



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

On October 13, 2017, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the unit; to keep the security deposit and or pet damage deposit; and to recover the cost of the filing fee.

On April 30, 2018, the Tenants submitted an Application for Dispute Resolution under the Act, for a monetary order for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing for May 14, 2018. The Landlord and Tenant attended the hearing. The hearing was adjourned to allow the Tenants a full opportunity to respond to the Landlord’s evidence.

The hearing for the Landlord’s application continued on July 12, 2018, and both parties attended the hearing. At the hearing the Landlord testified that she had not received the Tenants’ documentary evidence because they had sent it to an address where she no longer lives. The hearing was adjourned to allow the Tenants to re-serve the evidence.

A teleconference hearing for the Tenants’ application was scheduled for November 1, 2018. After further discussion the parties agreed to join the disputes to be heard together on November 1, 2018, at 1:30 pm. The matters are related.

On November 1, 2018, the Landlord and Tenants attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit in partial or full satisfaction of the claims?
- Are the Tenants entitled to money owed or compensation for damage or loss?
- Are the Tenants entitled to double the amount of the security deposit?

### Background and Evidence

The parties testified that the tenancy commenced on June 1, 2014, as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,780.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$890.00.

The parties agreed that the tenancy ended on September 30, 2017.

The Landlord's application indicates that the Landlord is seeking \$890.00 for damage to the rental unit and \$890.00 for damage or loss. The Landlord provided a monetary order work sheet dated April 2018, in her documentary evidence in the amount of \$6,536.38; however, she never amended her application and did not properly serve the Tenants with the change of her monetary claim. The Landlord was informed that her claim is restricted to the amounts identified in the Application and Notice that was served to the Tenants. The Landlord stated that she wished to proceed with her application.

The Landlord testified that she found many problems in the rental unit after the Tenants moved out. She testified that the rental unit was damaged and left unclean.

The Landlord testified that after the Tenants left she asked them to return and clean again and to remove the child safety locks on the cupboards. The Landlord testified that the Tenants refused.

The Landlord testified that the microwave was left damaged and the balcony door handle was broken. She testified that the Tenants never reported a problem with these items to her during the tenancy. The Landlord provided photographs of a broken

balcony door handle and a microwave oven cover that had been taped on. The Landlord testified that she could not find a replacement part for the microwave.

The Landlord testified that the Tenants left child safety locks attached to doors and cabinets in the rental unit. The Landlord provided photographs of child locks on a door and kitchen cabinets.

The Landlord testified that she found the presence of mould in the rental unit. She testified that she contacted the building management company who investigated the mould issue and could not find an issue surrounding the unit. The Landlord had an environmental engineer complete an inspection of the unit. The Landlord provided a report dated September 18, 2017, indicating mold was found around the bathtub; around all windows; and on various areas of walls. The report indicates that the wall area behind the toilet and the wall area adjacent to the patio door need to be replaced.

The Landlord testified that she had to renovate the rental unit to remove drywall and she found that the back of the drywall was dry. She submitted that the mould was present on the outside of the drywall only. She testified that the mould issue was due to poor ventilation.

The Landlord testified that she had to replace the wood around the windows of the unit. She testified that the work to renovate cost her thousands of dollars. She testified that the Tenants never reported an issue to her over the three years they lived in the unit. The Landlord provided photographs of the affected window sills and the corner wall area that was behind a bookshelf.

The Landlord testified that condensation occurs in all houses and that occupants are required to ensure there is ventilation.

In reply, the Tenants testified that the presence of mould was not their fault. The Tenants testified that they reported a problem with condensation and mould to the Landlord back in February 2015, and May 2016. The Tenants testified that there was water accumulation on all the windows. The Tenants testified that the Landlord came to inspect the problem and told them to wipe the windows with a cloth and open the windows often.

The Tenants testified that the rental unit came furnished with a tall corner bookshelf in the Livingroom. The Tenants testified that they never noticed any mold behind the bookshelf.

The Tenants testified that they reported the presence of mould in the bathroom to the Landlord.

The Tenants testified that they reported the problem with condensation to the building manager who confirmed that condensation on the windows is a problem for the building.

The Tenants submitted that the strata report says that the building has high condensation. The Tenants submitted that poor air flow is not their fault. The Tenants provided a copy of an email they sent to the building manager in October 2016, regarding window condensation that overflows the frame; the sill, and sometimes spills on the wood flooring. The Tenants provided a copy of an email from the building manager that states that they have had other units with large amounts of condensation.

The Tenants provided a copy of a Notice to Residents document dated August 2016 that states that some window glass throughout the complex is showing signs of seal failure.

The Tenants testified that in August 2015, there was a water leak from the unit above which leaked into the rental unit and affected the kitchen and living room. The Tenants testified that the contractors entered the unit to complete repairs. The Tenants testified that the contractors cut the walls; ceiling; and baseboards.

The Tenants testified that they had the rental unit in a clean condition on September 24, 2017. They submitted that the contractor crews entered the rental unit and performed work on the walls after this date. The Tenants suggested that any dust could have come from the contractors.

The Tenants testified that they are not aware of any damage to the balcony door handle. The Tenants testified that the microwave was operating correctly.

The Tenants acknowledged that they left a few nail holes in the walls and left child safety locks on the cabinets.

The Landlord acknowledged that the building had re-piping work done in August and September.

### Tenants Application

The Tenants applied for the return of double the security deposit and for money owed or compensation for damage or loss.

The Tenants testified that they provided their forwarding address to the Landlord on September 30, 2017.

The Tenants testified that they did not agree with the issues the Landlord recorded in the condition inspection report at the end of the tenancy. The Tenants submitted that the Landlord failed to provide them with a copy of the report until they received it as part of her disclosure evidence.

The Tenants are seeking compensation of \$1,830.00 from the Landlord because the Landlord entered the rental unit for an inspection and had contractors enter the unit to perform repairs without giving proper notice.

The Tenants testified that they had moved all of their possessions and furniture out of the rental unit by September 3, 2017. They testified that the Landlord demanded they pay the full rent for September 2017. The Tenants provided a copy of a letter they gave the Landlord dated August 30, 2017, stating that they were moving out early due to the construction for re-piping of the rental unit. The Tenants letter to the Landlord states that the workers have a set of keys so they have free access to the unit.

The Tenants submitted that the Landlord should have to compensate them because she entered the unit when they had to pay the full amount of rent for the month.

In reply the Landlord testified that the Tenants told her they had moved out and would not be present for any of the construction. The Landlord testified that she had a person from the insurance company and an investigator come into the unit. She testified that she sent text messages to inform the Tenants of the entry.

The Tenants testified that the Landlord never notified them about the entry by the environmental investigator.

### Analysis

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

#### Landlords Claim for Compensation

With respect to the Landlord's claim for compensation for repairing issues related to mould and moisture, I find that the window glass in the rental unit had seal failures resulting in a large amount of condensation that regularly pooled and spilled onto the window sills. In addition, I find that the rental unit was affected by a water leak from a unit above. I find that there was a high amount of moisture in the unit from these sources.

I find that the unit came furnished with the bookshelf, and the Tenants were not aware of an issue with mold forming behind the bookshelf. I find that it is not reasonable to expect the Tenants would move the bookshelf to ensure proper air circulation.

I find that the Tenants reported the moisture issues to the Landlord. I find that due to the window seal failures, the Tenants are not responsible for the costs to repair the windows; sills or the walls behind the bookshelf.

I find that the Tenants are responsible to deal with the presence of moisture in the bathroom by taking proper steps for ventilation. I accept the Landlord's evidence that there was mould present in the bathroom. While the Landlord did not identify a specific amount for the cost to deal with the repair of the bathtub caulking and wall area behind

the toilet, I find it is reasonable to award the Landlord a nominal amount for these costs. I award the Landlord \$150.00 for this repair.

#### Landlords Claim for Damage and Cleaning.

The Landlords claim for compensation to recover costs to clean the rental unit is dismissed. The Tenants testified that they cleaned the unit. I find that the rental unit was undergoing repairs and that there were work crews coming in and out of the unit after the Tenants had moved out and prior to the inspection.

#### Balcony Door Handle

While I accept that the balcony door handle is damaged, there is insufficient evidence that the damage was caused from intentional neglect by the Tenants. The Tenants testified that they did not notice any damage. The damage could have been caused by normal wear and tear and I also find that there were other people in the unit who may have damaged the handle. The Landlords claim to be compensated for the door handle is dismissed.

#### Child Safety Locks

I find that the Tenants left child safety locks on the cupboards at the end of the tenancy. While the Landlord did not identify a specific amount for the cost to deal with the removal of the child locks, I find it is reasonable to award the Landlord a nominal amount for these costs. I award the Landlord \$100.00 for the cost of removal and any cleaning from the removal of the child locks.

#### Microwave Part

I find that the damage to the microwave cover is cosmetic and did not affect the operation of the microwave. There was no testimony provided on the age of the microwave. I find that the microwave did not need to be replaced and the Landlord did not pay for a replacement part. I find that the Landlord has not established that she has suffered a loss. The Landlord's claim for compensation is dismissed.

#### Tenants Application

#### Security Deposit

I find that the Tenants provided the Landlord with their forwarding address in writing on September 30, 2017.

The Landlord applied for dispute resolution and made a claim against the security deposit on October 13, 2018.

I find that the Landlord failed to provide the Tenants with a copy of the condition inspection report following the move out inspection. Section 35 of the Act requires the Landlord to complete a condition inspection report in accordance with the regulations. Section 18 of the Residential Tenancy Regulation requires that the Landlord must give the Tenant a copy of the signed condition inspection report within 15 days of receiving the Tenants' forwarding address in writing.

While I find that the Landlord applied to keep the security deposit within 15 days of the end of the tenancy, the Landlord, pursuant to section 36(2)(c) of the Act, extinguished the right to apply to keep the deposit when the Landlord failed to provide the Tenants a copy of the report within 15 days.

I find that because the Landlord made a claim against the deposit within 15 days of receiving the Tenants forwarding address, the amount of the deposit does not double as a penalty.

I find that the Landlord owes the Tenants the security deposit in the amount of \$890.00.

#### Other Compensation

While I accept that the Tenants chose to move out of the rental unit early and that the Landlord had contractors completing repairs to the unit and may have entered to conduct an environmental assessment, I find that the Tenants have not established that they suffered a loss. The Tenants had moved all their belongings out of the unit by September 3, 2017. The Tenants letter to the Landlord states that the workers have a set of keys so they have free access to the unit. I find that any entry by contractors or by the Landlord after September 3, 2018 did not disturb the Tenants or affect the privacy of the Tenants' use of the unit.

The Tenants' claim for compensation in the amount of \$1,830.00 is dismissed.

#### Awards

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As both parties were partially successful with their application, I decline to award the cost of the filing fees.

The Landlord has established a monetary claim in the amount of \$250.00.



The Tenants are awarded the return of the security deposit in the amount of \$890.00.

I authorize the Landlord to keep the amount of \$250.00 from the security deposit of \$890.00. I order the Landlord to return the balance of \$640.00 to the Tenants. The Tenants are granted a monetary order in the amount of \$640.00. For enforcement, the order must be served on the Landlord and may be enforced in the Provincial Court.

### Conclusion

I find that the Tenants owe the Landlord the amount of \$250.00 for damage to the rental unit.

I find that the Tenants are entitled to the return of the \$890.00 security deposit. After setting off the amounts awarded to the Landlord, the Tenants are granted a monetary order in the amount of \$640.00.

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, 2018

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Residential Tenancy Branch