



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the tenants to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement, to recover their security deposit and the filing fee for this application.

I am satisfied that the tenants served the landlord with the hearing documents in accordance with section 89 of the *Act*.

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 make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined

### Issue(s) to be Decided

- Are the tenants entitled to recover their security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both parties agree that this tenancy started on October 01, 2010. This was a fixed term tenancy for three months and was due to expire on December 31, 2010. The tenancy ended on October 04, 2010. Rent for this unit was agreed to be \$1,100.00 per month due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$550.00 on September 13, 2010.

The tenants testify that they moved into this rental unit on October 01, 2010 and did a walk through inspection with the landlord. They claim after they signed the move in inspection report the landlord told them that they could not use the washing machine to its full capacity as "gray water" would come back up the plughole in the bathtub. The tenants state the house had been left in a filthy condition by the previous tenants and the landlord assured them it would be clean before they took occupation. They claim the carpets were wet and sticky when they moved in, there were two broken windows and mould in the unit along with other problems which the landlords had not addressed.

The tenants testify that the landlord misrepresented the condition of the house to them and they decided they could not remain living there and asked the landlord to sign a mutual agreement to end the tenancy. The tenants state the landlords were not willing to sign this agreement so they told the landlords they would be moving out. The tenants testify that the female landlord told them they would be withholding their security deposit as they had not given notice to end the tenancy. They state the male landlord then came to see them and agreed that the condition of the house was not acceptable and he would return their security deposit and any other monies advanced for the rent.

The tenants testify they gave the landlord their forwarding address on October 12, 2010 and to date have not received their security deposit. The tenants state this is the only sum of money they are seeking from the landlord although they have applied for money owed or compensation for damage or loss they only seek the return of their security deposit.

The landlord testifies that after the old tenants had moved out they only had a few days to clean the house. He states they the house was professionally cleaned, the stove was replaced, the furnace was cleaned, the yard was cleared, a new hood fan was installed and Rota Rooter came to deal with the plumbing issue. The carpets were cleaned also but the carpet cleaner had to use a lot of water to get the carpets clean and these were still damp when the tenants moved in. The landlord testifies they withheld the tenant's security deposit as they had a fixed term lease and did not give proper notice to end the tenancy.

### Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

I find there is no dispute that the landlords did receive the tenants forwarding address in writing on October 12, 2010. As a result, the landlord had until October 27, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit and consequently the tenants have established their claim for the landlord to return the security deposit of **\$550.00**.

The tenants have also claimed a Monetary Order for money owed or compensation for damage or loss but have not claimed a monetary amount for this or provided any evidence to support this. Therefore, this section of their claim is dismissed.

As the tenants have been successful with their monetary claim I find they are entitled to recover their \$50.00 filing fee from the landlords pursuant to s. 72 (1) of the *Act*. A Monetary Order has been issued to the tenants for **\$600.00**.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$600.00. The order must be served on the respondents 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: April 05, 2011.

---

Residential Tenancy Branch