



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their applications with one another. The female tenant testified that the tenants sent the landlord a copy of their dispute resolution hearing package by registered mail on April 5, 2012. She provided the Canada Post Tracking Number to confirm this mailing. The landlord testified that she did not receive the package until early May 2012, and that it was sent by regular and not registered mail. She confirmed that she had received the package in sufficient time to enable her to prepare for the hearing of the tenants' application. The tenants confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on May 17, 2012. I am satisfied that the parties served the above documents and their written and photographic evidence package in accordance with the *Act*.

Near the commencement of the hearing, the male tenant testified that the tenants were reducing the amount of their requested monetary award from \$850.00 to \$548.00, as the tenants acknowledged that they had not paid their portion of their heat and gas bills at the end of this tenancy.

Issues(s) to be Decided

Which of the parties are entitled to the tenants' security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for her application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on March 1, 2011. Monthly rent was set at \$1,700.00, payable in advance on the first of each month, plus a percentage of the heat and hydro. The landlord continues to hold the tenants' \$850.00 security deposit paid on February 28, 2011. The tenants vacated the rental premises on February 29, 2012. They maintained that the landlord did not respond to their request for a joint move-out condition inspection, and as a result, they were unable to return their keys, including the garage door opener to the landlord until March 4, 2012. New tenants occupied the rental unit on March 2, 2012.

The parties agreed that a joint move-in condition inspection occurred on March 1, 2011. The landlord entered into written evidence a copy of the inspection report that she prepared with respect to the joint move-in condition inspection. The parties agreed that they did not conduct a joint move-out condition inspection. The tenants entered into written evidence copies of emails they sent to the landlord to try to schedule the joint move-out condition inspection. Although the landlord conducted her own move-out condition inspection and submitted many photographs of the condition of the premises shortly after the tenants vacated the rental unit, she did not prepare a move-out condition inspection report.

The tenants' application for a monetary award resulted from their claim that the landlord had illegally withheld their security deposit after they provided her with their forwarding address on March 15, 2011. The landlord confirmed that she received the tenants' forwarding address on March 15, 2011, and neither returned their security deposit in full nor applied for dispute resolution within 15 days. The parties agreed that they had no written agreement allowing the landlord to retain any portion of the tenants' security deposit.

The landlord applied for a \$1,908.62 monetary award for damage to the following items:

Item	Amount
Locksmith Services at end of Tenancy	\$626.08
Plumbing and Heating Repairs	294.00
Carpet Cleaning	229.54
Gardening	168.00
Fireplace Insert	189.00
Powerwashing Decks	60.00
Garbage Dump Fees	40.00
Outstanding Utility Charges	302.00
<b>Total Monetary Award Requested</b>	<b>\$1,908.62</b>

The landlord also applied to recover the \$50.00 filing fee for her application and to retain the tenants' security deposit in partial satisfaction of the monetary award requested.

### Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

During this hearing, the parties reached an agreement to settle their dispute under the following terms:

1. Both parties agreed that the landlord will pay the tenants \$672.77 by June 2, 2012.
2. Both parties agreed that the monetary terms of this settlement agreement constituted a final and binding resolution of all issues in dispute arising out of this tenancy and that they will not initiate any further applications for dispute resolution arising out of this tenancy.

### Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$672.77. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the landlord fail to comply with these Orders, these

Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 30, 2012

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Residential Tenancy Branch