



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MND, MNR, MNSD, FF  
MNSD, FF

### **Introduction**

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord for an order of possession for a monetary order for damages, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is for return of double the security deposit and recovery of the filing fee.

Both parties participated in the conference call hearing.

### **Issue(s) to be Decided**

Is either party entitled to any of the above under the Act.

### **Background and Evidence**

This tenancy began August 2010 with monthly rent of \$1350.00 per month and the tenants paid a security deposit of \$675.00 and a pet damage deposit of \$675.00.

At the outset of the hearing the landlord advised that he was not in a position to proceed with the claim for damage to the kitchen floor and requested to withdraw that portion of the application so that he may reapply at a later date, this request was granted.

The landlord testified that during the move out inspection it was noted that the rental unit was not left in an acceptable, clean condition and the landlord had to have the rental unit cleaned at a cost of \$196.00. The landlord stated that there was cat hair all throughout the rental unit which severely affected the new tenant when he went to take possession of the rental unit. The landlord stated that the tenants had also not cleaned behind the fridge and that the move out condition inspection report notes areas throughout the rental unit that required cleaning.

The landlord stated that the condition the rental unit was left in delayed the new tenant from being able to take immediate possession and the landlord suffered a loss of 1 days rent as they credited the new tenant \$45.00 rent for August.

The tenants testified that the landlord did not provide them with a copy of the move out condition inspection report until they received the evidence package for this hearing and that was why the tenants were now claiming return of double the security deposit. The tenants stated that the landlord emailed them regarding patch work for the wall and painting but never mention to them that the kitchen floor would have to be completely replaced.

The tenants testified that they had not cleaned behind the fridge but challenged the landlord on the condition of the rental unit and were adamant that the landlord had altered the move out condition inspection report after the tenant had signed it on August 1, 2011. The landlord stated that he completed the move out condition inspection report by the book and denied the allegation that the report had been altered after the tenant signed it. The tenants were adamant that the sections written in by hand on the move out condition inspection report were added by the landlord after the report was signed by the tenant. The tenants stated that these notations do not appear on the move in condition inspection report. The hand written notations refer to the: microwave, table, furniture, dresser, patio, floor and cracked tiles in the kitchen.

The tenants also stated that there was minimal cat hair in the rental unit as the cat had even not been in the rental unit since June and that the rental unit had been adequately cleaned. The tenants stated that they patched the walls, painted them and replaced a dresser that had been damaged prior to vacating. The tenants maintained that the only area that required cleaning was behind the fridge.

The landlord stated that the tenants returned 2 fobs but that 1 of the fobs was not for this building and that the tenants only returned 1 set of keys for the mail box. The landlord stated that the replacement cost of the fob and mail box keys was \$111.00. The tenants acknowledges that they had returned only 1 set of mail box keys but stated that they had returned 2 fobs to the landlord. The landlord responded by stating that one of the fobs that was returned was completely different than the fobs issued to the tenants and would not work on the security system for this building.

The landlord requested to offer a settlement to the tenants regarding the monies being claimed by the landlord and suggested that \$500.00 of the tenant's \$1350.00 deposits be returned to the tenants. The landlord stated that if the tenants accepted this offer to settle that the landlord would not seek any further claims against the tenants for this tenancy.

The tenants responded with an offer to the landlord of \$350.00 and stated that the rental unit did not require 7 hours of cleaning, 2 fobs had been returned to the landlord and they had not damaged the kitchen floor. The landlord refused the tenant's offer resulting in no settlement of the claim between the parties.

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for cleaning costs, loss of rental income and replacement of 2 fobs and keys.

I accept that there was some cleaning required in the rental unit however when referring to the move out condition inspection report I am not satisfied that there was 7 hours of cleaning required. Therefore the landlord will be granted a monetary order in the limited amount of **\$98.00 for cleaning costs.**

I accept that the landlord suffered a loss of rental income of \$45.00 due to the suite requiring cleaning and I grant the landlord a **monetary order for \$45.00.**

I accept that one of the fobs returned to the landlord did not work, a fob for the garage was not returned and that the tenants did not return 2 sets of keys for the mail box and I grant the landlord a **monetary order for \$111.00** for replacement of these items.

Accordingly I find that the landlord is entitled to a **total monetary order of \$254.00.**

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

The trigger for return of double the security deposit is based on the landlord not complying with section 38 of the Act. Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
- (a) the date the tenancy ends, and*
  - (b) the date the landlord receives the tenant's forwarding address in writing,*  
*the landlord must do one of the following:*
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

As the tenancy ended July 31, 2011 and the landlord filed for dispute resolution on August 11, 2011, the landlord has complied with section 38 and the tenants are not entitled to return of double the security deposit.

The tenant's application is hereby dismissed without leave to reapply.

As the tenants have not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the landlord has established a monetary claim for \$254.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep **\$304.00** of the tenant's security deposit in full satisfaction of the claim.

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: November 16, 2011.

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Residential Tenancy Branch