



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNDC, MNR, MNSD, O, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 44, 45, 67, and 72 of the *Residential Tenancy Act* (Act).

### Background and Evidence

The landlords submitted into evidence copies of the following two tenancy agreements:

- A copy of a tenancy agreement signed by the parties on August 11, 2013 for a 1 year fixed term tenancy beginning on August 1, 2013 for a monthly rent of \$1,000.00 due on the 31<sup>st</sup> of each month with a security deposit of \$500.00 paid;
- A copy of a tenancy agreement signed by the parties on June 7, 2014 for a 1 year fixed term tenancy beginning on August 1, 2014 for a monthly rent of \$1,000.00 due on the 31<sup>st</sup> of each month with a security deposit of \$500.00 paid.

Both tenancy agreements provided that a wood stove was provided with the rental unit and also stipulated an addendum with 16 additional terms including:

- Clause 7 that stated: "The Landlord will, at the start of the tenancy, provide dry firewood. The tenant will maintain a firewood supply throughout the tenancy. The Tenant is responsible for replacing an equal amount of firewood at the end of tenancy." [reproduced as written]
- Clause 15 that stated: "There will be a \$25.00 charge for any NSF cheques." [reproduced as written]

The parties agree the tenancy ended when the tenants vacated the rental unit in early May 2015.

The tenants submit that the female tenant had spoken to the landlord asking that they be allowed to end the tenancy earlier than the fixed term. The tenant submits that based on this agreement the tenants found a new residence and proceeded to make arrangements to move out of the rental unit.

The landlord submitted that she had agreed to allow the tenants the opportunity to end the tenancy earlier than the end of the fixed term as long as the tenants provided the landlord with a 1 month notice of their intention to end the tenancy. The landlord submitted the tenant never provided them with a one month notice.

The landlord submits the tenants had vacated the rental unit by May 6, 2015 and that the tenants refused to pay for rent for the month of May, 2015. The tenants submit that they advised the landlord they could retain the security deposit for the ½ month's rent for the month of May 2015. The landlord confirmed their daughter moved into the rental unit by May 15, 2015. The landlord seeks a full month's rent for the month of May 2015 from the tenant and \$25.00 for bank service fees.

The tenants submit they should not be responsible for the bank service fees because the tenancy agreement stipulated a \$25.00 for cheques returned as insufficient funds, however the tenant put a stop payment on the cheque and therefore the bank charges were not for a cheque declined due to insufficient funds.

The landlords also submitted into evidence a Condition Inspection Report recording the condition of the rental unit at the start and end of the tenancy agreement. The parties agree the female tenant did attend the move out inspection but left prior to the completion of the inspection of the entire rental unit.

The tenant signed the Condition Inspection Report noting that she did not agree with the condition as recorded in the Report. She also signed the document agreeing to a deduction of \$500.00 from the security deposit. The tenant submitted that she had written the landlord could withhold monies from the security deposit for the repair of wall damage in the master bedroom. I note that this particular statement is crossed out in the Report.

Based on the Condition Inspection Report and their photographic evidence the landlord seeks the following compensation for cleaning and repairs:

Description	Amount
Washing machine lid replacement	\$126.97
Blind cleaning (professional)	\$362.88
Cleaning supplies	\$32.46
Cleaning labour - 18.5 hrs @ \$25.00/hr	\$462.50
Carpet cleaning	\$136.49
Wall repairs – 4 hrs @ \$45.00/hr	\$180.00
Porch light replacement	\$9.98
<b>Total</b>	<b>\$1311.28</b>

In support of these claims the landlords have submitted into evidence receipts and invoices for work and supplies, including invoices outlining their own labour for work completed.

The tenant submits that there was no dent on the washing machine lid and that the landlords' photographs do not show any damage that would warrant a replacement lid.

In relation to the landlord's claim for cleaning of the blinds the tenant submits the blinds had not been professionally cleaned at the start of the tenancy and they had dusted them when they moved out of the rental unit.

The landlord's claim for cleaning included a written invoice for the female landlord's time for washing walls, ceilings; doors; windows (including inside tracks); light fixtures; kitchen cabinets; scrubbing the front and back decks with bleach; scrubbing and cleaning inside closets; replacing lightbulbs; cleaning toilets; and cleaning the stove.

The tenant submits she did not see a reason why the cleaning was necessary with the exception of the stove. She stated she had intended to clean the stove but had forgotten. The tenant believes the landlord's claim for cleaning and cleaning supplies to be excessive.

The tenant also believes the landlords' claim for 4 hours of repairs to the hole in the master bedroom wall is excessive both in terms of the length of time and the hourly rate charged. The tenant submits it should have taken 1 ½ hours and there was no need for a "red seal carpenter" rates to apply.

The tenant submits that since the carpets had not been cleaned prior to them moving into the rental unit they should not be required to have the carpets cleaned. In particular she states that because they had not been cleaned prior to the start of the tenancy the cleaning required at the end of their tenancy would include additional work to have the carpets cleaned.

The tenant acknowledges that she lost a screw for the porch light. The landlord seeks compensation for a replacement light because she could not obtain just a replacement screw.

In support of their position the tenants had submitted several photographs that they indicate represent the condition of the rental unit at the end of the tenancy.

The landlords also submitted that the tenants failed to leave sufficient firewood as per the terms of the tenancy agreement addendum. The landlord claims \$270.00 for the purchase of 1.5 cord of firewood. In support of this claim the landlord has submitted photographic evidence of the wood pile at the start of the tenancy and at the end of the tenancy and a quote for the purchase of replacement wood.

The tenants dispute the amount of wood that had been left for them at the start of the tenancy. The tenants also submit that even if they are responsible for the cost of some firewood the landlord is claiming the cost of 1.5 cords and has not credited the tenants with any amount of wood that was left by them at the end of the tenancy.

The landlords also claim \$42.73 for the costs of photocopies in preparation for this hearing and have submitted receipts for these copies. During the hearing I advised both parties that *Act* does not provide for compensation for the costs associated with a claim against the other party other than to recover the filing fee for their Application. I heard no evidence on this issue.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Residential Tenancy Policy Guideline #1 states the tenant must maintain “reasonable health, cleanliness and sanitary standards” throughout the rental unit and property. The tenant is generally responsible for paying for cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or their guests. The tenant is not responsible for reasonable wear and tear to the rental unit or for cleaning to bring the premises to a higher standard than that set out in the *Act*.

In regard to the landlords’ claim for general and carpet cleaning I also note that Guideline 1 stipulates:

1. Carpets – generally, at the end of tenancy the tenant will be held responsible for steam cleaning or shampooing carpets after a tenancy of one year;
2. Windows – the tenant is responsible for cleaning the inside windows and tracks during and at the end of the tenancy, including removing mould;
3. Appliances – at the end of the tenancy the tenant must clean the stove top; elements and oven; defrost and clean the refrigerator, wipe out the inside of the dishwasher;
4. Walls – the tenant is responsible for washing scuff marks, finger prints, etc off the walls unless the texture of the wall prohibited wiping and the tenant is responsible for all deliberate or negligent damage to the walls; and
5. Internal Window Coverings – the tenant is expected to leave the internal window coverings clean when they vacate the rental unit.

As such, from the evidence of both parties I find the tenants did not have the carpets cleaned at the end of their tenancy and as such they are responsible for the costs the landlords incurred as a result. I find the landlords’ claim of \$136.49 is responsible for these costs and does not represent any extra or deep cleaning because of the condition of the carpets prior to the start of the tenancy.

From the landlords’ photographic and documentary evidence I accept that the windows and tracks and the stove required cleaning as the tenants had failed to clean these items sufficiently.

However, as to the landlords claim for the washing of walls; cabinets; and decks I find the landlord has provided no evidence that the tenants had left these particular items in a condition that required additional cleaning. I find that the standard of reasonably clean had been met by the tenants. I dismiss this portion of the landlords' claim

As a result, I find the landlords' full claim of 18.5 hours of cleaning is excessive and that for the cleaning required 5 hours is a more reasonable amount of time. I find the charge of \$25.00 is a reasonable charge for cleaning. Based on this I find the landlords are entitled to \$125.00 for general cleaning. I also find the landlords' claim for cleaning supplies in the amount of \$32.46 is reasonable and appropriate for the cleaning required.

In regard to the blinds, I find, from the photographic evidence that the blinds did require cleaning at the end of the tenancy. However, I find that having the blinds "ultrasonically cleaned exceeds the tenant's obligation to leave them reasonably cleaned. I find that a simple wipe or dusting of the blinds would have met the standard outlined in the *Act* and Policy Guideline. As a result, I grant the landlord 3 hours of cleaning at \$25.00 for the dusting of blinds or a total of \$75.00.

As to the landlords' claim for repairs I find the parties agree that the wall repairs were necessary as a result of the tenancy. I find the landlords' claim of 4 hours at \$45.00 to be reasonable. I am not persuaded by the tenants' position that this claim was excessive or that the male tenant returned after they had moved out their belongings to attempt to make the repairs.

I accept the female tenant acknowledges that she lost the screw for the porch light. I also accept that the landlord was therefore required to replace this light and has presented a reasonable claim of \$9.98.

In regard to the landlords' claim I note that the landlord has recorded in the Condition Inspection Report that the washing machine lid was damaged. I also note that this was documented for a section of the rental unit that the female tenant did not complete with the landlord. However, I agree with the tenants' submission that the photographs of the washing machine do not show any damage to the lid or that it required replacement. I dismiss this portion of the landlord's claim.

I find, as per the tenancy agreement, the tenants were required to leave, at the end of the tenancy an amount of firewood equal to that which the landlords had provided at the start of the tenancy. From the photographic evidence submitted by the landlord I find the tenants failed to leave an equal amount of firewood. As a result, I find the landlords are entitled to compensation.

As to the amount of compensation I accept the tenants' position that since there was some wood left by the tenants the landlord's claim must be reduced by a value equivalent to this amount. Without a definitive measurement, I must rely on the comparison of the before and after photographs. From these I find the landlords' claim should be reduced by 25%. I therefore find the landlords are entitled to \$202.50.

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
  - i. Section 45 (tenant's notice);

- ii. Section 46 (landlord's notice: non-payment of rent);
- iii. Section 47 (landlord's notice: cause);
- iv. Section 48 (landlord's notice: end of employment);
- v. Section 49 (landlord's notice: landlord's use of property);
- vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
- vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As there is no evidence before me that the landlords were in breach of a material term of the tenancy I find the tenants could only end the tenancy in accordance with Section 44(1)(c) (the landlord and tenant agree in writing to end the tenancy) or Section 45(2) by providing the landlords with notice of their intent to end the tenancy at the end of the fixed term.

As there was no written mutual agreement to end the tenancy during the month of May or June 2015 I find the tenants are responsible for the payment of rent for the full month of May 2015 subject only to the landlords' obligations to mitigate their losses. As the landlords' family member moved into the rental unit May 15, 2015, the landlords' losses ended on May 14, 2015. Therefore, I find the landlord is entitled to the equivalent of 1 month's rent or \$500.00.

While I accept the tenancy agreement stipulated the landlord could charge for NSF fees only, I find that the landlord suffered a financial loss because the tenant cancelled a rent cheque for rent that was owed to the landlord on May 1, 2015 and that the tenant had no authority under the *Act* to withhold any amount of rent.

As the bank charges were incurred because the tenant put a stop payment on the cheque for May 2015 rent in violation of the tenants' obligation to pay rent when it was due I find the landlords are entitled to recover this loss from the tenants.

### Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,336.43** comprised of \$500.00 rent owed; \$25.00 bank fees; \$368.00 cleaning/general/carpet/blinds/supplies; \$189.98 repairs; \$202.50 firewood; and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$836.43**. This order must be served on the tenant. If the tenant fails to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: November 18, 2015

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Residential Tenancy Branch

