



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking compensation under the Act or tenancy agreement, and the return of double their security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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(s) to be Decided

Are the Tenants entitled to monetary compensation from the Landlord?

### Background and Evidence

On or about November 11, 2009, the Tenants agreed to rent the Landlord's basement suite. The Landlord used a homemade, simple tenancy agreement. The Tenants paid a security deposit of \$488.00 to the Landlord and \$975.00 for December 2009 rent.

The Tenants allege the tenancy was to begin on December 1, 2009.

The Tenants wanted to paint the subject rental unit before they moved in. The Landlord allowed this, although she told the Tenants they would have to pay for the paint and materials themselves.

The Tenants testified that when they arrived to paint the rental unit on November 22, 2009, they found the floor was flooded by water. The Tenants allege the Landlord had

two pumps going to remove the water. They say the laminate wood floor was buckled and there was a bad smell coming from the floor.

The Tenants wrote to the Landlord on November 24, 2009, explaining they wanted the floors repaired and proper drainage before they moved in. They explained that if the repairs were not done they would not move in and they would want their security deposit to be returned. They allege the Landlord said they could fix the unit floor themselves and the first month of rent would be free. They did not want to do these repairs themselves.

The Tenants were not satisfied that the Landlord had done the necessary repairs and did not move in. They wrote to the Landlord on December 8, 2009, and provided her with the forwarding address to return the security deposit to.

The Landlord alleges that the tenancy was to begin on November 15, 2009.

The Landlord claims there was no flood in the rental unit. She testified that all laminate floors do some separation and buckling. She testified that her son had installed the laminate floor. Later in the hearing she testified that her brother had installed the floor but did not use underlay, and this is why it buckled and separated. The Landlord further testified that the odour in the unit was from cooking smells from the upstairs kitchen. She testified she did not re-rent the unit, but rather her children and grandchildren had moved into the rental unit in January of 2010.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act by failing to provide a rental unit suitable for occupation as required under section 32, and by failing to claim against or return the security deposit within 15 days of the end of the tenancy or receipt of the Tenants forwarding address, in breach of section 38.

I prefer the evidence of the Tenants over that of the Landlord, as I find that the evidence of the Landlord had inconsistencies which brought into doubt its credibility. For example, the Landlord initially said her son had installed the floor and then changed this to her brother later in the hearing. Furthermore, the tenancy agreement (such as it is), states that rent must be paid on the first day of the month, not the 15<sup>th</sup> day of the month as asserted by the Landlord, and therefore, I find it is more likely the tenancy was to begin on December 1, 2009.

I find that the breaches of the Act by the Landlord have caused the Tenants to suffer a loss. Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I find that the Tenants have established a total monetary claim of **\$1,951.00** comprised of one month of rent in the amount of \$975.00 and double the security deposit (2 x \$488.00), as required by section 38. I grant and issue them an order in these terms.

This order is enforceable in the Provincial Court, Small Claims division.

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: June 07, 2010.

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Dispute Resolution Officer