



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC and FF

### Introduction

This hearing was convened on the landlord's application, received on December 23, 2011 for a Monetary Order for damage to the rental unit, unpaid utilities, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance found to be owed.

As a matter of note, this tenancy was the subject of a hearing on December 1, 2010 on the tenants' application for return of their security deposit in double on the grounds that the landlord had not returned it or made application to claim on it as required under section 38 of the *Act*. In the result, the Dispute Resolution Officer found that the tenants were entitled to return of the security deposit in double and issued a Monetary Order for \$2,800. The landlord's subsequent application for a Review Hearing on April 22, 2011 was dismissed as it was made out of time and the Dispute Resolution Officer found no evidence of exceptional circumstances that would have permitted him to grant a extension of time to make such application.

Therefore, I must dismiss the security deposit portion of the landlord's present application as the deposit was disposed of in the previous hearing and the request is *Res Judicata*.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted.

Claims in damages require that several factors be taken into account: The comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

#### Background, Evidence and Analysis

This tenancy began on July 1, 2009 and ended on or about June 30, 2010. Rent was \$1,400 per month, \$200 of which was for utilities, with an agreement that amounts be reconciled periodically against actual billings. The landlord held a security deposit of \$1,400 which was disposed of in an earlier hearing as previously noted.

At the commencement of the hearing, it was determined that the tenants had not received the landlord's evidence, partially because it was sent late, and partially because the tenants had just returned from travel and had not picked up their mail.

In addition, there was some confusion over whether one of the respondents, mother of one of the others was actually a signatory to the agreement which is not before me. Finally, there is no summary of the landlord's claims. She has promised to submit such a summary, cross referenced to receipts, along with a copy of the rental agreement.

For these reasons, I have adjourned the hearing to a time and date set out in the attached Notice of Hearing. When the hearing reconvenes, the landlord must be prepared to prove that the tenants were served with the notice.

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: February 29, 2012.

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Residential Tenancy Branch