



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MND, MNR, O, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed her Application requesting monetary orders for alleged damages to the rental unit, for alleged rent owed, for loss or compensation under the Act or tenancy agreement, to keep all or a portion of the security and pet deposits, and to recover the filing fee for the Application.

The Tenants applied for a monetary order for double the security and pet deposits paid to the Landlord and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

I note the Tenants provided some documentary evidence late, contrary to the rules of procedure. Accordingly this evidence was not considered.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary orders claimed?

Are the Tenants entitled to the monetary order claimed?

### Background and Evidence

This tenancy began on September 1, 2010, with the parties entering into a written tenancy agreement. The monthly rent was \$1,225.00, payable on the first day of the month. The Tenants paid the Landlord a security deposit of \$612.50 and a pet damage deposit of \$100.00, on or before September 1, 2010.

The Tenants vacated the rental unit on January 30, 2012. The Landlord submitted that the Tenants did not give her written notice to end the tenancy, only verbal. The Landlord testified that this occurred in January of 2012.

The Landlord testified that she had performed an incoming condition inspection report with the Tenants and that they refused to sign the outgoing condition inspection report.

The Tenants testified that they were present for the incoming report but did not receive a copy of the report until they had the Landlord's evidence. The Tenants further testified that at the end of the tenancy they did a walk through with the Landlord, however, the Landlord did not have the condition inspection report on paper until after the inspection was done. They claim they did not see the written report until after the inspection occurred and that the Landlord had added numerous items to the report which were not discussed at the walk through.

The Landlord testified that the Tenants had verbally surrendered the security and pet deposits to her at the end of the tenancy.

The Landlord claims the Tenants caused damages to the rental unit. The Landlord has submitted estimates for the damages totalling some \$1,887.98. The Landlord testified that none of the work set out in the estimates has been done as she did not want to disturb the new renters. The Landlord had the new renters move into the rental unit on January 30, 2012, the same day the Tenants vacated.

The Tenants testified they gave the Landlord their written notice of their forwarding address on February 4, 2012, by posting it on the Landlord's door. The Landlord acknowledged receipt of the forwarding address.

### Analysis

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

I dismiss the Landlord's claims without leave to reapply. I find the Landlord failed to perform condition inspection reports in accordance with the Act. I find the Landlord did not provide a copy of the incoming condition inspection report to the Tenants within the required time frame under the regulation. I further find that the incoming condition inspection report form used by the Landlord did not comply with the Act.

I further find that the Landlord failed to perform the outgoing condition inspection report in accordance with the Act. The Landlord should have had the forms with her as the parties went through the rental unit.

By failing to perform the condition inspection reports in accordance with the Act, the Landlord has extinguished any right to claim against the security or pet deposits under the Act.

Furthermore, when making a claim for damages under a tenancy agreement or the Act, the party making the allegations (here the Landlord) has the burden of proving the claims made in their Application.

Proving a claim requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In this instance I find the Landlord has failed to verify the actual damage or losses which she alleges occurred. The Landlord has only provided estimates of the cost of the alleged repairs, however, as the Landlord already had new renters in the rental unit the same day the Tenants vacated, it is difficult to anticipate when she intends on doing the alleged work.

Furthermore, as the Landlord had new renters move into the rental unit the same day the Tenants vacated, the Landlord has not lost any rental income due to the improper notice given by the Tenants.

For these reasons I dismiss the claims of the Landlord, without leave to reapply.

As for the claims of the Tenants, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit. By failing to perform the incoming or outgoing condition inspection reports in accordance with the Act, the

Landlord has extinguished the right to claim against the security or pet deposits, pursuant to sections 24(2) and 36(2) of the Act.

The deposits are held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the deposits.

### Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,425.00**, comprised of double the pet damage deposit and the security deposit ( $\$612.50 + \$100.00 \times 2$ ).

I find the Tenants did not give the Landlord the required Notice to End Tenancy and were in breach of the Act, therefore, I do not award them the \$50.00 fee for filing this Application.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided in the Act, and 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 04, 2012.

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Residential Tenancy Branch