The witness testifies that he cleaned the carpets for the tenant at the end of the tenancy. The tenant also asked the witness for some help filling in some holes in the bedroom. The witness testifies that he provided all the materials for the tenant to do this work but did not see the end result. The witness testifies that there was no garbage left at the unit or the witness would have had trouble cleaning the carpets.

The landlord cross examines the witness and asks the witness to look at the landlord second picture showing a set of holes in a wall. The witness responds that this picture may indicate that the tenant did not fill the holes. The tenant asks his witness how many holes he saw in the bedroom wall. The witness replies that there were two.

The tenant testifies that the landlord's picture is clearly of a different wall. The landlord responds that this is a picture of the wall in the hallway. The landlord disputes ever giving the tenant permission to put up shelves on the wall and did not ask the tenant to leave any. The tenant responds that he did put up racks in the bathroom and kitchen and the landlord did ask him to leave them. The tenant testifies that he does not recall what was put up in the hallway.

The tenant recalls his first witness DB. The witness testifies that she was simply there as an observer for the move out inspection. However the landlord cancelled the first appointment and when they went back a few days later the landlord did not do a walkthrough with the tenant and the tenant did not agree with the landlord's findings.

The landlord testifies that there had been a senior lady living in the unit with the tenant for a few weeks. The landlord testifies that the damage costs came to over \$1,500.00 but the landlord is only seeking to recover \$800.00 from this tenant. The fault for the damage in the bathroom was a fault of both sets of tenants.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. I refer the parties to s. 35 of the Act which states:

**35** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit, or*

*(b) on another mutually agreed day.*

*(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

*(3) The landlord must complete a condition inspection report in accordance with the regulations.*

*(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

*(5) The landlord may make the inspection and complete and sign the report without the tenant if*

*(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*

*(b) the tenant has abandoned the rental unit.*

From the evidence provided I find that the landlord agrees she had already completed the inspection report without the tenant in attendance in contrary to s. 35 of the Act. I further find the landlord would not repeat the inspection with the tenant and

consequently the tenant signed to say he did not agree with the inspection report as he had not be given the opportunity to participate in the inspection. When the landlord has failed to comply with s. 35 of the *Act*, s 36(2) of the *Act* states that the landlord's right to file a claim against the security and pet deposit is extinguished. I therefore find from the evidence before me that the landlord has extinguished her right to file a claim to keep the security and pet deposit for damages and as such the landlord should have returned the security and pet deposit to the tenant within 15 days of either the end of the tenancy or the date the landlord received the tenants forwarding address in writing. As the landlord did not return either of the deposits then the tenant is entitled to recover double the security and pet deposit to an amount of **\$1,600.00** pursuant to s.38(6)(b) of the *Act*.

However the landlord is entitled to file a claim for damage to the unit, site or property and I am prepared to deal with that claim separately. The landlord has claimed that the tenants dogs caused damage to the plants and yard, and urinated on the landlords shoe and a cushion left out on the deck. The tenant and witnesses for the tenant testify that there were other dogs on the property including the landlords own dog and that of the landlord's boyfriend. The burden of proof falls to the person making the claim. The tenant disputes the landlord's claim and when one person's testimony and evidence contradicts that of the other then the landlord would be required to provide corroborating evidence to meet the burden of proof. The landlord has provided no corroborating evidence to support her claim in this matter that the damage to the yard, shoe and cushion was caused either by the tenant's dogs and consequently the landlords claim is dismissed.

In response to the landlord's claim that the tenant's dogs caused damage to the couch; the move in inspection report describes the couch as gently used. The landlord's photos show a large amount of scratches on the couch. However upon closer examination of the photos of the couch at the start of the tenancy there do appear to be an amount of scratches already on the couch. Consequently, without further corroborating evidence to show the tenant or the tenant's dogs are responsible for extensively scratching the couch I must dismiss this section of the landlords claim.

The landlord has claimed that the tenant failed to leave the rental unit clean at the end of the tenancy. The tenant contradicts this as does the witnesses for the tenant. Each party has provided some photographic evidence showing areas of the unit. The tenant's pictures show the unit clean, the landlord's pictures show some areas unclean. The tenant argues that the other tenant was responsible for cleaning the stove and dishwasher and the tenant and his witness cleaned the unit along with a professional cleaner for which the tenant has provided corroborating evidence.

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenant for the extra cleaning. In this case it is my decision that the landlord has not shown that the tenant failed to meet the "reasonable" standard of cleanliness required. Consequently this section of the landlord's claim is dismissed.

In response to the landlord's claim for damage to the bathroom; as both tenants had separate tenancy agreements and the bathroom was a common area then a landlord cannot hold one tenant responsible for damage that could have been caused equally by the other tenant. However, in this matter I have considered the evidence before me and find that it is likely that the damage to the bathroom was caused by both sets of tenants using the shower without the shower curtain attached. While the responsibility for the shower curtain cannot be held by this tenant as it was agreed that the other tenants son first pulled it down; this tenant does have an equal responsibility to inform the landlord that there was no shower curtain in place rather than to simply continue to use the shower without a curtain for three weeks. I find therefore that on a balance of probability that the bathroom damage was caused by both sets of tenants using the shower without the curtain and not by a previous flood. The landlord has not put a monetary claim on this work other than a request to keep \$400.00 of the tenant's security deposit.

Therefore I find as the tenant is jointly responsible for this damage that the landlord is entitled to recover an amount of **\$200.00** for a portion of this repair work.

In response to the landlords claim for damage to the counter top and sink; I find there have been other tenants residing in the unit and sharing the kitchen during the course of the tenancy. These tenants were not co-tenants under the same tenancy agreement. Consequently in this matter the landlord has the burden of proof to show that this tenant was responsible for the damage to the counter top and sink and not one of the other tenants. It is not suffice to say that because this tenant lived there longer that he must have done the damage. Consequently, without any corroborating evidence to meet the burden of proof this section of the landlord's claim is dismissed.

In response to the landlord's claim for repairs to the holes in the wall; the landlord has shown that there were some holes left in the hallway wall. The tenant does not recall what was put on that wall however the holes remain in place and were not filled by the tenant at the end of the tenancy. I find therefore that the tenant is responsible for filling these holes and as such I find the landlord is entitled to recover a nominal sum of **\$50.00**.

As the landlord has been partially successful with this claim I find the landlord is entitled to **\$25.00** which is half the \$50.00 filing fee pursuant to s. 72(1) of the *Act*.

When the landlord has been partially successful with a claim for damages but has extinguished their right to deduct the cost of these from the security deposit; sections 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep the amount of **\$275.00** from the tenant's security and pet damage deposits award of \$1,600.00 to compensate the landlord for the damages and filing fee.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to retain the amount of **\$275.00** from the tenant's security deposit.

The tenant has been awarded double the security and pet deposit less the amount awarded to the landlord. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,325.00**. The order must be served on the landlord. Should the landlord fail to comply with the order the Order can be enforced 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: November 19, 2013

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Residential Tenancy Branch

