



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants: MNSD FF  
For the landlord: MND MNSD FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a return of all or part of a security deposit; and to recover the filing fee.

The landlord applied to retain the tenants’ security deposit; a monetary order for damage to the unit, site or property; and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties agree they were served with the applications and the corresponding evidence. 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.

### Issue(s) to be Decided

- Should the tenants be granted a monetary order?
- Should the landlord be granted a monetary order?
- Should either party recover the filing fee?

### Background and Evidence

The tenants provided a copy of the signed tenancy agreement as evidence. Both parties agree that the tenancy began on May 1, 2011 for a fixed term of one year which expired on April 30, 2012. Both parties agree that the tenants vacated the rental unit on April 30, 2012 and returned the keys to the landlord.

Both parties agree that rent in the amount of \$1,550.00 was due on the first day of each month; and a security deposit of \$1,550.00 was paid by the tenants to the landlord at the start of the tenancy.

The tenants testified that they provided notice to the landlord on March 18, 2012 that they would be vacating the rental unit on April 30, 2012 as indicated on the fixed term tenancy agreement. The tenants stated that on March 24, 2012 they received a \$500.00 cheque from the landlord as a rebate for being good tenants and as an incentive to continue the tenancy beyond April 30, 2012. The tenants stated that the \$500.00 cheque had the word "rebate" written on it and was submitted as evidence.

The landlord disputed the tenants' testimony and stated that the \$500.00 cheque issued on March 24, 2012 was for partial return of the \$1,550.00 security deposit consisting of \$250.00 for each tenant.

The landlord submitted two invoices as evidence. The landlord stated that the first invoice for \$275.00 was to paint one bedroom and the second invoice was for \$85.00 for house cleaning. The tenants disputed both invoices by stating that neither appeared valid and that when they researched the cleaning company, it did not exist.

Both parties agree that two cheques of \$345.00 were provided to the tenants by the landlord on May 11, 2012, for a total of \$690.00 in partial return of the security deposit.

The landlord claims he has paid \$1,190.00 towards the security deposit of \$1,550.00. The remaining \$360.00 was deducted for the painting and house cleaning costs described above. The tenants claim that they have only received \$690.00 of the \$1,550.00 security deposit as the other \$500.00 payment was a "rebate" from the landlord.

The tenants testified that as per the written tenancy agreement, the landlord agreed to clean and shampoo the carpets and repaint the rental unit at the start of the tenancy. The tenants confirmed that although the carpets were cleaned and shampooed, the rental unit was not repainted. The landlord testified that he arranged to have a painter repaint the rental unit but the tenants would not permit the painter inside the rental unit

to perform the work. The tenants testified that they did not permit the painter to repaint the rental unit as he did not come until one month before they were vacating the rental unit and did not want the related inconvenience that close to the end of the tenancy.

The landlord stated that move-in and move-out condition inspection report were completed. The landlord did not provide either report as evidence prior to the hearing and did not describe the reports orally during the hearing.

### Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

The security deposit received by the landlord from the tenants at the start of the tenancy was not in accordance with the Residential Tenancy Regulation (the "Regulation"). Section 2(1)(a) of the Regulation states that the security deposit **must not exceed one half of the monthly rent**. In the matter before me, I find the tenants were required by the landlord to pay double what is permitted under the Regulation.

The tenants were paid \$345.00 each for a total of \$690.00 on May 11, 2012. I reviewed the copy of the \$500.00 cheque that the tenants claimed had the word "rebate" written on it. I did not see the word "rebate" written on the \$500.00 cheque issued by the landlord on March 24, 2012. I do find that tenants benefited from the \$500.00 payment made to them on March 24, 2012. This leaves a \$360.00 balance to consider of the \$1,550.00 security deposit.

I dismiss the landlord's \$275.00 claim for repainting as the landlord agreed to repaint the rental unit at the start of the tenancy which was not completed. Section 23 of the *Act* requires a move-in condition inspection to be conducted at the start of the tenancy; while section 35 of the *Act* requires a move-out condition inspection to be conducted at the end of the tenancy. Given the above, the remaining \$85.00 claim by the landlord for house cleaning is dismissed due to lack of evidence such as the move-in and move-out condition inspection reports.

Based on the above, I find the tenants are entitled to a monetary order under section 67 of the *Act* in the amount of **\$360.00** consisting of the \$275.00 withheld by the landlord for repainting, and \$85.00 for house cleaning. I dismiss the remainder of the tenants' application as they benefited from the \$500.00 and \$690.00 cheques issued to them by the landlord as described above. As the tenants were partially successful with their

claim, I find the tenants are entitled to recover half of the filing fee, in the amount of **\$25.00**.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to section 67 and grant a monetary order in the amount of **\$385.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under 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: June 15, 2012

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Residential Tenancy Branch