



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and an order allowing retention of all or part of the pet damage deposit and security deposit; and (b) an application by the tenants for a monetary order. Both parties have requested recovery of the filing fee. Both parties attended the hearing and had an opportunity to be heard.

### Issue(s) to be Decided

Are the parties entitled to their requested orders?

### Background and Evidence

This tenancy began on April 1, 2009. The rent was \$850.00 per month. The tenants paid a security deposit of \$425.00 and a pet damage deposit of \$200.00 at the start of the tenancy. Condition inspection reports were conducted upon move-in and move-out. The tenant did not participate in the move-out inspection. The parties are in disagreement as to who is responsible for the tenants' non-participation in the move-out report. The tenants claim not to have been offered two opportunities for inspection. The landlord disputes this.

The parties are also in disagreement about the date upon which the tenants actually vacated the rental unit. The tenants claim to have fully vacated the unit on March 31, 2012 while the landlord claims the tenants were still cleaning the unit on April 1<sup>st</sup>. The tenants acknowledged that they were doing some cleaning in the unit on April 1<sup>st</sup> but that they were only doing it because they were there waiting to do the move-out report and thought they might as well do some further cleaning.

The tenants provided the landlord with a forwarding address in writing on March 27, 2012. On April 11, 2012 the landlord sent a cheque to the tenants in the amount of \$305.67 as a partial refund of the tenants' deposits. The landlord then filed an

Application for Dispute Resolution claiming against the deposits on April 16, 2012. The tenants subsequently filed their own application claiming return of double the amount of the deposits.

### Analysis

#### Landlord's Claim

The landlord has made a monetary claim comprised of the following:

Carpet repair and cleaning	\$280.00
Drape cleaning	\$25.00
General cleaning	\$40.00
April rent – 1 day overheld	\$28.33
<b>TOTAL</b>	<b>\$373.33</b>

*Cleaning & repairs* - The portion of the landlord's claim that relates to cleaning is based on Section 37 of the Act which requires that the tenant leave the unit reasonably clean and undamaged except for reasonable wear and tear. According to the landlord, the tenant did not do a thorough job of cleaning the unit, failed to clean the drapes and left the carpet in a dirty and damaged condition. The landlord submitted invoices in support of these claims. The tenant disputes all of the landlord's claims for cleaning and repairs on the basis that the items claimed by the landlord did not go beyond normal wear and tear having consideration for the length of the tenancy. The tenants also claim that they did in fact clean the drapes at the laundromat.

In considering this portion of the claim I have considered the move-in condition inspection report, the invoices submitted by the landlord and the testimony of both the parties. I am satisfied on balance that the landlord has proved this portion of the claim.

*Overholding* - The landlord has claimed one day of rent for April 1<sup>st</sup> on the basis that the tenants did not completely vacate the rental unit on March 31, 2012. The tenants acknowledged that they were still doing some cleaning on April 1<sup>st</sup> but that they had all their things completely moved out. The tenants also argued that the only reason they were even there on April 1<sup>st</sup> was to conduct the move-out inspection.

In considering the testimony of both parties and the written statements of the parties surrounding the question of the move-out report, I am not satisfied that the landlord has established its claim for one day of overholding. I therefore dismiss this portion of the landlord's claim.

Tenants' Claim

The tenants claim that the landlord should be ordered to pay to them double the amount of their security and pet damage deposits. The total amount claimed is \$1,250.00. The tenants make this claim pursuant to Section 38 of the Act.

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit.

In the present case, the landlord filed an application for dispute resolution claiming against the deposit on Monday, April 16<sup>th</sup>. While the Act specifies 15 days after the end of the tenancy, the landlord was entitled to file on the 16<sup>th</sup> day in this case because the 15<sup>th</sup> day fell on a Sunday. However, the tenant argued that even if the landlord filed an application for dispute resolution within the 15 day time limit, the landlord's right to claim against the deposit had already been extinguished under Sections 24(2) and 36(2) of the Act due to its failure to provide the tenant with a copy of the initial condition inspection report within 7 after inspection and its failure to provide two possibilities for a move-out inspection.

However, a claim for return of double the security deposit only arises under Section 38(6) of the Act which provides as follows:

*38(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Section 38(6) makes no reference to extinguished rights but rather only to the requirement of filing a claim or repaying the deposit. Presumably, this is because it is only after a hearing that a determination can be made as to whether the failure to conduct the reports was due to the actions of the landlord or the tenant. In other words, the doubling of the deposit arises as a result of a landlord failing to file an application within 15 days or failing to return the entire amount of the deposit. It is not related to whether the rules surrounding condition inspection reports were followed.

Accordingly, I dismiss the tenants' application.

Conclusion

I have found that the landlord has established a monetary claim against the tenants in the amount of \$345.00. I therefore order that the landlord retain the deposit and interest (\$0.00) of \$319.33 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$25.67. This order may be filed in the Small Claim Court and enforced as an order of that Court.

I dismiss the tenants' application.

I dismiss the requests of both parties to recover their filing fees from each other.

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*.