



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain a portion of the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38;
- e) A monetary order for cost of emergency repairs and other compensation; and
- f) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

The tenants vacated the unit on August 31, 2013. Has the landlord proved on the balance of probabilities that the tenants caused damage to the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Are the tenants entitled to twice their security deposit refunded and to recover filing fees for the application?

### **Background and Evidence:**

Both parties and witnesses/advocates for the tenants attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on September 1, 2012, that rent was \$1985 a month and a security deposit of \$992.50 was paid in August 2012. It is undisputed that the tenants vacated the property on August 31, 2013 and provided a forwarding address in writing to the landlord on September 16, 2013 by registered mail.

The landlord claims she gave the tenants two opportunities by telephone to do a move out inspection report on August 31, 2013 and September 1, 2013 and emphasized the place had to be left clean but they did not respond and took off with the key. The tenants and their witnesses who are a tenant's parents and also lawyers and Officers of the Court in another province said that the landlord was evasive, did not return calls and they waited for hours for her to come for inspection on Saturday August 31, 2013. They said they followed her instructions, gave keys to her son so he could show prospective tenants in the month prior and left all the rest of the keys inside the house for her. The mother of a tenant said the place was very dirty when the tenants moved in but a tenant signed a move in report saying everything was in good condition because they were under duress to find a place as they are students. She said she cleaned and a tenant cleaned for hours but it was not professionally cleaned. In evidence are some photographs submitted by the tenants which they said they took at move-in and at move-out but no clear close ups of the appliances or floors to illustrate how clean they were. The tenant submits that the landlord cannot legally claim against their deposit as she did not do a move-out condition inspection report with them or give them a Notice of Final Opportunity for inspection. The tenants also list a large number of problems they had with the unit during the tenancy such as a non functioning dryer for at least a month but they have not claimed compensation for these problems.

The landlord claims \$150 for cleaning the property. She states that it was clean at move-in but she had a housekeeper clean it again after they moved in. The tenants provided a statement saying that the landlord had a substandard cleaning job done after the tenancy commenced. The landlord submitted photographs taken at move-out which show a dirty oven and refrigerator and some dirt on floors and heating vents. She submitted no invoice for her costs for cleaning. A statement from the present tenant is included in her evidence. He says they had to wait a few hours to move in on September 1, 2013 so the landlord and her son could clean the property and she told him she was sorry for the delay which was caused by the last tenant not cleaning the property.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Monetary Order:**

This was a difficult hearing as the applicants were accusing each other of being untruthful on most of the points. Therefore I will be assessing the credibility of the evidence relying on the consistency of the oral evidence with the documentary evidence which was completed at the time of the events in question. I decline to assess credibility on the fact that a tenant's parents are lawyers and Officers of the Court as was submitted to me by the tenant's parents.

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible and prefer it to the evidence of the tenant on the condition of the unit at move-in. Although a tenant's parents are advocates and officers of the Court, I find their evidence of the condition at move-in is inconsistent with the condition inspection report done at move-in and signed by one of the tenants. Items are noted as in good condition and no problems with cleaning or otherwise are noted. I find that even if it was not cleaned to a high standard at move-in, the undisputed evidence is that the landlord had it cleaned again. Although the tenants and a mother gave evidence that they cleaned the unit at move-out, the photographs that they submitted do not support their statements as the condition of appliances and floors cannot be seen in them. I find the landlord's evidence more credible as she provided clear, close-up photographs at move-out to show a dirty oven, a dirty refrigerator and some dirt on floors and vents and also a statement from the next tenant who witnessed her and her son cleaning for several hours on September 1, 2013. I find the claim of \$150 to clean a home is reasonable so I find her entitled to recover \$150 for the cleaning.

On the tenant's application, the onus is on him to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on August, 2013 and provided their forwarding address in writing on by registered mail on September 12, 2013 which is deemed to be received on September 17<sup>th</sup> according to section 90 of the Act. I find the landlord filed her application on September 30, 2013 which is within the 15 day limitation set out in section 38 of the Act so the doubling provision does not apply. While the landlord maintains she complied with section 35 and gave the tenant two opportunities for inspection, I find she provided no written notices of appointments for inspection, did not give the tenant a final notice of a move-out inspection and did not complete one herself. Therefore, I find her right to claim against the security deposit is extinguished in accordance with section 35. I find the tenants entitled to the return of their deposit.

Although the tenants complained about problems during the tenancy, I find they claimed no monetary compensation and they submitted no documentary evidence of costs etc. to support their claims. A principle of natural justice is that the other party must be informed of any monetary amount claimed. I dismiss this portion of their claims.

**Conclusion:**

I find the landlord entitled to a monetary order for \$150 for cleaning plus her filing fee of \$50 for this application.

I find the tenants entitled to a refund of their security deposit plus their filing fee with a deduction of \$200 to offset the amount owed to the landlord. I dismiss the further claims of the tenant.

Calculation of Monetary Award:

Refund of security deposit	992.50
Tenants' filing fee	50.00
Cleaning fee to landlord offsetting amount owed	-150.00
Filing fee of landlord	-50.00
Total Monetary Order to <b>**Tenant**</b> (as amended Oct. 25 <sup>th</sup> .)	842.50

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 24, 2013

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Residential Tenancy Branch

