



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

**Dispute Codes:** MND, MNSD, FF

This hearing was convened upon the joint applications of the landlords and the tenants.

The landlords are seeking:

1. A monetary order for damage;
2. An order to be allowed to retain the security deposit; and
3. Recovery of the filing fees.

The landlord claims \$3,490.00 plus the filing fee.

The tenants seek:

1. Return of the security deposit; and
2. Recovery of the filing fees.

The tenants claim \$1,700.00 plus the filing fee.

Both parties appeared at the hearing and gave evidence under oath.

### **Background Summary**

The claims of the landlord and the tenants were advanced, amongst others, in previous joint applications numbered 721763 and 722765 which were heard together on August 18 and September 16, 2008. On that date the parties agreed to enter into a mutual agreement to end the tenancy. The landlord received an Order of Possession effective October 19, 2008 and the Dispute Resolution Officer reserved his decision on the balance of the claims, for monetary orders for damage, compensation for loss, return of the security deposit, recovery of the filing fees and various other relief.

On October 29, 2008 the Dispute Resolution Officer issued his reserved decision finding:

As each party has suffered financial losses which are ultimately indistinguishable, I find there is a corresponding offset of costs and losses attributable between the parties. Therefore, I find the best recourse is to grant neither party a monetary award and to dismiss their claims against each other.

### **Analysis and Findings**

In the previous claims the landlord and the tenants made applications for substantially the same items they seek to claim in these new applications. While some of the claims may be worded slightly differently or may be slightly different in nature they are substantially the same and still border on the “dump truck style litigation” described in the previous decision. Because they are substantially the same claims, the landlord’s and the tenant’s current applications are dismissed *res judicata* meaning the matters have already been decided and cannot be reheard.

With respect to the claim now made regarding the security deposit I find that while the landlord’s claim to retain it was dismissed in the last application, no specific order was made regarding the disposition of the deposit. I will therefore deal with the tenants’ current application for its return.

Because the landlord’s monetary claims are dismissed I direct the landlord to return the deposit to the tenants with interest. With respect to the amount to be returned I find that a letter submitted in evidence shows that the tenant’s told the landlord their forwarding address but, the landlord did not receive it in writing until an undated letter was sent. With respect to that letter, I accept the landlord’s testimony that the letter was post-marked November 21, 2008. Therefore, while the landlord did not return the deposit he did make a claim to retain the deposit on November 26, 2008, that is within the 15 day time limit.

I therefore find that the landlord did comply with Section 38(1) and the tenants are therefore not entitled to recovery of double their deposit but they are entitled to the return of their deposit in the sum of \$850.00 plus interest from the date the deposit was paid.

With respect to the parties claims to recover the security deposit I will allow the tenant's to recover \$25.00 as they have had partial success.

|   |                 |
|---|-----------------|
| Security Deposit paid on January 22, 2008                               | \$850.00        |
| Interest on original amount from January 22, 2008 to date of this order | 12.02           |
| Filing Fees   | 25.00           |
| <b>TOTAL MONETARY AWARD</b>   | <b>\$887.02</b> |

The tenants have been provided with a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with the Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.