



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

For the tenants – MNSD, (FF)

For the landlord – MNR, MND, MNDC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants have requested the return of double their security deposit and have asked to amend their application to include the recovery of the filing fee. This amendment has been allowed. The landlord seeks a Monetary Order for loss of income, for damage to the rental unit, for compensation for loss of damage under the *Residential Tenancy Act (Act)* and to recover the filing fee.

Both parties served the other party by registered mail with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed and sworn evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Are the tenants entitled to receive double the security deposit back?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?
- Has the landlord established a monetary claim due to the loss of rent?

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- Has the landlord provided sufficient evidence that the damage is caused by actions or neglect of the tenants?
- Is the landlord entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the landlord entitled to a Monetary Order to recover the filing fee?

## Background and Evidence

This fixed term tenancy started on June 01, 2007 and ended on June 01, 2009. Rent for this unit was \$2,100.00 per month. The tenants paid a security deposit of \$900.00 on June 01, 2007. The landlord did not conduct a move in condition inspection with the tenants. When the tenants moved from the unit the landlord did not give them at least two opportunities to take part in a move out condition inspection and no formal inspection was done in line with the *Act* or regulations.

The tenants seek double the return of their security deposit. They sent the landlord their forwarding address in writing on June 29, 2009 and requested the return of their security deposit. The landlord did send the tenants a cheque for \$900.00 sometime after July 31, 2009.

The landlord claims the tenants caused damage to the rental unit. He claims the tenants did not clean the bath and shower creating black mould; some tiles in the kitchen were burnt under the microwave oven; the glass shower door was off its track and the towel rail was broken; there was damage to the walls and ceiling, the dining room table was damaged; the carpets were not cleaned at the end of the tenancy (installed new in October 2008); smoke detector had to be replaced; the knobs on the washer and dryer had been damaged; hundreds of cigarette butts had to be removed below the balcony; a snow mobile had to be removed from the underground storage; the door knob on the front door was damaged. The landlords' caretaker of the property claims the unit was left in a horrendous condition and could not be re-rented until October 01, 2009 after being redecorated and repairs made. The landlord is claiming a loss of revenue from the tenants for the month of June, 2009. The landlord also claims the tenants did not return the parking pass and they incurred a Strata fine for noise.

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The tenants dispute the landlords' claims. The tenants state that they had issues with the shower door and the knobs on the washer and dryer at the start of the tenancy and the landlord did not address these problems. The tenants claim the front door knob was damaged because it was not working properly and the landlord sent a locksmith to make the repair. The tenants claim that no one smokes in the unit and therefore the cigarette butts are not associated to their unit. The tenant's claim the carpets had been replaced during their tenancy and were not very old therefore they did not require cleaning.

The tenant's dispute the remainder of the landlords claim as without the evidence from a move in condition inspection the landlord is unable to show what condition the rental unit was in at the start of the tenancy. The tenant's further claim that a landlord is responsible for redecorating a rental unit at reasonable intervals throughout a tenancy and any damage to the walls and ceiling are normal wear and tear.

The tenants do admit that they had a noise complaint on one occasion when a roommate had some friends over and were excessively noisy.

## Analysis

I have carefully considered all the evidence before me, including the affirmed and sworn evidence of both parties and witness. In dealing with the tenant's application for the return of double their security deposit I find in favour of the tenants application. Section 38(1) of the *Act* states:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

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(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord received the tenants forwarding address in writing on June 29, 2009 and did not return the tenants security deposit within the allowable 15 days nor did the landlord make an application to keep the security deposit. However, the landlord did return \$900.00 to the tenants sometime after July 31, 2009. Therefore, I find pursuant to section 38(6)(b) of the Act that the tenants are entitled to recover double the security deposit plus any accrued interest (\$21.74) on the original amount.

In dealing with the landlords' application I find that the landlord has not carried out a move in or move out condition inspection. Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if they have left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. Due to this I find that the landlord has not provided sufficient evidence to support his application for damage to the rental unit, re-decoration of the unit, and replacement costs for the parking pass and therefore I dismiss these sections of his claim without leave to reapply.

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The landlord also claims carpet cleaning costs from the tenants. The Residential Tenancy Policy Guidelines #1 state that after a tenancy of one year a tenant is generally assumed to be responsible for cleaning the carpets of a rental unit they have occupied. Although the tenants argue that the carpets were new and did not require cleaning the landlords testimony and that of his witness states the carpets were approximately eight months old and have been stained by the tenants. Therefore, I uphold the landlords' application to recover the cost of cleaning the carpets to an amount of \$120.75.

I further find the tenants are responsible for the strata fine for a noise bylaw infraction of \$105.00. As the tenants are responsible for their guests while they are on the property they are therefore responsible for any fines placed on the landlords strata lot owners account due to their actions or the actions of their guests.

As to the landlords application for a loss of revenue for June, 2009 due to the condition the tenants are alleged to have left the rental unit in rendering it un-rentable for the month of June. I find that the landlord has not provided sufficient evidence that the damage was caused by the tenants as shown above and therefore he is unable to claim for a loss of revenue for June, 2009. Therefore, this section of the landlords' application is dismissed without leave to reapply.

As the tenants have been successful with their application they are entitled to recover the \$50.00 filing fee from the landlord. As the landlord has been partially successful with his application I find he is entitled to recover half his filing fee from the tenants.

I find the tenants are entitled to recover the following amounts:

Double the security deposit	\$1,800.00
Filing fee	\$50.00
Less amount already returned	(-\$900.00)
Total amount due to the tenants	\$971.74

I find the landlords are entitled to recover the following amounts:



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Carpet cleaning	\$120.75
Half the filing fee	\$50.00
Total amount due to the landlord	\$275.75

As both parties are entitled to a monetary Order I have offset the landlords Monetary Order against that of the tenants. Therefore the tenants Monetary Order has been reduced accordingly to **\$695.99**.

## Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$695.99**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to recover the amount of **\$275.75** from the tenants and this amount has been offset against the tenant's monetary claim.

The remainder of the landlords' application is dismissed without leave to reapply.

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 20, 2009.

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Dispute Resolution Officer