



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants application for a Monetary Order for the cost of emergency repairs; for an Order for the return of double the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on September 14, 2012. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared along with a translator, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Are the tenants entitled to recover the cost for an emergency repair?
- Are the tenants entitled to recover double the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The tenants' testify that this tenancy started on May 15, 2011 and a new contract was entered into on January 01, 2012 for a month to month tenancy. Rent for this unit was \$1,600.00 per month due on the first of each month. The tenants paid a security deposit on May 15, 2011 of \$800.00. When the first contract ended the landlord deducted \$400.00 from that security deposit for carpet cleaning of \$100.00; \$150.00 for a gas stove repair and \$150.00 for a microwave oven repair. The landlord did not have the tenants' permission to deduct these sums and did not clean the carpets or repair the gas stove. The tenants paid another \$400.00 security deposit on January 01, 2012. The tenancy ended on June 30, 2012. The tenants' testify that the landlord did not complete a move in condition inspection report with the tenants at the start or end of the tenancy. Someone for the landlord walked through the unit at the end of the tenancy and documented that the keys and parking passes were returned and the stove works and the carpets are clean. A copy of this note has been provided in evidence.

The tenants testify that they gave the landlord their forwarding address in writing on July 05, 2012. The tenants requested an address for the landlord and were told by e-mail to use the dispute address for the landlord. A copy of this e-mail has been provided in evidence. The tenant's testify that the landlord sent the tenants a text message to agree the landlord will return \$100.00 for the repair to the gas stove as the tenants had to repair it. The tenants' testify the landlord did not return this sum to them. The tenants seek to recover this sum from the landlord. A copy of the text message has been provided in evidence

The tenants seek to recover the money deducted for the carpets and gas stove repair from the original security deposit. The tenants testify that the landlord sent them a cheque for \$225.00 dated August 01, 2012 however that cheque was dishonoured at the bank. The landlord had deducted the sum of \$575.00 for Strata fines. The tenants testify that they only agreed that the landlord may deduct \$125.00 for one Strata fine as the tenants had failed to move their car when the Strata were washing the parking stalls. The tenants do not agree to the other Strata fines as these were for parking fines of \$400.00. The tenants testify that the landlord had charged the tenants to park in the stall at \$50.00 per month but had failed to provide a parking sticker to the tenants until May 14, 2012. The tenants were also fined \$200.00 for cleaning their own balcony at the end of the tenancy as instructed by the landlord. However the Strata do their own balcony cleaning and fined the landlord \$200.00 which the landlord passed onto the tenants by deducting it from their security deposit. Copy of information from the landlord informing the tenants to clean the balcony and information about the Strata fines have been provided in evidence.

The tenants seek to recover the sum of \$7.00 incurred in bank charges due to the landlord's dishonoured cheque. A copy of the landlords returned cheque and bank charges have been provided in evidence. The tenants seek to recover the filling fee of \$50.00.

### Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and

does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on July 05, 2012. As a result, the landlord had until July 20, 2012 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to complete either a move in or move out condition inspection of the property with the tenants in accordance with s. 24(2) and 36(2) of the *Act*. Therefore, I find that the tenants has established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act*.

I further find the landlord deducted the sum of \$400.00 from the tenants' security deposit after the first tenancy agreement ended even though one of the original tenants was continuing the tenancy. The landlord did not have written permission from the tenants to do so. Therefore, even though the tenants have not applied for double the security deposit that was deducted I am required to order that the landlord must pay double the amount of that security deposit to the tenants to the sum of \$800.00.

The tenants agreed at the hearing that the landlord may deduct the sum of **\$125.00** from the security deposit for one Strata fine for not removing their car when the parking stall was cleaned. This amount will be deducted from the tenants claim. Consequently it is my decision that the tenants are entitled to the sum of \$1,600.00 for the second security deposit not returned. The amount the tenants have agreed at the hearing that the landlord may keep from the security deposit of **\$125.00** will be deducted from the tenant's monetary award for both security deposits of **\$2,400.00**.

With regard to the tenants claim to recover the sum of \$150.00 they paid to fix the gas stove. The tenants have provided no evidence to show they paid this sum to repair the stove; however the landlord has agreed to return the sum of \$100.00 to the tenants for

this repair. Consequently, I have upheld the tenants claim in part to recover the sum of **\$100.00** from the landlord. The tenants have also requested the sum of \$100.00 for carpet cleaning. However I have no evidence to show the tenants paid this sum to clean the carpets or that the landlord agreed to reimburse the tenants for this work.

With regard to the tenants claim to recover the bank charge of \$7.00 incurred due to the landlords dishonored cheque; I find the tenants did incur this change due to the landlord issuing a cheque which was dishonored therefore the I uphold the tenants claim for **\$7.00**.

The tenants are entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the tenants for the following sum:

Double the original portion of security deposit	\$800.00
Double the security deposit not returned	\$1,600.00
Repair to the stove	\$100.00
Bank charges	\$7.00
Filing fee	\$50.00
Less amount agreed for Strata fine	(-\$125.00)
Total amount due to the tenants	\$2,432.00

### Conclusion

I HEREBY FIND largely in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$2,432.00. The order must be served on the Respondent and is enforceable through the Provincial Court as an order 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: November 30, 2012.

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Residential Tenancy Branch