



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenants from the start of the hearing and the landlord joined the hearing 15 minutes later.

### Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of their rent; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began on March 1, 2010 as a month to month tenancy for a monthly rent of \$875.00 due on the 1<sup>st</sup> of the month with a security deposit of \$437.50 and a pet damage deposit of \$437.50 paid. The tenants noted that even though they did not have a pet the landlord charged them a pet damage deposit.

The tenants provided into evidence a summary of events and 25 photographs of the interior of the rental unit. The photographs show walls with writing and scribbles, holes in walls, vertical blinds tracks hanging off the wall, mould on the walls in the dining room and bedroom and torn and unclean flooring.

The tenants submit that when they had looked at the rental unit the previous tenants were still in the unit with furniture and boxes against the walls and so they were not able to see the full extent of the condition of the rental unit. The testified that they did notice the "cat" smell but they thought it would leave when the previous tenants left with their cats.

Once they moved in the, the tenants stated, they found the house was infested with fleas and the stench of cat smell remained and that they informed the landlord who provided them with a can of flea spray. As per the instructions on the flea spray the

tenants left the rental unit for at least 24 hours and returned and the flea problem remained.

The tenants testified they had tried to contact the landlord several times but that the landlord did not answer any of their calls or return calls after messages were left for him. The tenants noted they gave the landlord notice to end the tenancy on March 8, 2010. They testified the landlord then gave them a cheque for return of the security deposit and pet damage deposit dated March 23, 2010.

The landlord testified that the tenants had completed a move in walk through prior to the end of February 2010 after the previous tenants had moved out early and that they did not indicate there were any problems.

Initially, the landlord testified that he could not prove that he had completed a move in condition inspection report. In response to that statement I asked the landlord three times if he had in fact completed a report and finally, after a series of non responsive answers, he acknowledged he had not completed a move in condition inspection report.

The landlord testified that he had gone back to the rental unit 3 or 4 times after the initial flea spraying but that the tenants had not complied with his requests to get things off the floor so the spray would work properly. The tenants indicated that they had no knowledge of whether or not the landlord entered the property during that period.

The landlord further testified that the tenants had entered into an agreement to and did pay rent for the month of March and they should not be able to get it back just because the female tenant did not like the rental unit that the male tenant had agreed to rent prior to the female tenant seeing the unit.

### Analysis

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find the tenants fulfilled their obligations under the *Act* and the tenancy agreement by paying rent on or before March 1, 2010 and as a result of that payment the landlord had an obligation under Section 32 of the *Act* to provide the tenants with a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While no evidence was provided that would indicate if the property was in contravention of any health, safety or housing standards required by law, the tenants have provided substantially testimony and photographic evidence showing the condition of the rental unit.

Based on that evidence and the more credible testimony provided by the tenants, I accept that the rental unit was not suitable for occupation, as is required under Section 32.

As a result, I find that the landlord failed to meet his obligations under the *Act* and tenancy agreement and as a result the tenants lost the entire value of their tenancy. I also find the tenants took all reasonable steps to mitigate any loss. In compensation for the loss, I find the landlord must return the amount of rent received for the month of March 2010.

In relation to the security deposit and pet damage deposit, as per the tenant's testimony, I find that matter has already been resolved between the parties themselves. As such, I dismiss this portion of the tenant's application.

### Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$925.00** comprised of \$875.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: August 26, 2010.

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Dispute Resolution Officer