



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC-T, OLC, RP, RR, FFT  
                              MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords. The tenant has applied for:

- an order cancelling a notice to end the tenancy for cause;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement;
- an order that the landlords make repairs to the rental unit or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlords for the cost of the application.

The landlords have applied for:

- a monetary order for damage to the rental unit or property;
- an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant.

Both landlords initially attended the hearing, however only one remained in attendance. The tenant also attended with an agent. The landlord who remained in attendance gave affirmed testimony, and the tenant and agent were permitted to question the landlord. Neither the tenant nor the tenant's agent testified, and both parties were given the opportunity to give submissions.

At the commencement of the hearing, the tenant withdrew the application in its entirety, advising that she vacated the rental unit on November 23, 2018.

The tenant indicated that she had not received photographs which were provided for this hearing by the landlords. The landlord responded that the application seeking damages and to keep the security deposit was made prior to the tenant moving out, so the initial hearing package including evidentiary material was sent to the tenant by registered mail at the address of the rental unit. The landlords had no forwarding address for the tenant, so could not provide the photographs. The tenant did not dispute that, and given that the Tenant's Application for Dispute Resolution contains the rental unit as the tenant's address, I accept the landlord's photographs as evidence for this hearing.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

#### Background and Evidence

The landlord testified that this fixed term tenancy began on February 1, 2018 and expired on July 31, 2018 thereafter reverting to a month-to-month tenancy which ultimately ended on November 23, 2018. Rent in the amount of \$1,085.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlords resided in the upper level of the house during the tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the parties had been to dispute resolution hearings on October 5, 2018, which was adjourned to November 29, 2018 due to lack of time to complete it. Another dispute resolution hearing was scheduled for November 16, 2018. The landlord was granted an Order of Possession due to extraordinary damage, however the landlords had also made a damage claim as an amendment, which was misplaced by the Residential Tenancy Branch, and the Arbitrator did not deal with it.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy. The move-out condition inspection was scheduled for November 22, 2018 at 1:00 p.m., but the tenant hadn't finished moving, and the parties agreed to do the inspection report the following day at 2:00 p.m. The tenant was still in the rental unit, and it was mostly empty, and the parties started the inspection, but the tenant

walked out within about 10 minutes. The landlord finished the inspection in the absence of the tenant. Copies of the reports have been provided as evidence for this hearing.

The landlords have provided a Monetary Order Worksheet setting out the following claims, totalling in excess of \$35,000.00:

- \$68.25 for an electrician;
- \$38,248.00 to replace floor, including removal of the old flooring;
- \$200.00 to replace vinyl blinds in the living room;
- \$40,992.00 for floor replacement (estimate);
- \$39,200.00 for floor replacement (another estimate).

During the tenancy, the tenant wanted an inspection due to an emergency repair, however there was no emergency. The tenant said she felt electricity flowing and said wiring was not correct. The landlord paid \$68.25 for the Invoice, and a copy has been provided which states: "Supply labor for emergency electrical testing of the suite subpanel and kitchen receptacle for corrosion & possible shock hazard. Went over areas of concern & all appears safe. No repairs required." It is dated September 13, 2018.

All floors are continuous except the entrance and bathroom, and the rental unit is about 800 square feet. The floors are about 1 ½ or 2 years old now, made of engineered hardwood laminate. Because it's the same floor as entire house, the landlords claim the cost for 2800 square feet including the rental unit and the landlords' suite. It's one unit of flooring and the landlords do not accept that they would have to have 2 different floorings in the upper and basement units. An Invoice from the landlord's own flooring company has been provided for this hearing.

The landlord also testified that during the tenancy the tenant notified the landlords of flooding in the bathroom. The landlords mopped the floor and sprayed it with chlorine, and vacuumed the residue using a shop vac. The water was contained within the shower itself, and the tenant scooped up water with a pail.

The vinyl blinds in the living room were broken at the end of the tenancy, and the landlords have provided an advertisement from Home Depot showing the replacement cost is \$83.42, and there are 3 sets that are broken. The blinds are 1 ½ or 2 years old.

The other 2 flooring items in the Monetary Order Worksheet are estimates from other flooring companies, however neither of the merchants viewed the rental unit.

The landlords have not re-rented the rental unit and do not intend to. Photographs have also been provided for this hearing, which the landlord testified were taken during the move-out condition inspection. The tenant has not provided the landlord with a forwarding

address in writing and has not served the landlords with an Application for Dispute Resolution claiming the security deposit.

**Submissions of the Landlord:**

The landlords did not have the opportunity to provide further photographic evidence of the flooring damage. There was no damage at the point of entry to the bathroom, and therefore the flooding in the shower could not have been the cause of the damage to the floor. The tenant admitted flushing Q-Tips and the tenant was the only person residing in the rental unit.

**Submissions of the Tenant's Agent:**

The landlords have disregarded the flood and sewer back-up as the cause of the damaged flooring, but does not know what caused it. The landlord then changed his story to that of the tenant causing the flood. The landlord is dis-genuine, and is holding the tenant responsible unreasonably.

Analysis

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The *Act* also states that I may make monetary orders to compensate a landlord for damages caused to the rental unit or other areas to which the tenant has access. There is no evidence before me that the tenant had any access to the landlord's upper unit, or any portion of the rental home other than the tenant's rental unit, which is the basement suite. I have reviewed the estimates, including from the landlord's own company, and note that none of them indicate the cost of the rental unit alone. Therefore, I find that the landlord has failed to establish element 3 in the test for damages with respect to flooring.

I have also reviewed the electrician bill, and I am satisfied that the tenant caused the landlord to incur the cost for no apparent reason. I find that the landlord has established the \$68.25 claim for the electrician.

I have also reviewed the move-in and move-out condition inspection reports, and the blinds in the living room were not noted as damaged at the beginning of the tenancy and were broken and dirty at the end of the tenancy. The landlords have provided an estimate of \$83.00 for each set of blinds, and there are 3. However, the landlord testified that the blinds in the rental unit during the tenancy were 1 inch vinyl, and the landlords have provided an advertisement for 2.5-inch cordless Fauxwood blinds, which I find is not a fair replacement at the cost of the tenant, and I dismiss that portion of the landlords' claim.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep \$168.25 of the \$500.00 security deposit held in trust.

The *Residential Tenancy Act* states that a landlord must return any portion of the security deposit to the tenant that the landlord is required by law to return within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the tenant does not provide the landlord with a forwarding address in writing within 1 year of the date the tenancy ends, the landlord may keep it.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep \$168.25 of the security deposit.

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: December 28, 2018

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Residential Tenancy Branch