



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's three agents, CA, LG and PG (collectively "landlord") and the two tenants and their advocate JB (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's three agents confirmed that they had authority to speak on behalf of the landlord company named in this application at this hearing. The two tenants confirmed that their advocate had authority to speak on their behalf at this hearing. This hearing lasted approximately 58 minutes in order to allow both parties to fully present their submissions.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's Application.

Pursuant to section 64(3)(c) of the *Act*, I have amended the landlord's application to add the middle name of the male tenant in the style of cause on the front page of this decision. The male tenant has the same first and last name as his father, who also appeared at this hearing. I made the above amendment in order to differentiate the two

individuals. I find no prejudice to either party in doing so, as it also clarifies the decision and order being made against the male tenant rather than his father.

### Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this Application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, their agents and advocates, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2012 and ended on February 29, 2016. Monthly rent in the amount of \$1,630.00 was payable on the first day of each month. A security deposit of \$815.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing. A written forwarding address was provided by the tenants to the landlord on the move-out condition inspection report, completed on February 29, 2016. The landlord had written permission from the tenants on the move-out condition inspection report to keep \$12.00 for general cleaning and \$105.00 for carpet cleaning from the security deposit.

The landlord seeks a monetary order of \$1,695.52 from the tenants. The landlord seeks \$12.00 for general cleaning of the rental unit, \$105.00 for carpet cleaning, \$180.00 for drapes cleaning and \$1,398.52 for an elevator company servicing invoice.

### Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$12.00 for general cleaning in the rental unit and \$105.00 for carpet cleaning because the tenants agreed to pay this amount at the hearing and in the move-out condition inspection report.

I dismiss the landlord's claim of \$180.00 for drapes cleaning, without leave to reapply. The landlord produced an invoice for \$227.70 but claimed only \$180.00, stating that only the estimated cost would be claimed, as per the landlord's initial application. I accept the tenants' testimony that they carefully cleaned the drapes before vacating the rental unit. The landlord did not show why professional drapes' cleaning was required, rather than regular cleaning by the tenants. The landlord pointed to section 31 of the tenancy agreement, which states that the drapes must be professionally cleaned at the end of the tenancy if it was done at the beginning of the tenancy. However, the landlord failed to provide documentary proof to show that the drapes were professionally cleaned at the beginning of the tenancy.

I award the landlord \$1,258.67 of the \$1,398.52 sought for the elevator company servicing invoice. The landlord provided an invoice for the full cost of \$1,398.52 and confirmed that payment was made by the landlord on behalf of the tenants. The tenants agreed that their movers dropped the elevator key down the narrow elevator shaft gap. This caused the elevator for the rental building to go into a locked mode. The landlord had to call the designated elevator servicing company on a Saturday in order to immediately retrieve the key and unlock the elevator, in order for other rental building residents to use the elevator. The cost was increased due to the weekend call-out rate. I find that the tenants caused the landlord to incur the above cost and that the landlord proved parts 1, 2 and 3 of the above burden of proof test.

I reject the tenants' submissions that the landlord should have used any locksmith to deal with this issue, as the landlord provided testimony that it had a contract with the elevator company to use only them to service the elevator. Further, the tenants

provided no documentary evidence for this hearing, including information they said they received from a locksmith stating that he could do the work or the cost of such work, which the tenants said was \$82.50 plus taxes. However, I reduced the landlord's claim by 10% to account for a failure to fully mitigate its losses, as per part 4 of the above burned of proof test. I find that the landlord failed to carry a spare elevator key in order to deal with this type of incident quickly and cost-effectively. If it had, the elevator could have been unlocked quickly and the key could have been retrieved at a future elevator servicing date. The landlord indicated that it has now obtained a spare elevator key to deal with this type of incident and has attached a large FOB to it, in order to prevent it from falling and getting stuck in the narrow gap of the elevator shaft.

As the landlord was mainly successful in this Application, I find that it is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$815.00. No interest is payable of the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' entire security deposit of \$815.00 in partial satisfaction of the monetary award.

### Conclusion

I order the landlord to retain the tenants' security deposit of \$815.00 in partial satisfaction of the monetary award. I issue a monetary order in the landlord's favour in the amount of \$660.67 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, 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: July 22, 2016

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Residential Tenancy Branch