



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD,

### Introduction

This is an application for a monetary order for \$3087.66.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

The issue is whether or not the applicants have established a monetary claim against the respondent for \$3087.66.

### Background and Evidence

The applicants testified that:

- They had given notice that they would be vacating the rental unit at the end of February 2013; however on February 7, 2013 the landlord gave them notice that repairs were going to be done to the rental unit.
- They believed that the required repairs to the rental unit would significantly interfere with their use and enjoyment of the rental unit and therefore they considered it a breach of the Residential Tenancy Act and they gave the landlords notice that they would be vacating the rental unit on February 11, 2013.

- They had totally vacated the rental unit by February 11, 2013 and therefore they are requesting the return of the remainder of their rent which they had paid for the full month of February 2013.
- They are also asking for her compensation for loss of use of the driveway and access to the double garage for the period of October 3, 2012 through November 7, 2012. The landlords did repairs on the driveway and therefore they were forced to park on the street. They believe they should get 20% off their rent for loss of use.
- The landlord also made deductions from their security deposit without any permission to do so and therefore they are requesting return of double their security deposit minus the \$679.79 that has already been returned.
- The landlord had a forwarding address in writing by February 13, 2013 however no application for dispute resolution was forthcoming. They are therefore requesting a monetary order as follows:

Return of rent for 17 days of February 2013	\$1001.81
Compensation for loss of use of the driveway	\$385.85
Double the \$825 security deposit	\$1650.00
Filing fee	\$50.00
Subtotal	\$3087.66
Less amount of security deposit already returned	\$679.79
Total order requested	\$2407.87

The respondent testified that:

- They did give the tenants notice that repairs would be done in the rental unit, however when the repair person viewed the unit on February 8, 2013, the tenants that already and vacated the area in which the repairs were to be done.
- Further the tenants never requested that they delay the repairs, they simply gave notice that they were vacating early. Had the tenants requested a delay I'm sure we could've arranged it.
- The tenants are claiming that the driveway was unavailable for over a month, however the work done on the driveway took no longer than two weeks.
- Further there was little inconvenience to the tenants as the parking on the street is just about as close as parking in the driveway.
- She made a deduction from the security deposit and did not apply for dispute resolution because she thought she had a verbal agreement from the tenants to

keep a portion of the security deposit. She therefore deducted the agreed-upon amount and returned the remainder. She never got any written permission from the tenants to keep any or all of the security deposit.

In response to the landlord's testimony the tenants testified that:

- They were in the process of moving out of the rental unit, but had expected to have the whole month to move and when the landlord stated they were going to do repairs they sped up their move.
- The driveway was inaccessible for over a month as the landlords had tape across the driveway to deny access and it was very inconvenient having to park on the street as there were often times when there were no spots available in front of the rental unit.
- They never gave the landlord any verbal permission to keep any of the security deposit and in fact they strongly denied any responsibility for damages.

### Analysis

It's my finding that the landlord did not breach the tenancy agreement or the Residential Tenancy Act when the landlord gave notice that repairs would be done in the rental unit. The Residential Tenancy Act requires that landlords maintain the rental property and therefore if repairs are needed the tenants must allow reasonable access to the landlords to do those repairs.

I therefore will not allow the tenants request for return of any rent for the month of February 2013, as their Notice to End Tenancy was effective for the end of February 2013 and they are liable for rent for the full month.

I also deny the request for a 20% rent reduction for loss of use of the driveway. It may of been inconvenient to lose the use of the driveway however as I stated above the landlord is required to maintain the property. Further I find that the inconvenience of having to park on the street does not warrant any reduction in rent as there was no significant loss of use of the rental property.

As far as a security deposit is concerned however, it is my finding that the landlord is liable for double the security deposit.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the

tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants full security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

The tenants vacated the rental unit on February 11, 2013 and the landlord had a forwarding address in writing by February 12, 2013 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenants paid a deposit of \$825.00, and therefore the landlord must pay \$1650.00 minus the \$679.79 already returned for a difference of \$970.21.

I further allow the request for recovery of the \$50.00 filing fee

### Conclusion

I have allowed \$1020.21 of the applicant's claim and have issued a monetary order in that amount.

The remainder of the applicants claim is dismissed without leave to reapply.

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: August 19, 2013

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Residential Tenancy Branch

