



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MND MNSD FF  
                             MNSD FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a Monetary Order for damage to the unit, to keep all or part of the security and or pet deposit, and to recover the cost of the filing fee from the Tenants.

The Tenants filed seeking a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlords.

Service of the hearing documents by the Landlords to each Tenant was done in accordance with section 89 of the Act, sent via registered mail on July 16, 2010. The Canada Post tracking numbers were provided in the Landlords' evidence. Based on the written submissions of the Landlords, I find that each Tenant has been served with the Dispute Resolution Proceeding documents. The Tenants confirmed receipt of the Landlords' hearing documents.

Service of the hearing documents by the Tenants to each Landlord was done in accordance with section 89 of the Act, sent via registered mail on June 25, 2010. The Canada Post tracking numbers were provided in the Tenants' evidence. Based on the written submissions of the Tenants, I find that each Landlord has been served with the Dispute Resolution Proceeding documents. The Landlords confirmed receipt of the Tenants' hearing documents along with copies of the tenancy agreement.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlords confirmed they did not submit documentary evidence in support of their claim or in defense of the Tenants' claim.

Issues(s) to be Decided

1. Are the Landlords entitled to a Monetary Order?
2. Are the Tenants entitled to a Monetary Order?

Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement effective April 1, 2010. Rent was payable on the first of each month in the amount of \$1,100.00 and the Tenants paid a security deposit of \$550.00 on approximately March 27, 2010. No move-in inspection report or move-out inspection report was completed and signed by both parties. The parties came to a mutual agreement to end the tenancy as the Tenants were moving back to their family home after the recent passing of their mother.

The Landlords testified the rental unit was built in approximately 1940 and they have owned the single family house for the past three years. They occupied the rental unit while they completed a renovation of the property. They did not receive the Tenants' forward address until they received a copy of the Tenants' application for dispute resolution at the end of June 2010. They confirm they did not return the Tenants' security deposit and they are seeking damages as follows:

- \$639.00 for the counter top for which the Tenants used as a cutting board. The counter was new in approximately July 2009.
- \$30.00 for a light fixture in the den.
- \$0.00 for two broken crispers in the fridge which was new around July 2009.
- \$100.00 for the Landlords having to clean the kitchen and bathroom.
- \$0.00 for garbage left at the rental unit which was later picked up by the Tenants when they were told they were not getting their security deposit.
- The carpet smelled like urine for which the Landlords cleaned.

The Tenants testified the Landlords knew they were moving back to their parents place so they did not provide their forwarding address as the Landlord's knew it already. They requested the return of their security deposit as soon as their tenancy ended and were told by the Landlords that it would be returned to them by the 15<sup>th</sup> of the following month. It was mid June 2010 when the Landlords told the Tenants they would not be receiving their deposit back. The Tenants argued that they cleaned the house at the end of their tenancy and that their parents assisted in the clean up. The Landlords did not provide working lights in the kitchen or the den and the electrical wiring kept sparking.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

### **Landlord's Application**

Sections 24(2) and 36 (2) of the Act respectfully stipulate that if the move-in inspection report and the move-out inspection report requirements are not met then the right of the landlord to claim against a security deposit for damage to the residential property is extinguished.

Based on the aforementioned and in the absence of evidence to support the condition of the rental unit at the onset and at the end of this tenancy I hereby find the Landlords have provided insufficient evidence in support of their claim and I hereby dismiss their application.

As the Landlords have not been successful with their application I hereby decline to award recovery of their filing fee.

### **Tenant's Application**

The evidence supports the tenancy agreement ended either May 25<sup>th</sup> or May 27<sup>th</sup>, 2010. The Tenants did not provide the Landlords with their forwarding address in writing until the Landlords received a copy of the Tenants' application for dispute resolution which was sent registered mail to the Landlords on June 25, 2010. The Landlords are deemed to have received the hearing documents on June 30, 2010, five days after they

were mailed in accordance with section 90 of the Act. The Landlords filed their application for dispute resolution on July 12, 2010.

The Tenants have applied for the return of double their security deposit; however the tenant has not met the burden of proving that they gave the landlord(s) a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution. Based on the above, I find the Landlords were sufficiently served the Tenants' forwarding address in writing on June 30, 2010 in the form of their application for dispute resolution.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than July 15, 2010. The Landlords' application was filed July 12, 2010.

The Landlord made application for dispute resolution within the required 15 day time limit and are therefore not subject to section 38(6) for the return of double the deposit. Having dismissed the Landlords' claim above the Landlords are not entitled to retain the security deposit. The Tenants are hereby entitled to the return of their security deposit of \$550.00 plus interest of \$0.00.

The Tenant's have been partially successful with their application; therefore I award recovery of their filing fee of \$50.00.

### Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$600.00 (\$550.00 + \$50.00)**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court 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: November 08, 2010.

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Dispute Resolution Officer