



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenants: MNSD, FF  
For the landlord: MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenants applied for a monetary order for a return of their security and pet damage deposit, doubled, and to recover the filing fee for the Application.

The landlords applied for a monetary order for damage to the rental unit, for compensation under the Act and the tenancy agreement, to retain the security and pet damage deposit and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Are the landlords entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

### Background and Evidence

I heard testimony that a tenancy between the landlords and the female tenant started on March 1, 2009, and ended on December 31, 2009. I heard testimony and reviewed evidence that the landlords entered into a month to month tenancy agreement with the male tenant only, with the tenancy beginning on January 1, 2010. However, the female and male tenants are a couple and both remained in the home throughout the remainder of the tenancy. Monthly rent was \$1,200.00.

There was no clear evidence or testimony explaining why the female tenant was not listed on the latest tenancy agreement and the initial tenancy agreement between the female tenant and the landlords was not entered into evidence.

From the evidence and testimony, the landlords considered the female tenant as a continuing tenant.

I heard testimony that this tenancy ended on February 28, 2011, and that the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$500.00 in March 2009.

The parties acknowledge there is no move-in or move-out condition inspection report.

**Tenants' application:**

The tenants testified and supplied evidence that the landlords were given the tenants' written forwarding address, with a request to return their security and pet damage deposit, in a letter sent via registered mail on March 18, 2011. The tenants' evidence showed successful delivery of that document on March 25, 2011.

In that same letter, the tenants requested to complete an "exit condition report" as the tenants had stated "the premise was cleaned thoroughly and the carpets/rugs were washed."

According to the tenants, the landlords have yet to respond to either request and the landlords have not returned their security or pet damage deposit.

The tenants' claim is the amount of \$2,200.00, which is their security and pet damage deposits, doubled.

**Landlord's Application:**

The landlords admit that they have not returned the tenants' security and pet damage deposit.

The landlords' monetary claim is as follows:

Quote for removal and installation of floor, parts	\$870.42
Quote for removal and installation of floor, labour	\$2,147.60
Wood paneled wall, parts	\$220.73
Wood paneled wall, labour	\$490.80
Turbine truck rims	\$1,221.20
AC Unit	\$999.99
Moulding	\$200.00
Lost income	\$1,100.00
Replace ceiling fan	\$123.19
Meals, gasoline, various home items, painting, filing fee, registered mail fee	\$5,034.42
Damages to TV room ceiling, app. parts and labour	\$3,800.00
<b>Total</b>	<b>\$16,085.16</b>

Included in the landlords' relevant evidence were copies of photos of the rental unit depicting alleged damage from the tenants, written summaries of their claim, an email train between the landlords and tenants in June 2010, which according to the landlords show that the tenants were painting without permission (I note that the tenants informed the landlords they were painting the bathroom), the real estate listing the home in 2011, quotes from home supply stores, food and gas receipts, receipts for various home items, monetary order worksheets and a receipt from a painter for \$1,800.00. I note that the landlords listed \$900.00 over the actual payment of \$1,800.00 for the painter on two separate worksheets.

In support of their application, the landlords testified that without permission, the tenants made changes to the rental unit, including dismantling the lower bathroom by removing the shower, vanity and drywall. The bathroom has not been restored, according to the landlords. The landlords stated that they met with the tenants in July 2010, and the tenants mentioned a mould issue, but that the tenants did not supply any evidence of this.

Additionally the landlords submitted that the tenants painted the master bathroom a dark blue, despite specific instructions to the contrary.

The tenants, according the landlords, gave a neighbour the AC unit without permission. Also 4 classic truck turbine tires are missing.

The tenants patched all the walls in the home, despite instructions to the contrary, which required the landlords to have the entire rental unit painted.

The landlords submitted that the flooring needed replacement due to the tenants drilling three holes in the floor.

The landlords submitted that the tenants, without knowledge to and permission from the landlords, removed a wood paneled wall from the TV room and painted the wood/coal stove.

The landlord stated there was no move-in or move-out condition inspection report and attributed a lack of a move-out inspection to the tenants not delivering a key to the female landlord's brother, who lived nearby and acted as an agent for the landlords.

Upon query, the landlords stated that the flooring has not been replaced and that the wood stove was between 15-20 years old.

The landlords submitted that their intention was to return the tenants' deposits, but did not after receiving a phone call from their realtor on March 24, 2011, who said that the damages in the house needed addressing prior to a sale.

I note that the parties agree the house has been sold, without replacing the flooring, according to the landlord's testimony.

I note that despite this submission, the landlords did not file a claim against the tenants' security and pet damage deposit, or for damages, until June 7, 2011, nearly two months after the tenants filed a claim seeking reimbursement of their deposits and over three months after the end of the tenancy.

In response, the tenants testified that the landlords agreed that the tenants would perform the repairs and work on the house; despite this, the tenants stated they are not seeking compensation from the landlords for work done, only reimbursement of their deposits.

The work included removing the bathroom walls and fixture due to a pipe bursting and a flooding of the room. The tenants endured a mould problem due to the burst pipe. The tenants submitted that the landlords instructed them to take out the drywall. The mouldy drywall was removed in October 2010.

As to the upper bathroom, when the tenants moved in, the walls just had a primer, no paint, so the tenants painted the bathroom walls, according to the tenants.

The tenant submitted that the small holes in the floor was for a cable connection and did not ruin the floor.

The tenant submitted that the AC unit was old and unusable as it was sitting on a trailer in the yard, collapsing the trailer. The tenant stated that the unit was an old commercial unit with mice and bugs and that the male landlord told the tenants to take the unit away. According to the tenant, the neighbour took away the AC unit, which meant they did not have to do the hauling.

The tenant stated that the damage to the ceiling was already there when she moved in.

The tenant submitted that they did not return the keys to the female tenant's brother as they were instructed to drop off the keys to the listing realtor, which they did.

The tenants stated that they were never offered an opportunity for a move out inspection.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

### **Tenants' Claim:**

The evidence and testimony supports that the tenants provided the landlords with their written forwarding address on March 18, 2011, via registered mail. Section 90 of the Act states that documents delivered in this manner are deemed received on the 5<sup>th</sup> day after it is mailed. I accept the tenants' testimony and evidence and find that the landlords were served with the tenants' written forwarding address on March 23, 2011.

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. [Emphasis added]

The failure to comply with this section entitles the tenants to receive double their security deposit.

The landlords did apply for dispute resolution to keep all or part of the security or pet damage deposit, but the filing on June 7, 2011, was well past the allowed 15 days. The landlords do not have the tenants' written consent to retain the security deposit.

Based on the above, I find that the tenants have established a monetary claim as follows:

Security Deposit owed, doubled (2 x \$600.00)	\$1,200.00
Pet Damage Deposit owed, doubled (2 x \$500.00)	\$1,000.00
Filing fee	\$50.00
<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$2,250.00</b>

### **Landlord's Claim:**

Section 23(3) of the Residential Tenancy Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy and Section 35, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

In the absence of a condition inspection report, I find there to be insufficient evidence to meet the burden of proof establishing the condition of the rental unit either before or after this tenancy. The evidence depicting the condition of the rental unit at the

beginning of the tenancy, and directly after the tenants moved out, consisted of disputed, verbal, testimony. When the evidence consists of conflicting and disputed verbal testimony and evidence, then it is virtually impossible for a third party to establish facts and the claim fails.

I therefore find the landlords failed to prove the tenants damaged the rental unit or caused a loss to the landlords and I **dismiss** their application, **without leave to reapply**.

As I have dismissed their application, I have declined to award the landlords recovery of the filing fee.

As I have dismissed the landlords' application and find that the tenants have established a monetary claim of \$2,250.00, pursuant to section 67 of the Act, I grant the tenants a **monetary order** in the amount of **\$2,250.00**.

I am enclosing a monetary order for \$2,250.00 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) for enforcement should the landlords fail to comply with this monetary order.

#### Conclusion

The tenants are granted a monetary order of \$2,250.00.

The landlords' application is dismissed, without leave to reapply.

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: August 02, 2011.

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Residential Tenancy Branch