



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MND, FF, O

### Introduction

This hearing dealt with two related applications. File 812541 is the landlord's application for a monetary order and an order permitting retention of the security deposit in full or partial satisfaction of the claim. File 538176 is the tenants' application for return of double the security deposit. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications one decision will be rendered for both.

### Issue(s) to be Decided

- Is the landlord entitled to a monetary order and, if so, in what amount?
- Are the tenants entitled to a monetary order and, if so, in what amount?

### Background and Evidence

The formal start date of this month-to-month tenancy was August 1, 2013 although the tenants actually moved in earlier. The monthly rent of \$1275.00 was due on the first day of the month. The tenants paid a security deposit of \$637.50. The tenants paid the August and the September rent in advance. A move-in inspection was not conducted nor was a move-in condition inspection report completed.

On August 12 the tenants notified the landlord by text message that they would be vacating the rental unit by the end of the month. In fact, the tenants were out by August 29.

The landlord was able to re-rent the unit effective September 1 at the same rent. The arrangements were that the new tenant would be moving in at noon on August 31.

The landlord and the male tenant met at a local restaurant on the evening of August 30 at which time the tenant gave the landlord the keys to the rental unit. By then the landlord had been into the unit and observed that it was vacant. She described condition of the unit as not being filthy but not to her standards. When the parties met there was some conversation about a move-out inspection and re-imbursement of the September rent and the security deposit. The landlord did not express any concerns

about the condition of the unit nor did she ask the tenants to do any additional cleaning. A move-out inspection was not conducted.

The landlord returned the September rent to the tenants by electronic transfer on September 6.

The tenants provided their forwarding address in writing to the landlord by registered mail dated September 13. The landlord filed her application for dispute resolution September 16; the tenants filed their on September 24.

The landlord had just moved to Grande Prairie from Kelowna when this tenancy started. She said she traveled back to Kelowna specifically to be present when the tenants moved out and the new tenant moved in. The landlord claims accommodation costs of \$180.00 and gas expenses of \$225.00. These are her estimated costs as she did not keep any receipts from the trip.

The landlord also claimed loss of income of \$180.00. She testified that in order to be in Kelowna by the end of the month she had to take Friday off work. She testified that her hourly rate is \$22.75 and her normal work day is eight hours.

The landlord claims \$25.00 for cleaning supplies. She says she washed the floor, wiped out the cupboards and cleaned the bathroom before the new tenant moved in. The tenants say they left the unit clean.

The tenants dispute all of the landlord's claims. They say that the landlord had previously planned the trip to Kelowna for that weekend; that she stayed and/or travelled with friends; and that she did not do any additional cleaning. They also pointed to the lack of documentation filed in support of the landlord's claims. Finally, they argued that they should not be responsible for costs incurred by a landlord who lives in a different community than the one in which the rental unit is located.

#### Analysis

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser.

The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The landlord's claim for travel costs is dismissed. Not only was there no documentation from this particular trip filed by the landlord, tenants are not responsible for costs incurred by a landlord by travelling to or from their rental unit. These costs may be tax deductible by a landlord but they are not costs that may be collected from a tenant.

Similarly the landlord's claim for loss of employment income is dismissed. Once again, no documentation was filed in support of the claim. In general, if a landlord has paid employment in addition to a rental business it is up to the landlord to balance the requirements of each. Tenants are not responsible for the loss of income suffered by a landlord while they attend to their rental business.

The landlord's claim for cleaning supplies is dismissed. There was no evidence such as photographs or a completed condition inspection report to corroborate the landlord's description of the condition of the unit nor were there any invoices for cleaning supplies filed.

The tenants' claim for payment of double the security deposit is allowed for the following reasons.

Section 23 of the *Residential Tenancy Act* provides that at the beginning of every tenancy the landlord and tenant must conduct a move-in inspection together and complete a move-in condition inspection report in accordance with the regulation. Section 24 sets out the consequences for both parties if the inspection is not conducted, the report not completed, or a copy of the report not given to the tenant. For landlords the consequence is that their right to claim against the security deposit or pet damage deposit is extinguished.

Section 35 provides that at the end of every tenancy the landlord and the tenant must conduct a move-out inspection together and the landlord must complete a move-out condition inspection report and provide a copy to the tenant. Section 36 prescribes the same penalties as section 24 for non-compliance.

Section 38(1) 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 either repay the security deposit to the tenant or, if the landlord has the legal right to do so, file an application for dispute resolution claiming against the deposit.

Although the landlord did file this application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing, her right to claim against the security deposit had been extinguished. As the landlord had lost the right to file a claim against the security deposit, she was obliged to return the full amount within 15 days.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. The landlord did not return the security deposit to the tenants within 15 days and is therefore subject to the section 38(6) penalty.

It is important to note that although section 24 and 35 prevent a landlord from claiming against a security deposit or pet damage deposit if they have not complied with section 23 or 35, those sections do not prevent a landlord from applying for a monetary order for damages. Pursuant to section 72 any award in favour of a landlord may be offset against any security deposit or pet damage deposit due to the landlord. However, in this case I have already dismissed the landlord's claims for damages so there is no award in favour of the landlord to offset against the award in favour of the tenants.

I find that the tenants have established a total monetary claim of \$1325.00 comprised of payment of double the security deposit in the amount of \$1275.00 and the \$50.00 fee paid by the tenants for their application and I grant the tenants a monetary order in that amount. As the landlord was unsuccessful on her application no order for payment of the fee she paid to file her application will be made.

#### Conclusion

A monetary order of \$1325.00 has been made in favour of the tenants. If necessary, this order may be filed in the Provincial 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 18, 2013

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Residential Tenancy Branch

