



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenants: as an application for the return of double the amount of the security deposit; and to recover the filing fee associated with this application.

By the landlord: as an application for a Monetary Order for damage to the unit: to keep the security deposit; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the tenants entitled to the return of double the amount of the security deposit?

Are the tenants entitled to recover the filing fee?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a one bedroom condominium. Pursuant to a written agreement, the tenancy started on April 1<sup>st</sup>, 2009 and ended February 27<sup>th</sup>, 2011. The rent was \$1200.00 and the tenants paid a security deposit of \$600.00.

In her documentary evidence, the landlord provided a copy of the condition inspection report, 10 photographs in support of the damages identified in the report, and estimates for the following repairs:

- Paint: \$ 400.00 + HST: \$ 448.00
- Repair cabinet doors: \$1415.00 + HST: \$1584.80
- Repair counter chip: \$ 175.00 + HST: \$ 196.00
- Blind cleaning: \$ 372.08
- Total: \$2600.88

The landlord did not dispute that she received the tenants' security deposit on February 27<sup>th</sup>, 2011 and did not dispute that she did not return the security deposit with 15 days. She stated that; she discovered other damages after the move-out inspection; that she offered the tenants to keep the security deposit as compensation for the repairs; that the tenants did not agree; and that she then obtained quotes for the repairs. For the quotes as noted above, the landlord made a claim of \$2000.00. The landlord said that the unit was new and had never been lived in before the tenants moved in.

Tenant B.C. testified that the landlord received the forwarding address when the condition inspection report was completed on February 27<sup>th</sup>, 2011. The tenant stated that the landlord did not sent a copy of the report within 15 days and that the landlord was not given consent to keep any portion of the security deposit. He agreed to the damages reported on the report, but stated that he felt the quotes were inflated with the exception of the granite counter chip.

Concerning the blinds, he stated that only 3 blinds were stained and concerning the grease on the cabinets, he stated that he could not explain why it would not come off completely.

### Analysis

Concerning the tenant's claim for the security deposit; Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address on February 27, 2011. The landlord made an application for dispute resolution on May 6th, 2011; the security deposit was not returned and the landlord did not apply for dispute resolution within the time frame required by statute. Therefore the tenants are entitled to the return of double the amount of the security deposit for the sum of \$1200.00.

Turning to the landlord's claim: before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. In this matter that burden was on the landlord to prove her claim against the tenants. Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

While I accept the tenants' testimony that they caused damages beyond reasonable wear and tear, the landlord submitted estimates for work that has not been yet performed, and for which she agreed that they appeared to be on the high side. Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage

must do whatever is reasonable to minimize the damage or loss. Since the landlord only provided estimates the cost for repairs cannot be verified as claimed. Nevertheless, the tenants agreed to the damages. Since I am not convinced that the quotes objectively reflect on the landlord's statutory obligation to mitigate her loss, I grant the landlord an arbitrary compensation for repairs as follows:

- Paint: \$ 125.00
- Cabinet doors: \$ 700.00
- Counter chip: \$ 196.00
- Blind cleaning: \$ 75.00
- Total: \$1096.00

### Conclusion

The tenants established a claim of \$1200.00. Since the parties' applications had merit, I decline to make an order regarding the filing fees.

Pursuant to Section 72 of the Act, I set off the amount awarded to the landlord against the amount award to the tenants, and I grant the tenants a monetary order for the difference of \$104.00. This Order may be registered in the Small Claims Court 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: July 15, 2011.

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Residential Tenancy Branch