



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      FF, MND, MNSD

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for double the \$400.00 security deposit and a request that the landlords bear the \$50.00 filing fee that they paid for their application for dispute resolution. Total amount requested \$850.00.

The landlord's application is a request for a monetary order for \$868.00, and a request that the tenants bear the \$50.00 filing fee that they paid for their application for dispute resolution. Total amount requested \$918.00.



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## Tenants application

### Background and Evidence

The tenants testified that:

- They vacated the rental unit by June 30, 2010, and the landlord was given a forwarding address in writing on July 12, 2010.
- To date the landlord has not returned any of their security deposit.

The tenants are therefore requesting an order for double the security deposit plus the filing fee.

The landlords testified that:

- They have never had to file a claim before and therefore were unaware of the 15 day time limit, and therefore they did not apply for dispute resolution to keep the security deposit even though they did get a forwarding address in writing on July 12, 2010.

### Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

This tenancy ended on June 30, 2010 and the landlord admits that they had a forwarding address in writing by July 12, 2010, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Is Therefore, the landlords must pay double the amount of the \$400.00 security deposit to the tenant, for a total of \$800.00.

I also allow the tenants claim for the \$50.00 filing fee.

## Landlords application

### Background and Evidence

The landlords testified that:

- When the tenants vacated they left extensive damage in the rental unit.
- Window blinds in the main bedroom were damaged had to be replaced.
- The number two-bedroom curtain rod was gone.
- The sliding door was stripped and the handle and lock were damaged.
- Smoke detectors in the living room had been disarmed and the wires were cut.
- The smoke detectors were badly discoloured from smoke.
- There were many nail holes in the living room walls that needed to be repaired; we counted a total of 28 nails.
- Kitchen cabinet door was broken and the hinges stripped and had to be repaired, he had viewed these cabinets two days prior and they were not damaged at that time yet when the tenants vacated they were damaged.
- Both bedrooms had to be repainted due to smoke damage in what was a no smoking rental unit.

The total cost to get the repairs done was \$868.00 and they are her requesting an order that the tenants be held liable for that cost plus the \$50 filing fee.

The tenants testified that:

- They did not cause any damage in the rental unit, and they left the unit in the same condition that it was in when they moved in.
- They did not damage any of the blinds or take a curtain rod.
- They did not damage the sliding door or sliding door handle, the door was installed incorrectly and any damage was the result of normal everyday use.
- They did not damage or cut the wires to any of the smoke detectors in the rental unit.

- They did not put 28 nails in the walls of the rental unit, although they did hang some pictures with approximately 9 small nails.
- The kitchen cabinets were not damaged when they moved out, and since the landlord was planning to move the wall on which the cabinets were hung they suspect the cabinets were damaged when the landlord did that renovation.
- They never smoked in the rental unit, as they had a small child and would not do so, however the previous tenant was a two pack a day cigarette smoker and any staining to the walls or smoke alarm existed when they moved in.

They believe the landlord has fabricated this whole claim, and they suspect the photos were taken well before they vacated; some of them even in the summer.

### Analysis

Both the landlord and the tenants testified that no move-in, or move-out inspection report was done for this tenancy.

The reason for move-in and move-out inspection reports is to avoid the very thing that happened during today's hearing. An inspection is supposed to be done at the beginning of the tenancy so that at the end of the tenancy when the move-out inspection is done a comparison can be made to show if there is any damages occurred during the tenancy.

Further, the other reason for the move-out inspection is so that there is a record of what condition the rental unit was in at the end of the tenancy.

In this case, since the landlord did not do either of the required inspections, I have no reports to compare and no record of the condition at the beginning of the tenancy or at the end of the tenancy. I therefore have no way of knowing whether the damages existed at the beginning of the tenancy, whether the damages existed at the end of the tenancy, or whether the damages occurred after the tenancy ended.



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Therefore when it comes to the landlords claim, it is basically the landlords word against that of the tenant's and the tenants denied causing any of the damages claimed by the landlord. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Therefore since in this claim it is just the landlords word against that of the tenants, it is my decision that the landlords have not met the burden of proving any of the claims against the tenants.

### Conclusion

I have allowed the tenants full claim of \$850.00, and I dismissed the landlords full claim without leave to reapply. I have therefore issued a monetary order in favour of the tenants in the amount of \$850.00.

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: December 23, 2010.

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Residential Tenancy Branch