



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, MNSD, MND, FF

### Introduction

This hearing was convened in response to applications by the tenant and the landlords.

The tenant's application is seeking orders as follows:

1. Return of all or part of a pet deposit and security deposit; and
2. For monetary compensation for loss under the Act.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages to the unit; and
2. For compensation for loss under the Act.

### Issue(s) to be Decided

Is the tenant entitled to the return of all or part of a security deposit?

Is the tenant entitled to compensation for loss under the Act?

Are the landlords entitled to a monetary order for damages to the unit?

### Background and Evidence

The tenancy began on December 1, 2010. Current rent in the amount of \$3,100.00 was payable on the first of each month. A security deposit of \$1,500.00 was paid.

### Tenant's application

The tenant claims as follows:

a.	Return of double security deposit	\$3,000.00
d.	Filing fee	\$50.00
	Total	\$3,250.00

### Security deposit

The tenant testified that she vacated the premises on July 30, 2012, and on August 16, 2012, she sent a letter to the landlords with her forwarding address requesting the return of her security deposit. The tenant stated she sent a copy of her letter to each landlord by registered mail. Filed in evidence is a copy of the letter and copies of the Canada post tracking numbers.

The landlords' acknowledged they received the tenant's forwarding address on August 17, 2012.

The parties acknowledged a move-in inspection and move-out inspection were not completed in accordance with the Act.

Return of strata fee

The tenant testified that she paid the strata counsel a move-out fee for the use of the elevator and on the day she moved-out the elevator was broken. The tenant stated she applied to the strata counsel to have the move-out fee refunded and they agreed that a refund was appropriate in her case. However, the strata counsel was required to apply the refund to the owners' account and the landlords were then responsible to issue her a cheque. Filed in evidence is correspondence between the tenant and the strata counsel, showing the strata fee was credited to the landlord's account.

The landlord (AS) testified he was unaware that the strata counsel had provided the landlords with a credit for the tenant's move-out fee.

Landlords' application

The landlords' claim as follows:

a.	Damages to unit	\$1,128.21
c.	Filing fee	\$50.00
	Total	\$3,026.21

The landlord (AS) testified the tenant cause damaged to the rental unit.

The landlord (KS) testified they had to replace one blind in the master bedroom, fix 2 sink stoppers, replace the fridge ice dispenser motor and clean the unit. Filed in evidence are invoices for the blind and fridge ice dispenser motor.

The tenant testified there were no problems with any of the items claimed by the landlord at the end of tenancy.

### Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, each party has the burden of proof to prove a violation of the Act by the the other party and a corresponding loss as a result.

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.

### Tenant's application

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant 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 an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlords are not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **\$3,250.00**, comprised of double security deposit (\$1,500.00) and the \$50.00 fee for filing this application. This order may be off-set with the landlord's application should one be granted.

#### Landlords' application

#### Damages to the unit

In this case, each party has provided a different version of events regarding damages to the unit.

In the absence of a condition inspection report, I find there is insufficient evidence to meet the burden of proof establishing that the tenant damaged the rental unit.

Section 23(1) of the Act states: The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(4) of the Act states: The landlord must complete a condition inspection report in accordance with the regulations and (5) both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

As a result, I dismiss the landlords' claim for compensation for damages to the unit.

Agent commission

In this case, the tenant agreed to pay half of the commission for a specific property management company to expedite the re-renting of the unit as she was under a fixed term contract.

The fee claimed by the landlords is not for the specific property management company consent to by the tenant. Rather, it is the fee claimed for the landlords' own agent.

I find that there is no provision under the Act, which would allow the landlords to recover the cost of their agent. Therefore, the landlords' are not entitled to compensation and I dismiss their claim for the agent commission.

Conclusion

The landlords' application for compensation for damage or loss under the Act is dismissed.

The tenant is granted a monetary order in the amount of **\$3,250.00** and the landlords must be served with a copy of this order as soon as possible. Should the landlords 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 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 28, 2012.

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Residential Tenancy Branch