



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlords: MNSD, MNDC, FF  
Tenant: MNSD, MNDC, FF

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. Both the landlords and the tenant sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began in October 2010 as a month to month tenancy for a monthly rent of \$1,350.00 due on the 1<sup>st</sup> of each month with a security deposit of \$675.00 paid. The parties also agree the tenancy ended on or before January 31, 2012 and that the landlords returned \$240.00 of the security deposit to the tenant on February 10, 2012.

The tenant provided the landlords with her forwarding address by email on January 31, 2012 and by registered mail on February 16, 2012. The tenant testified the parties had established a pattern of communication via email throughout the tenancy. The landlords submitted their Application for Dispute Resolution seeking to claim against the security deposit on April 2, 2012.

The landlord's agent testified that as a result of the tenant's movers repeatedly holding the elevator for moving items the elevator stalled and a weekend service call was required to get the elevator working again, for which the landlord was invoiced in the amount of \$389.34 from the strata. Further to this the landlord was charged for a

weekend call out for the property manager in the amount of \$100.80 and a fee of \$50.00 from the strata plan itself.

The tenant testified that the landlord had arranged for moving pads to be installed in the elevator but that she was never made aware of a key to hold the elevator for moving. From the tenant's documentary evidence her movers were actually trapped in the elevator for some time and they used the elevator phone to call in the need for assistance.

The landlord's agent testified that the tenant was aware there was an elevator key from when she moved in to the unit and that it was available in the coffee shop below the rental unit. The tenant testified that she remembers that when she moved in to the unit that there were no elevator problems but she does not recall having a key or even being aware there was a key.

### Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit in full or less any mutually agreed upon amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the undisputed testimony of the tenant that the parties had established email as a method of communication between the parties and that she provided the landlords with her forwarding address via email on January 31, 2012 I find the landlords had until February 15, 2012 to either return the deposit or file an Application for Dispute Resolution to claim against the deposit.

Even if I were to accept the later date of February 16, 2012 as the date the tenant provided the landlords with her forwarding address and allowing 5 days for delivery of the registered mail I find the latest the landlords could have returned the security deposit or filed an Application for Dispute Resolution would have been March 7, 2012.

As the landlords returned \$240.00 to the tenant on February 10, 2012 and did not apply to claim against the security deposit until April 2, 2012 I find the landlords have failed to comply with Section 38(1) of the *Act* and as a result the tenant is entitled to double the amount of the security deposit less the amount already returned to the tenant.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the landlord's claim for compensation resulting from the misuse of the elevator by the tenant's movers I find that it is the landlord's responsibility to ensure a tenant is aware of all requirements for both moving in and moving out of a rental property.

While the parties dispute whether or not the tenant was aware of an elevator key or its location at the start of the tenancy I find it is not reasonable to expect the tenant would remember this a year later or in fact where to find the key when it came time to move out of the rental unit.

As the landlords had arranged for the moving pads to be installed, I find the landlords accepted responsibility to arrange all that was necessary with the strata to move out and therefore should have also informed the tenant of all requirements, including the use and location of the elevator key.

As such, and despite the financial loss the landlords have suffered, I find the landlords have failed to establish the tenant has violated the *Act*, regulation or tenancy agreement and I dismiss the landlord's Application in its entirety.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,160.00** comprised of \$1,350.00 double the security deposit plus the \$50.00 fee paid by the tenant for this application less \$240.00 already returned to the tenant.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: April 17, 2012.

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Residential Tenancy Branch