



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order for money owed or compensation for damage or loss under the Act, regulation or the tenancy agreement, and an order to the return of double the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background, Evidence and Analysis

Both parties agree to the following:

The tenancy began on September 1, 2012 and ended on February 28, 2013. The tenants were obligated to pay \$1150.00 per month in rent as well as half the water bill and 1/3 the electrical and gas bills. In advance and at the outset of the tenancy the tenants paid a \$575.00 security deposit. Neither a move in or move out condition inspection report was conducted.

As the tenants are the sole applicants in this matter I address their claims and my findings as follows:

**First Claim** – The tenants are seeking the return of double their security deposit. The tenants stated that they provided their forwarding address in writing to the landlord by registered mail on March 26, 2013. The landlord acknowledges the receipt of the forwarding address sometime in the first week of April 2013. The landlord stated that the tenants have unpaid utility bills outstanding.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

The landlord did not comply with the Act as outlined as above and I therefore find that the tenants are entitled to the return of double the security deposit  $\$575.00 \times 2 = \$1150.00$ .

It was explained to the landlord that she was at liberty to file her own separate application for dispute resolution if she wished to have her claims heard. The landlord indicated that she understood.

**Second Claim** – The tenants stated that they are seeking \$1000.00 for having to live with a hole in the ceiling and an ongoing water leak. The tenants stated that the initial leak occurred in late November 2012 and was not completely repaired until January 2013. The landlord adamantly denies that the repairs took as long as purported by the tenants. The landlord stated that all repairs were done within one week. The tenants stated on their application that they were also seeking compensation for a sink that was leaking in the amount of \$125.00, burnt out side light \$125.00, \$300.00 for ant problems and \$300.00 for unusable washer and dryer however provided no testimony to those claims.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants failed to provide sufficient evidence to meet all four of the above criteria, specifically #2 and #3. Based on the above I dismiss this portion of the tenants' application.

As for the monetary order, I find that the tenants have established a claim for \$1150.00. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$1200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenants are granted a monetary order of \$1200.00.

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: September 03, 2013

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Residential Tenancy Branch

