



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND MNSD FF
For the tenants: MNDC 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 landlord applied for a monetary order for damage to the unit, site or property, and for authorization to retain all or part of the security deposit, and to recover the filing fee.

The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of all or part of their security deposit, and to recover their 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.

At the outset of the hearing, the parties confirmed that they received the evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. On April 18, 2013, after 77 minutes, the hearing was adjourned to allow for additional time to hear testimony from both parties. On May 24, 2013 the hearing re-convened for an additional 126 minutes.

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.

Preliminary and Procedural Matters

During the April 18, 2013 portion of the hearing, the son of the landlord, SR, attended the hearing and requested that the re-convened hearing be after 3:30 p.m. SR was advised that a 3:30 p.m. hearing was not possible as the next hearing would be scheduled at a time which permitted a longer scheduled hearing to allow enough time for the remainder of the testimony to be heard. Therefore, the re-convened hearing was scheduled for 9:30 a.m. on May 24, 2013 and was scheduled for three hours. Although the other parties attended the hearing, SR did not attend the re-convened hearing on May 24, 2013.

During the hearing, the tenants withdrew their claim for a \$500.00 septic inspection, \$544.00 claim for loss of revenue related to a home-based business, and all of the \$3,081.01 moving and repair cost claim with the exception of three items; \$102.57 for a faucet, \$139.06 for a rental truck related to moving out of the rental unit, and \$50.40 to have the post office re-direct their mail for six months after the tenancy ended. Based on the above, the tenants reduced their monetary claim from \$10,291.00 to \$6,132.03.

During the hearing, the landlord provided an itemized list of their monetary claim which totalled \$3,029.20, however, in the landlord's application the landlord claimed for \$3,000.00. Therefore, the landlord is limited to the amount listed in their application which is listed as \$3,000.00. In addition, the landlord requested to add the dishwasher onto the landlord's claim which was denied, as that would have prejudiced the tenants.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on June 15, 2004 and reverted to a month to month tenancy after June 15, 2005. Monthly rent in the amount of \$1,400.00 was due on the 15th day of each month. The tenants paid a security deposit of \$800.00 at the start of the tenancy in June 2004, which exceeds the maximum security deposit permitted under the *Act*, and will be addressed later in this decision.

During the hearing, both parties confirmed that there was no formal written move-in condition inspection report completed at the start of the tenancy.

On December 13, 2012, the tenants provided written notice to the landlord that they would be vacating the rental unit due to a septic system failure which could lead to another sewage overflow inside the rental unit. The tenants wrote in their notice to end tenancy that the rental unit would be vacated by January 15, 2013. The parties agree the tenants vacated the rental unit on January 15, 2013.

The tenants stated that they provided their written forwarding address to the landlord on a piece of paper on January 15, 2013 which was mailed January 16, 2013, and again on January 20, 2013. The landlord did not dispute that a forwarding address was provided in writing the tenants by January 20, 2013. The landlord filed their application on January 25, 2013.

Tenants' claim

The tenants are claiming \$6,132.03 comprised of the following:

Item #	Description	Amount
1	Moving and repair costs	\$292.03
2	Loss of enjoyment (calculated at 20% of rent (\$280.00) multiplied by 18 months)	\$5,040.00
3	Return of security deposit	\$800.00
	TOTAL	\$6,132.20

Tenants' Item #1 of 3

This items consists of three sub-items; A. \$102.57 for a faucet, B. \$139.06 for a rental truck, and C. \$50.40 for the post office to re-direct the tenants' mail for six months.

The tenants testified that sub-item A relates to a faucet that failed on September 10, 2012. A receipt for \$102.57 was submitted in evidence. The landlord disputes that the tenants advised them in writing that the previous faucet had failed. Furthermore, the landlord testified that she was unsure whether a new faucet was installed in the rental unit. The tenants did not provide any photos of the faucet and did not present any evidence that the landlord was notified in writing of the failure of the previous faucet.

The landlord would not agree to repay the tenants for the cost of the new faucet during the hearing.

Sub-item B relates to \$139.06 for the cost of rental a rental truck to move their personal items when vacating the rental unit. A receipt for \$139.06 was submitted in evidence.

Sub-item C relates to \$50.40 for the cost of having the post office re-direct the tenants' mail after they vacated the rental unit. The tenants clarified during the hearing that this cost covered a six month mail re-direction service. A document submitted in evidence showed a total of \$50.40.

Tenants' Item #2 of 3

The tenants are claiming \$5,040.00 for 18 months of loss of enjoyment due to problems related to A. Septic system failure, B. Condition of the interior stairs of the rental unit, C. Mould issues in the master bedroom and D. House settling resulting in the garage door and closet doors to not close correctly.

The tenants stated that they arrived at the amount of \$5,040.00 by attributing a loss of 20% of the value of their \$1,400.00 monthly rent for a total of \$280.00 per month, multiplied by 18 months.

The tenants stated that the first septic system failure was on June 27, 2011, which the landlord confirmed. The parties agreed that the septic tank was pumped out shortly after, which was supported by a receipt submitted in evidence. At that time, water and sewage was coming out of the tenants' toilet and shower drain. The second septic system failure was on October 1, 2012 which caused the toilet and shower drain to overflow again with water and sewage, which the landlord did not dispute. The third septic system failure was on December 19, 2012 which caused the toilet and shower drain to overflow again with water and sewage, and at which time a plumbing company confirmed the septic field had failed, which the landlord did not dispute. The landlord stated that she has since paid \$18,000.00 to have the septic field redone. The tenants submitted a video in evidence showing water overflowing from a gutter onto the septic tank. The landlord did not dispute the video.

The tenants stated that they asked the landlord for a free months' rent due to sewage in the house. Both parties agreed that the tenants were compensated by the landlord for January 2013 rent which was from December 15, 2012 to January 15, 2013 as rent was due on the 15th day of the month. That compensation totals \$1,400.00 as monthly rent is \$1,400.00 and the landlord agreed that the tenants did not have to pay the last month of

rent. The landlord wrote in their documentary evidence that the tenants provided their written notice to end the tenancy though, and the landlord still compensated the tenants \$1,400.00 by not charging them for their last month of rent because of the sewage backing up into the rental unit.

The tenants testified that they are also claiming for loss of enjoyment due to the condition of interior stairs, however, the tenants confirmed they did not write to the landlord regarding the interior stairs, nor did they submit evidence of the interior stairs such as photos.

The tenants stated that they did not write to the landlord regarding mould issues in the master bedroom and confirmed that they did not submit any photos or other evidence for this portion of their claim. The tenants alleged that the mould occurred in August 2012.

The tenants also claim that due to the house settling, the garage door and closet doors could not close correctly. The tenants confirmed that they did not advise the landlord in writing regarding the garage door or closet door issues. The landlord stated that the house was built in the 1990's.

Tenants' Item #3 of 3

The tenants originally claimed \$800.00 for the return of their security deposit, however, during the hearing requested that if they are entitled to double their security deposit under the *Act*, they would be seeking double their security deposit. The tenants did not waive their right to the doubling of the security deposit under section 38 of the *Act*.

Landlord's claim

The landlord is claiming \$3,029.20 comprised of the following:

Item #	Description	Amount
1	House cleaning	\$301.20
2	Junk removal	\$548.00
3	Plumbing repair	\$380.00
4	Drywall repair	\$200.00
5	Electrical repair	\$380.00
6	Garage door replacement	\$1,230.00
	TOTAL	\$3,029.20

As mentioned earlier in this decision, the landlord is limited to their original claim amount of \$3,000.00 as it would be prejudicial to the tenants to increase their monetary claim during the hearing.

Landlord's Item 1

The landlord is claiming \$301.20 for house cleaning. The landlord submitted a two-page invoice for house cleaning dated March 28, 2013 which shows the amount of \$301.20. The tenants submitted an invoice for \$120.00 for carpet cleaning dated January 10, 2013.

The landlord's son testified that the landlord's invoice was dated for March 28, 2013 as they "didn't have time to clean earlier". During the hearing, landlord photos 1 and 2 were reviewed. Photo 1 showed what the landlord was alleging to be an unclean door with grease on it. Photo showed what the landlord was alleging to be an unclean shower. The tenants disputed photo 1 by stating that the door was worn but not greasy. The tenants confirmed that photo 2 showed the remainder of the sewage backup in the shower which the tenants felt they should not have to clean up due to the septic system failure.

Landlord's Item 2

The landlord is claiming \$538.00 for junk removal. The landlord's son testified that he paid his step-brother in cash although the estimate submitted in evidence has a company name and was confirmed as a quote and not an actual invoice. The landlord confirmed that there was no statement from the step-brother confirming that the landlord paid him \$538.00 in cash supporting that the landlord suffered a loss of \$538.00 for junk removal.

Landlord's Item 3

The landlord is claiming \$380.00 for a plumbing repair. The landlord's son testified that there were no receipts for this amount but that he paid his friend, AB, in cash. The landlord did not submit any statements from AB confirming or supporting that he was paid in cash by the landlord. The quote submitted states a company name which the landlord confirmed was just a quote and not an actual invoice.

Landlord's Item 4

The landlord is claiming \$200.00 for drywall repairs. The landlord's son testified that he completed the drywall work himself and is charging \$20.00 per hour for a total of ten hours of labour to repair the drywall damage caused by the tenants. Landlord photos 84, 98, 107, 111 and 112 were reviewed during the hearing. In the photos, the landlord stated the photos support that the tenants caused damage to the drywall stemming from the tenants installing and subsequently removing their home-based business which included ovens and related wiring. Photo 98 shows a pipe exposed which the tenants confirmed they "left open for the landlord" after removing their home-based business from the rental unit. In the documentary evidence filed by the landlord, the landlord writes "\$50/hour, estimates 4 hours".

Landlord's Item 5

The landlord is claiming \$380.00 for electrical repairs. The landlord's son testified that there were no receipts for this amount but that he paid his friend, AB, cash. The landlord did not submit any statements from AB confirming or supporting that he was paid in cash by the landlord. The landlord writes in their documentary evidence, "\$90/hour, estimates 3 hours".

Landlord's Item 6

The landlord is claiming \$1,230.00 for the garage door replacement. The landlord's son testified that there were no receipts for this amount and that he paid cash for the garage door. The landlord confirmed during the hearing that there are no photos to support that the garage door had been replaced. The tenants disputed the testimony of the landlord. The tenants stated that they spoke to the garage door company representative about two weeks prior to May 24, 2013, and spoke to a man named "E" who advised them that a new garage door was not installed. The landlord had no witnesses to support that a new garage door has been installed.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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.

Landlord's claim: Item #1 – The landlord is claiming \$301.20 for house cleaning. The landlord submitted a two-page invoice for house cleaning dated March 28, 2013 which shows the amount of \$301.20. The tenants submitted an invoice for \$120.00 for carpet cleaning dated January 10, 2013. During the hearing, the tenants disputed various photos provided by the landlord. There was no dispute regarding photo 2 which the parties agreed showed the remainder of sewage backup in the shower which the tenants felt they should not have to clean as that was the third septic failure resulting in the overflow of water and sewage in the rental unit. Based on the above, and taking into account that the initial condition of the rental unit was not agreed upon due to the landlord breaching section 23 of the *Act* by failing to complete a move-in condition inspection report, and that the tenants provided an invoice for carpet cleaning, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Landlord's claim: Item #2 - The landlord is claiming \$538.00 for junk removal. The landlord's son testified that he paid his step-brother in cash. The estimate submitted in evidence has a company name and was confirmed as a quote and not an actual invoice. The landlord confirmed that there was no statement from the step-brother confirming that the landlord paid him \$538.00 in cash supporting that the landlord suffered a loss of \$538.00 for junk removal. Based on the above, **I find** the landlord has failed to prove that they suffered a loss of \$538.00. At the very least, the landlord should have had the step-brother present as a witness or have provided a written statement

from the step-brother supporting that junk removal work was completed. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Landlord's claim: Item #3 - The landlord is claiming \$380.00 for a plumbing repair. The landlord's son testified that there were no receipts for this amount but that he paid his friend, AB, in cash. The landlord did not submit any statements from AB confirming or supporting that he was paid in cash by the landlord. The quote submitted states a company name which the landlord confirmed was just a quote and not an actual invoice. Based on the above, **I find** the landlord has failed to prove that they suffered a loss of \$380.00. At the very least, the landlord should have had AB present as a witness or have provided a written statement from AB to support that plumbing work was completed. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Landlord's claim: Item #4 – The landlord is claiming \$200.00 for drywall repairs. The landlord's son testified that he completed the drywall work himself and is charging \$20.00 per hour for a total of ten hours of labour to repair the drywall damage caused by the tenants. In the landlord's documentary evidence filed by the landlord, however, the landlord provides contradictory evidence by writing "\$50/hour, estimates 4 hours". Therefore, **I find** the landlord has failed to prove the value of their loss by providing contradictory testimony that was not consistent with their own documentary evidence. Therefore, **I dismiss** this portion of the landlord's claim due to contradictory evidence, without leave to reapply.

Landlord's claim: Item #5 – The landlord is claiming \$380.00 for electrical repairs. The landlord's son testified that there were no receipts for this amount but that he paid his friend, AB, cash. The landlord did not submit any statements from AB confirming or supporting that he was paid in cash by the landlord. The landlord writes in their documentary evidence, "\$90/hour, estimates 3 hours". Based on the above, **I find** the landlord has failed to prove that they suffered a loss of \$380.00. At the very least, the landlord should have had AB present as a witness or have provided a written statement from AB to support that plumbing work was completed. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Landlord's claim: Item #6 – The landlord is claiming \$1,230.00 for the garage door replacement. The landlord's son testified that there were no receipts for this amount and that he paid cash for the garage door. The landlord confirmed during the hearing that there are no photos to support that the garage door had been replaced. The tenants disputed the testimony of the landlord. The tenants stated that they spoke to the garage

door company representative about two weeks prior to May 24, 2013, and spoke to a man named "Erik" who advised them that a new garage door was not installed. The landlord had no witnesses to support that a new garage door has been installed.

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. In the matter before me, the tenants disputed the landlord's testimony that a new garage door was installed. At the very least, when a party is seeking \$1,230.00 for a new garage door and claims that the garage door was paid in cash, the party submitting the claim should provide additional evidence to support their claim such as photos, a witness statement or have a witness present during the hearing to provide testimony. Based on the above, **I find** the landlord has failed to meet the burden of proof that they suffered a loss of \$1,230.00 to install a new garage door. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

As the landlord's claim did not have merit, **I do not grant** the landlord the recovery of the filing fee.

Tenants' claim: Item #1 – This items consists of three sub-items; A. \$102.57 for a faucet, B. \$139.06 for a rental truck, and C. \$50.40 for the post office to re-direct the tenants' mail for six months.

The tenants testified that sub-item A relates to a faucet that failed on September 10, 2012. A receipt for \$102.57 was submitted in evidence. The landlord disputes that the tenants advised them in writing that the previous faucet failed so the landlord. Furthermore, the landlord testified that she was unsure whether a new faucet was installed in the rental unit. The tenants did not provide any photos of the faucet and did not present any evidence that the landlord was notified in writing of the failure of the previous faucet. The landlord would not agree to repay the tenants for the cost of the new faucet during the hearing. As the tenants failed to submit photos of the faucet in the rental unit, and any evidence that they advised the landlord of the faucet failing during the tenancy, I am not satisfied that the tenants have provided sufficient evidence that they suffered a loss. Therefore, **I dismiss** this portion of the tenants' application due to insufficient evidence, without leave to reapply.

Sub-item B relates to \$139.06 for the cost of rental a rental truck to move their personal items when they vacated the rental unit. A receipt for \$139.06 was submitted in evidence. Sub-item C relates to \$50.40 for the cost of having the post office re-direct the tenants' mail after they vacated the rental unit. The tenants clarified during the

hearing that this cost covered a six month mail re-direction service. A document submitted in evidence showed a total of \$50.40. Both sub-items B and C are costs that the tenants would have incurred at the end of the tenancy regardless. Furthermore, the tenants ended the tenancy themselves by giving written notice to the landlord.

Therefore, **I find** the landlord is not responsible for these costs as both of these items are normal costs incurred by tenants after they have given notice to end a tenancy.

Based on the above, **I dismiss** this portion of the tenants' claim as they have failed to meet the burden of proof that the landlord is responsible for these costs under the *Act*.

Tenants' claim: Item #2 – The tenants are claiming \$5,040.00 for 18 months of loss of enjoyment due to problems related to A. Septic system failure, B. Condition of the interior stairs of the rental unit, C. Mold issues in the master bedroom and D. House settling causing the garage door and closet doors to not close correctly. The tenants stated that they arrived at the amount of \$5,040.00 by attributing a loss of 20% of the value of their \$1,400.00 monthly rent for a total of \$280.00 per month, multiplied by 18 months.

I will first deal with portions B, C and D of the tenants' claim listed above. The tenants confirmed that they did not advise the landlord in writing at any time regarding B, C or D listed above. Furthermore, the tenants failed to provide any supporting evidence such as photos or video of B, C or D in support of their claim. Therefore, **I dismiss** these portions of the tenants' claim due to insufficient evidence, without leave to reapply. This leaves the septic system failure as the remaining item to address for this item.

There is no dispute that there were three septic system failures during the tenancy. The first septic field failure was on June 27, 2011, the second septic system failure was on October 1, 2012 and the third septic system failure was on December 19, 2012. I do not find that a video of overflowing gutters flowing onto the septic tank proves that the landlord was negligent in maintaining the septic system. **I find** that the value of the tenants' tenancy was diminished for each of the three months where the septic system overflowed into the tenants' rental unit, but **not** for the entire 18 months being claimed. The tenants have confirmed that the landlord has already provided compensation the tenants for one month of rent in the amount of \$1,400.00. The landlord agreed to not charge the tenants rent in the amount of \$1,400.00 for December 15, 2013 to January 15, 2013. Therefore, **I find** that the tenants have already been compensated sufficiently by the landlord for each of the three months where the septic system overflowed into the tenants' rental unit by receiving one month's free rent in the amount worth \$1,400.00. Based on the above, **I do not grant** the tenants additional monetary compensation for this portion of their claim.

Tenants' claim: Item #3 – I will now deal with the tenants' security deposit. Firstly, section 19 of the *Act* states:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[emphasis added]

Based on the above, **I find** the landlord breached section 19 of the *Act* by requesting and accepting a security deposit of \$800.00 when monthly rent was \$1,400.00. The maximum security deposit was \$700.00, however, the landlord accepted \$100.00 more than what is permitted under the *Act*. Therefore, **I caution** the landlord to comply with section 19 of the *Act* in the future.

Secondly, there is no dispute that the landlord failed to complete a move-in condition inspection report at the start of the tenancy. Section 23 of the *Act* states:

Condition inspection: start of tenancy or new pet

23 (1) 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.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(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.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

[emphasis added]

Based on the above, **I find** the landlord breached section 23 of the *Act* by failing to complete a move-in condition inspection report as required by the *Act*. Section 24 of the *Act* states:

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[emphasis added]

Based on the above, **I find** the landlord extinguished their right to claim towards the security deposit for damage to the residential property by failing to complete a move-in condition inspection report pursuant to section 23 of the *Act*.

The landlord continues to hold the tenants' security deposit of \$800.00 which as accrued \$28.34 in interest since the start of the tenancy which brings the total security deposit to \$828.34.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage

deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

[emphasis added]

Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenants' full security deposit as the landlord was not entitled to claim towards the security deposit, having extinguished their right at the start of the tenancy by failing to complete a move-in condition inspection report. Therefore, **I grant** the tenants double their original security deposit of \$800.00 for a total of **\$1,900.00** plus the original interest of \$28.34 for a total of **\$1,928.34**.

As the tenants' were successful with a portion of their application, **I grant** the tenants the recovery of half of their \$100.00 filing fee, in the amount of **\$50.00**.

I find the tenants have established a total monetary claim in the amount of **\$1,978.34** comprised of \$1,928.34 for double the tenants' security deposit plus interest, and \$50.00 of the tenants' filing fee. Based on the above, **I grant** the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$1,978.34**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

I dismiss the landlord's claim in full, without leave to reapply.

I find the tenants have established a total monetary claim in the amount of \$1,978.34 comprised of \$1,928.34 for double the tenants' security deposit plus interest, and \$50.00 of the tenants' filing fee. The tenants are granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$1,978.34. This order must be served on the landlord 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 06, 2013

Residential Tenancy Branch