



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDC, MNSD, FF  
MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on July 01, 2012. Monthly rent of \$950.00 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Arising from a hearing held on August 26, 2013 (file # 810380), an order of possession was issued in favour of the landlord by the same date. Subsequently, the tenants finished vacating the unit on October 1, 2013. A move-out condition inspection report was completed with the participation of both parties on October 1, 2013, and the tenants informed the landlord of their forwarding address in writing on that same date. Further, the landlord testified that new renters began moving into the unit on October 1, 2013.

Both parties filed their applications for dispute resolution on October 16, 2013.

### Analysis

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy:**

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The particular attention of the parties is also drawn to the following statutory provisions:

The Act:

Section 38: **Return of security deposit and pet damage deposit**

The Regulation:

Section 19: **Disclosure and form of the condition inspection report**

Section 20: **Standard information that must be included in a condition inspection report**

Section 21: **Evidentiary weight of a condition inspection report**

Based on the documentary evidence and testimony, and in consideration of the above statutory provisions, the various aspects of the respective applications and my findings around each are set out below.

## **TENANTS**

Section 38 of the Act, as above, provides in part 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 or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, I find that the tenancy ended on October 1, 2013, and that the tenants' forwarding address was provided in writing on that same date.

Accordingly, where it concerns section 38 of the Act, **the fifteenth day** was October 16, 2013. While the landlord has presently not returned the security deposit, as she filed her application to retain the security deposit on October 16, 2013, I find that the doubling provisions of the Act do not apply. Accordingly, the tenants' application for a monetary order reflecting the double return of the security deposit is hereby dismissed.

## **LANDLORD**

### **\$824.32: *miscellaneous remedial repairs***

Evidence submitted by the landlord includes photographs and an "estimate" of costs provided by a property renovation and maintenance company. There are no receipts in evidence, and the landlord testified that the subject work was completed only three (3) days ago.

The tenants take the position that any work required in the unit after their tenancy ended was the result of "reasonable wear and tear."

I find that the move-in and move-out portions of the condition inspection report document contains virtually, and almost literally, no descriptive / evaluative information. Further, the very limited manual notations border on being completely indiscernible. I find that this, in combination with the absence of receipts, in combination with additional wear and tear from other tenants who have had possession of the unit from October 1, 2013 up until three (3) days ago when the remedial repairs were completed, lead me to finding that this aspect of the landlord's application must be dismissed.

### **\$50.00: *replacement of keys***

The landlord testified that this estimate set out on the move-out condition inspection report was in excess of the actual cost which turned out to be nearer to \$22.00. Female tenant "KEL" testified that at the end of tenancy she did not return all keys that were provided to her at the start of tenancy. In the absence of a receipt, I find on a balance of probabilities that the landlord has established entitlement limited to **\$20.00**.

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As both parties have achieved a measure of success with their applications, the respective applications to recover the filing fee are hereby dismissed.

Following from all of the above, I order that the landlord may withhold **\$20.00** from the tenants' security deposit of **\$600.00**, and I order the landlord to repay the balance of **\$580.00** (\$600.00 - \$20.00) to the tenants.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$580.00**. Should it be necessary, this order may be served on the landlord, 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: January 14, 2014

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Residential Tenancy Branch

