



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

TENANT: MNSD, FF

LANDLORD: MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, for compensation for damage or loss under the Act, regulations or tenancy agreement, for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on August 8, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on June 28, 2013, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?

2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is there unpaid rent and if so how much?
4. Is the Landlord entitled to unpaid rent and if so how much?
5. Is there a loss or damage to the Landlord and if so how much?
6. Is the Landlord entitled to compensation for loss or damage and if so how much?
7. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

### Background and Evidence

The Tenants moved into the unit on October 23, 2011 and the tenancy officially started on November 1, 2011 as a fixed term tenancy with an expiry date of May 1, 2012. The Tenancy then continued on a month to month basis. Rent was \$1,200.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$600.00 on November 1, 2011.

The Landlord said the Tenants moved out of the unit on May 8, 2013 and gave the property manager their forwarding address on that date. The Landlord said she had issued a 2 Month Notice to End Tenancy in late March or early April for the end of May, 2013. The Landlord said the Tenants did not pay the April, 2013 rent as per the agreement with the 2 Month Notice to End Tenancy, but the Tenants stayed in the unit until May 8, 2013 so the Landlord said she is claiming 7 days of rent in the amount of \$280.00.

Further the Landlord said that although no formal move in and move out condition reports were completed and signed by the parties, her property manager did a walkthrough of the unit prior to move in and a copy of the property manager's note is in the evidence package. The note says the property is in good condition. As a result the Landlord is claiming damage to the unit as follows:

1. Dump trips and fees	\$ 51.00
2. Clean up and repairs	\$ 342.74
3. Cleaning	\$ 150.00
4. Additional cleaning and work	\$ 116.13
5. Wall repairs	\$ 200.00
6. Rodent control and clean up	\$ 376.00
7. Estimate for painting	\$1,500.00

Total damage claim	\$2,735.87
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The Landlord said the unit was left in very poor condition and it required a lot of work and time to clean the unit and grounds up to bring it back to the condition at the start of the tenancy.

The Tenant who arrived 20 minutes into the hearing said he was given a 2 Month Notice to End the Tenancy in April to end the tenancy at the end of May, 2013. The Tenant said they agreed not to pay the April, 2013 rent and the Tenant would move out by the start of May, 2013. The Tenant said they moved out on May 8, 2013 and the Landlord had agreed that no rent would be paid for May, 2013 in trade for moving out early. The Landlord said no agreement to that effect was made.

The Tenant continued to say that there were no move in or move out condition inspection reports done and the unit was in very messy and poor condition when they moved in. As well the Tenant said the Landlord stored her belonging in the unit and much of the things taken to the dump were not the Tenant's belonging. The Landlord submitted photographs that she said were taken at the end of the tenancy. The Tenant said the garbage and debris in the photographs were not the Tenants' belongings or garbage. The Landlord said the Tenant was lying. The Tenant said that they cleaned the unit very well prior to leaving and gave the property manager their written forwarding address on May 8, 2013.

The Tenant continued to say that the Landlord returned \$150.00 of their security deposit in the first week of May, 2013, but kept the balance of the deposit in the amount of \$450.00 to cover the cost of cleaning and damages. The Tenant said the Landlord should have returned all of the deposit and now he is applying for double the outstanding security deposit in the amount of  $\$450.00 \times 2 = \$900.00$ .

In closing the Landlord's agent said they understood they did not do the required condition inspection reports but the property manager said in her note the property was in good shape at the start of the tenancy. The Landlord's agent continued to say the Tenants should be responsible for the rent during May, 2013 as they got April, 2013 rent free.

The Tenant said in closing that the unit was not in good shape on move in it was dirty and needed many repairs and no condition inspection reports were done. As well the Tenant said they cleaned the unit very well before leaving and the photographs the Landlord provided is not of their stuff.

### Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has established there was damage to the rental unit from the photographs the Landlord provided, but the extent of the damage attributable to the Tenant is unproven. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has established there was damage during the tenancy the Landlord has not established that the unit was in poorer condition on move out than it was on move in, because no inspection reports were completed and signed by the parties. Therefore the Landlord has not established grounds to prove her claims. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to establish a loss or damage existed at the end of the tenancy. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the Landlord's testimony that the Tenants did not pay rent for 7 days in May, 2013 and there was no agreement for free rent for May, 2013 as the free rent concession under the 2 Month Notice to End Tenancy was granted in April, 2013. Therefore I grant the Landlord unpaid rent for 7 days in May, 2013 in the amount of \$280.00.

With respect to the Tenants' application for double their security deposit in the amount of \$900.00.

Section 38 (1) of the Act 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.

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on May 8, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution by May 23, 2013. Consequently I find for the Tenants and grant an order for double the security deposit of \$600.00 in the amount of \$1,200.00 less the amount of

security deposit returned to the Tenant in the amount of \$150.00. It should be note the Act indicates the amount of the security deposit not the balance of the security deposit is the basis for the calculation. Therefore the calculation is based on the full amount of the security deposit of \$600.00.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlord has not been successful in this matter I order the Landlord to bear the \$50.00 filing fee for his application, which he has already paid.

A monetary order has been issues to the Tenants for the following:

Double Security deposit	\$ 1,200.00	
Filing fee	\$ 50.00	
Total		\$ 1,250.00
Less the amount returned on the security deposit	\$ 150.00	
Less the unpaid rent	\$ 280.00	
Total		\$ 430.00
Total owing from the Landlord to the Tenant		\$ 820.00

### Conclusion

A monetary order has been issued to the Tenants' for \$820.00.

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: October 01, 2013

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Residential Tenancy Branch