



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenant applied for return of his security deposit. The landlords applied for compensation for damage or loss under the Act, regulations or tenancy agreement, and authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions and to respond to the submissions of the other party.

At the commencement of the hearing I determined that both parties had submitted late evidence and the late evidence was excluded. The parties were provided the opportunity to provide verbal testimony with respect to the content of their late evidence.

### Issue(s) to be Decided

1. Are the landlords entitled to compensation for loss of rent and damages?
2. Should the security deposit be returned to the tenant or awarded to the landlords?

### Background and Evidence

The month-to-month tenancy commenced August 1, 2010 and ended January 31, 2011. The tenant was required to pay rent of \$1,275.00 on the 1<sup>st</sup> day of every month under the terms of the tenancy agreement. The tenant paid a \$637.50 security deposit. The parties participated in a walk-through at the beginning and end of the tenancy; however, no move-in or move-out inspection report was prepared by the landlords. The tenant returned one key to the landlords January 31, 2011 and kept one key so that he could return to do painting; however, the landlord came and retrieved the second key from the tenant on February 1, 2011.

It was undisputed that the tenant provided his forwarding address in his written notice to end tenancy. The tenant did not authorize the landlord to make any deductions from the security deposit; however, the tenant had verbally agreed he was responsible for repairing holes in a wall where a wine rack had been attached.

The landlords acknowledged receiving the tenant's forwarding address with his notice to end tenancy but explained that the notice was not received until the second week of January 2011. The landlords submitted that the post mark date on the envelope appears to read January 7 or 8, 2011. The landlords explained that they did not refund the security deposit or file an Application for Dispute Resolution sooner as they wanted to give the tenant a chance to repair the wall and they were trying to negotiate compensation for damages with the tenant. During those negotiates, the tenant had offered \$125.00 in compensation for the wall repairs but the landlords rejected this offer.

The parties were in disagreement as to whether the rent had been lowered to \$1,150.00 per month during the tenancy. In making their application, the landlords are claiming compensation for loss of rent in the amount of \$1,150.00 for February 2011 and \$500.00 for damage to the walls.

The landlords submitted that they advertised the unit for rent and for sale in latter portion of February 2011 and were successful in re-renting the unit effective April 15, 2011. Further, the tenant failed to sufficiently repair the large holes in one wall before the end of the tenancy and had painted over the patches with mismatched paint. The landlords paid \$375.00 for the painter on March 1, 2011 and had the carpets shampooed at a cost of \$149.00.

The tenant responded by stating that he mailed his notice to end tenancy on or about December 27, 2010 but dated the notice December 30, 2010. The tenant acknowledged a conversation with the landlord about the late notice to end tenancy but the tenant did not agree to pay for February 2011 rent. The tenant pointed to the landlord's failure to mitigate their loss of rent for February 2011. The tenant submitted that the painting of one wall should not have precluded the landlords from trying to re-rent the unit sooner.

The tenant disagreed with the landlord's claim to recover the entire painting bill from him. The tenant asserted he is not responsible for all of the painting done in the unit, only the wall with the holes from the wine rack. The tenant disagreed with paying for carpet cleaning as his tenancy was only six months in duration, the tenancy agreement does not require him to clean the carpets, and the tenant took his shoes off in the unit.

### Analysis

Having considered all of the evidence before me, I make the following findings with respect to each of the applications.

### **Tenant's application**

The landlords did not have the tenant's written consent for deductions from the security deposit. Accordingly, under section 38(1) of the Act, the landlords were required to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord fails to comply with the requirements of section 38(1) the landlord must pay the tenant double the security deposit. The requirement to pay double the security deposit is not discretionary and I must apply the Act as it is written.

The Act provides that a tenancy ends when a tenant vacates a rental unit. Having heard the parties participated in a move-out inspection on January 31, 2011 and the tenant returned one key to the landlord January 31, 2011 I accept that the tenant vacated the rental unit that day and the tenancy ended January 31, 2011. I am also satisfied the landlords were in possession of the tenant's forwarding address by way of his notice to end tenancy which the landlords acknowledge receiving in the second week of January 2011. Therefore, the later of these two dates is January 31, 2011 and the landlords were required to either repay the security deposit to the tenant or make an application for dispute resolution by February 15, 2011.

Since the landlords did neither of these two options the landlords did not comply with section 38(1) of the Act and the landlords must now repay the tenant double the security deposit pursuant to section 38(6) of the Act. Therefore, the tenant is entitled to an award of \$1,275.00.

### **Landlords' application**

Section 45 of the Act provides that a tenant may end a month-to-month tenancy by giving one full month of written notice to be effective on the day before the rent is due. In order to give sufficient notice to end the tenancy January 31, 2011 the landlords were entitled to receive the tenant's written notice no later than December 31, 2010.

When a document is mailed, section 90 of the Act deems that it is received five days later. Thus, the tenant should have put his notice in the mail by December 26, 2010 in order to reach the landlords by December 31, 2010.

The landlords submitted that they did not get the tenant's notice until the second week of January 2011. The tenant submitted that wrote the notice on December 27, 2010 and mailed it that day but had future dated the notice to read December 30, 2010. I find the

tenant's explanation about future dating his notice to be unlikely and I accept that the landlords' testimony that they received the tenant's notice in January 2011. Therefore, I find the tenant violated the Act and did not give sufficient notice to end his tenancy for January 31, 2011.

Where a party violates the Act and the other party suffers a loss as a result of that violation, the party that suffered a loss may seek compensation. However, in order to establish an entitlement to compensation, section 7 of the Act requires that the party making the claim must show that they did whatever was reasonable to minimize the loss.

As I have found above, the tenant did violate the Act by giving insufficient notice to end tenancy and I accept that according to the tenancy agreement, the landlords were entitled to receive rent in the amount of \$1,275.00 for February 2011. However, I find the landlords are responsible for the loss incurred for February 2011. Having received notice in early January 2011 I find the landlords did not make reasonable efforts to minimize the advertise the unit in order to avoid or minimize a loss for February 2011; thus, I find the tenant is not solely responsible for the loss of rent for February 2011.

Taking into account the tenant's late notice and the landlords' decision to not advertise until late February 2011 I order that both parties shall share equally in the loss of rent for February 2011. Therefore, I award the landlords \$637.50 for loss of rent.

I accept that the tenant is responsible for repairing the holes where the wine rack was installed. I accept the landlords paid \$375.00 for painting; however, I am unable to ascertain which rooms were painted given the evidence before me. Without a detailed receipt or other evidence before me, I find \$375.00 unreasonably high for painting one wall. Therefore, I award the landlords the amount the tenant agreed to pay which is \$125.00.

With respect to carpet cleaning, the Residential Tenancy Policy Guideline 1 provides that, generally, tenants are responsible for carpet cleaning if the tenancy is longer than one year or the tenant smoked or had pets in the unit. In this case the tenancy was less than one year, the landlord did not establish the carpets were unusually dirty, and I was not provided evidence to verify the landlords' expenditure. Therefore, I deny the landlord's claim for carpet cleaning.

### **Monetary Order and filing fee**

I award the filing fee based on the relative success of each of the applications. The tenant is awarded the entire filing fee he paid and the landlords are awarded \$30.00 towards the filing fee they paid.

Pursuant to section 72 of the Act, I have offset the amounts awarded to each of the parties and provide the tenant with a Monetary Order in the net amount calculated as follows:

Award to tenant – double security deposit	\$ 1,275.00
Award to tenant – filing fee	50.00
Less: award to landlords for loss of rent	(637.50)
award to landlords for painting	(125.00)
award to landlords for filing fee	<u>(30.00)</u>
Monetary Order for tenant	\$ 532.50

The tenant is provided a Monetary Order in the amount of \$532.50 to serve upon the landlords and enforce in Provincial Court (Small Claims) as necessary.

### Conclusion

The tenant was awarded double the security deposit. The landlords were partially successful in their claims for damage or loss. The amounts awarded to the parties have been offset and the tenant provided a Monetary Order in the net amount of \$532.50 to serve upon the landlords.

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 30, 2011.

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Residential Tenancy Branch