



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD FF  
                             MNSD RPP FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a Monetary Order for damage to the unit, site or property, to keep the security deposit and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed seeking a Monetary Order for the return of their security deposit, the return of their personal possessions and recovery of the filing fee.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Have the Landlords' right to claim against the security deposit been extinguished?
2. Have the Landlords proven the Tenants have breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to sections 7 and 67 of the *Residential Tenancy Act*?
4. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
5. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into fixed term tenancy agreements that first began on March 1, 2010 with the most recent agreement beginning on March 1, 2011 and ending February 28, 2012. Rent was payable on the first of each month in the amount of \$1,300.00 and on or before March 1, 2010 the Tenants paid \$650.00 as the security deposit. No condition inspection reports were completed at the beginning or at the end of the tenancy even though the parties conducted a walk through inspection on February 28, 2012. The rental unit was new at the outset of this tenancy. The tenancy ended when the Tenants vacated the property February 28, 2012.

The Landlords affirmed that they were only seeking recovery of the costs to have the hardwood floor replaced in the amount of \$7,325.62 as provided in the estimated they included in their evidence. They confirmed they did not provide the Tenants with written instructions for care or use of anything in the rental unit. They advised that the floor was brand new at the start of the tenancy and now it has several divot type dents all the way down the hallway and into the living room and several scratches. They believe the Tenants were attempting to cover of the damage because they put pledge on the floor just prior to the inspection and after this dried they noticed the damage.

The Tenant confirmed the unit was new at the start of their tenancy however there were small scratches and divot marks on the floor from the beginning and were possibly from realtors or contractors coming through the unit before they occupied the unit. He advised that he believes there was normal wear and tear to the floor during their tenancy and that they went above and beyond to protect the floors by having felts placed under all of their furniture. He confirms that he washed the floor with a pledge product that stipulated it could be used on hardwood floors in his attempts to have the unit clean for the next tenant and that they were not attempting to cover up anything. They noted how there was no mention of damage to the unit until two days after the new tenant took possession and moved in even though he provided the Landlords with his forwarding address February 29, 2012.

The Tenants are seeking the return of their personal possessions, specifically silver coins that they forgot in the unit. He pointed to their evidence which supports that he contacted the new tenant within hours of vacating the unit to attempt to come by and pick up his coins and that he continued to be in contact with her over a period of several days until he received notice from the Landlords in mid March 2012 to stop contacting their new tenant and that they would return his possessions the next time they were in town. The parties confirmed the Tenants' possessions have not yet been returned and that they are still at the rental unit.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of: numerous e-mails between the parties, the March 1, 2011 tenancy agreement, pictures printed from a computer and copies which are not legible, and Canada Post receipts.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 21 of the regulations provides that condition inspection reports completed in accordance with the regulation is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case the Landlords rely on photos of the rental unit that are not legible and a quote to replace the flooring dated March 3, 2012. The Tenants dispute causing damage to the floor that exceeds normal wear and tear and argued that there was no mention of damage to the floor until two days after the new tenant had moved into the unit.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlords have the burden to prove damages occurred during the course of these Tenants' tenancy. Notwithstanding the Landlords' evidence that there is damage to the floor, the only evidence before me to suggest the damage was caused during this tenancy and not by the new tenant was verbal testimony. Accordingly, I find the disputed verbal testimony insufficient to meet her burden of proof. Therefore I dismiss the Landlords' claim for damage to the hardwood floor.

The Landlords have not been successful with their application; therefore I find they must bear the burden of the cost to file their application.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished, pursuant to sections 24 and 36 of the Act. Because the Landlords in this case did not complete condition inspection reports, they lost their right to claim the security deposit for damage to the property.

The Landlords were therefore required to return the security deposit to the Tenants within 15 days of the later of the two: (1) of the tenancy ending and (2) having received the tenant's forwarding address in writing. The Landlords received the Tenants' forwarding address on February 29, 2012, but did not return the security deposit within 15 days of that date.

Because the Landlords' right to claim against the security deposit for damage to the property was extinguished, and they failed to return the tenant's security deposit within 15 days of having received the forwarding address, section 38 of the *Act* and #17 of the *Residential Tenancy Policy Guidelines* requires that the Landlord pay the tenant double the amount of the deposit.

As per the above, I find the Tenants are entitled to the return of double their deposit in the amount of **\$1,300.00** (2 x \$650.00).

During the hearing I found the Landlords were withholding the Tenants' personal possessions without cause. Accordingly I issued a verbal Order that the Landlords or their Agent meet with the Tenant(s) at the rental unit on May 9, 2012 at 6:00 p.m. so the Tenant may retrieve his possessions, pursuant to section 65(1)(e) of the Act.

The Tenants have been successful with their application; therefore I award recovery of their **\$50.00** filing fee.

### Conclusion

The Landlords' application is HEREBY DISMISSED.

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$1,350.00** (\$1,300.00 + \$50.00). This Order is legally binding and must be served upon the Landlords.

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 08, 2012.

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Residential Tenancy Branch