



# 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 applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of their security deposit pursuant to section 38; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord corrected the spelling of his first name to that reflected in his application and as shown above. Tenant Matthew S. attempted to connect with the hearing a few times but was unable to retain a connection long enough to be sworn in as a party to the proceedings or to communicate effectively with the others participating in this hearing.

The landlord entered oral and written evidence that he sent copies of his dispute resolution hearing package to each of the five tenants by registered mail on September 14, 2012 to the address provided to him by the tenants at the joint move-out condition inspection on August 28, 2012, the same day that the tenants vacated the rental unit. The tenants testified that they did not receive these mailings, but learned of the landlord's application when they contacted the Residential Tenancy Branch to make enquiries in preparation for their own application for dispute resolution. The landlord confirmed that his registered mailings were returned to him as unclaimed.

The landlord testified that he only received notice of the tenants' cross application for dispute resolution when he discovered a copy of their application left for him in an

envelope a few days before this hearing. As neither party had received one another's dispute resolution hearing packages in time to properly prepare for this hearing, both parties expressed a willingness to adjourn this hearing to a date to be determined later if they were unable to resolve their dispute during the scheduled teleconference hearing.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy? Which of the parties are entitled to the tenants' security deposit? Are the tenants entitled to a retroactive reduction in rent for this tenancy? Is the landlord entitled to recover his filing fee for this application from the tenants?

#### Background and Evidence

The tenants started living in this rental home on or about August 28, 2010, on the basis of a one-year fixed term tenancy that was to expire on August 31, 2011. They arranged a second one-year fixed term tenancy agreement that began on September 1, 2011, and was to end on August 28, 2012. Monthly rent was set at \$3,180.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold a \$1,590.00 security deposit, paid in two stages by the tenants. The first of these payments of \$1,500.00 occurred when the 2010 tenancy began. The tenants paid an additional \$90.00 on or about September 1, 2011.

The landlord applied for a monetary award of \$1,440.00 for damages arising out of this tenancy. The tenants applied for a monetary award of \$2,000.32 for the return of their security deposit and for a rebate of four days of pro-rated rent for the last four days of August 2012, which they estimated at \$410.32.

#### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Despite the concerns regarding the notification provided to both parties of these applications for dispute resolution, both parties expressed a desire to reach a final and binding resolution of all issues arising out of this tenancy. They achieved this objective on the basis of the following agreement entered into by the parties in attendance who represented the interests of all those involved in this dispute and who agreed to resolve all issues in dispute arising out of this tenancy, including all items noted in their respective applications for dispute resolution under the following terms:

1. The landlord agreed to return \$890.00 from the tenants' security deposit payable to Tenant GL by sending it to him by mail postmarked no later than December 10, 2012, at the following address:  
100 - 123 East 123 Ave.  
City BC
2. The tenants agreed to allow the landlord to retain the remaining \$700.00 from their security deposit.
3. The parties agreed that this settlement agreement constituted a final and binding resolution of all issues in dispute arising out of this tenancy and agreed furthermore that the parties would not initiate any further applications for dispute resolution arising out of this tenancy.

### Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$890.00. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. Tenant GL is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

As per the parties' agreement, I allow the landlord to retain \$700.00 from the tenants' security deposit.

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: December 03, 2012

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Residential Tenancy Branch