



# 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 was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on September 16, 2013 for:

1. A Monetary Order for compensation – Section 67;
2. An Order to retain all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on October 4, 2013 for:

1. A Monetary Order for return of double the security deposit – Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy started on August 1, 2013 and ended on August 31, 2013. Rent of \$1,200.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. No move-in inspection was conducted and no move-out inspection was offered to the Tenants. The Tenant's provided their forwarding address in writing on September 9, 2013 and requested return of the security deposit. The Landlord has not returned the security deposit.

The Tenant claims return of double the security deposit.

The Tenant states that when they were considering renting the unit, the landlord showed them a different unit and told them that the unit they would be renting was the same and in the same condition. The Tenants state that when they moved into the unit they rented, the unit had mold growing and cockroaches. The Tenants state that as they were pregnant and had two small children they were concerned that the unit was not liveable and hired an inspector to look at the unit. The Tenant states that the inspector attended the unit on August 22, 2013 and that the Landlord was present and tried to deny the inspector entry to the unit. The Tenants state that the inspector found that toxic black mold was growing. The Tenants provided a copy of that report. The Tenants states that the next day the Landlord told the Tenant that they would deal with the issue on their timeframe. The Tenants states that as their pregnancy was high risk and given the Landlord's behavior with the inspector and the Landlord's stated intention to resolve the problem on the Landlord's timeframe, that the Tenants believed the Landlord was not taking the situation seriously and would not act quickly to address the problem so they informed the Landlord on August 26, 2013 that they would be moved out of the unit on August 31, 2013. The Tenants state that they also had no reason to trust that the Landlord would address the cockroach problem as well. The Tenants state that a physician was not seen during this period in relation to health issues related to the unit or mold. The Tenants states that the unit was unliveable and claim compensation of \$1,200.00.

The Landlord states that that a company was hired to visit the unit on August 23, 2013 and the Landlord left a voice mail to this effect for the Tenants. The Landlord states that the maintenance person was also sent to the unit to check to see if anyone was home but was told that the female Tenant was leaving the house and that she required quiet. The Landlord states that the male Tenant then called and refused the Landlord entry to the unit that day. The Landlord states that the company was then not available until the following week. The Tenant agrees that the Landlord was denied entry to the unit as the female Tenant had surgery that day and because the Landlord told them that the company was only going to check into the cockroaches. The Landlord states that they attended the unit and left repeated notices to inspect the unit but that the Tenants refused the Landlord entry into the unit.

The Landlord states that the Tenants failed to provide a month's notice to end the fixed term tenancy. The Landlord states that the unit was advertised and rented to new tenant for October 1, 2013 at the same rental amount. The Landlord states that there was no mold found in the unit and that as water had leaked from the trap there was only moisture. The Landlord states that repairs were made and completed by September 7 or 8, 2013. The Landlord states that no cockroaches were found. The Tenants states that the Landlord started repairs before they moved out of the unit. The Landlord claims lost rental income of \$1,200.00. The Landlord states that the tenancy agreement provides for a penalty if the Tenants end the tenancy before the fixed term date. The Landlord claims this penalty of \$200.00 for breaking the lease.

The Landlord states that the Tenants failed to clean the carpet at the end of the tenancy and that as the tenancy agreement requires this cleaning, the Landlord claims \$200.00.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution

claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Tenants provided their forwarding address on September 9, 2013 and as the Landlord filed an application to claim against the deposit on September 16, 2013, I find that the Tenants are not entitled to return of double the security deposit.

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the non complying party must compensate the other party for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although the Tenant claims there were cockroaches in the unit, given the Landlord's denial that any cockroaches were in the unit and considering that the Tenant provided no supporting evidence of the existence of cockroaches, I find that the Tenant has not substantiated that cockroaches were in the unit. Although the Tenants provided evidence of moisture and mold in the unit, there was no evidence of toxicity and no medical evidence to support health implications for the Tenants. While I accept that the Tenants did not trust the Landlord and were anxious over the pregnancy, I accept the Landlord's evidence of attempts to address the problem, and given the undisputed evidence that the Landlord initiated repairs to the unit before the Tenants moved out, I find that the Landlord acted reasonably. I find that the Tenants have failed to establish that the unit was unliveable or that the Landlord breached its obligations to maintain the unit and I dismiss their claim for \$1,200.00. As the Tenant's claims have not been substantiated, I decline to award recovery of the filing fee.

Given that the Tenant ended the tenancy before the fixed term date with insufficient notice, and accepting the Landlord's evidence that the unit was immediately advertised

for rent, I find that the Landlord has substantiated an entitlement to lost rental income of **\$1,200.00**. As the Landlord has been fully compensated for the losses caused by both the late notice and the early end of the fixed tenancy, I find that a penalty in the circumstance to be unconscionable and I dismiss the claim for the penalty.

Section 37 of the Act provides that at the end of a tenancy, the tenant must leave the unit reasonably clean. As the tenancy was only one month and as the Landlord provided no evidence to indicate that the carpets were dirty, I find that the Landlord has not substantiated that the Tenants left the carpet unreasonably clean I dismiss the Landlord's claim for this compensation.

As the Landlord's application has met with substantial success, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,250.00**. Deducting the security deposit of **\$600.00** plus zero interest from this entitlement leaves **\$650.00** owed by the Tenant to the Landlord.

#### Conclusion

I Order the Landlord to retain the security deposit plus interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$650.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court. 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: November 8, 2013

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Residential Tenancy Branch

