



# 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 the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double their security and pet damage deposits (the deposits) pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The female landlord (the landlord) testified that she and the male landlord, her husband, had received a copy of the tenants' dispute resolution hearing package sent to the landlords by the tenants by courier on October 8, 2013. I am satisfied that the landlords were served with the tenants' dispute resolution hearing package well in advance of this hearing and that both parties exchanged written evidence with one another.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their deposits? Are the tenants entitled to a monetary award equivalent to the amount of their deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for their application from the landlords?

### Background and Evidence

This periodic tenancy commenced on June 1, 2012. Monthly rent was set at \$1,600.00, payable in advance on the first of each month. The tenants paid an \$800.00 security deposit and an \$800.00 pet damage deposit on April 28, 2012.

Although the parties participated in a joint move-in condition inspection on June 1, 2012, neither party signed the joint move-in condition inspection report entered into written evidence by the landlord. The tenants testified that they were not provided a copy of the landlords' report of the joint move-in condition inspection until shortly before this hearing. The landlord said that she was uncertain as to whether the tenants were sent a copy of the joint move-in condition inspection report at the beginning of this tenancy.

The landlord confirmed that she received the tenants' August 1, 2013 notice to end this tenancy by August 30, 2013. The male landlord and the tenants participated in the joint move-out condition inspection on August 30, 2013. The female tenant testified that the details of the condition of each room were not completed when the tenants signed the joint move-out condition inspection report. She said that the first two pages of the report were blank in the report she and her husband, the co-tenant, signed on August 30, 2013. She testified that the only notations of damage on the copy of the report that the tenants signed were as follows:

*Vanity, cleaning, yard cleanup etc.*

Both tenants testified that no amounts were cited in the move-out report they signed. The female tenant said that the tenants did not receive the report of the move-out inspection report until January 3, 2014. The female landlord said that she mailed the joint move-out condition inspection report to the tenants on or about September 10, 2013.

The female landlord did not dispute the female tenant's testimony regarding the additions made to the joint move-out condition inspect report signed by her husband and the tenants on August 30, 2013. In addition to the details of each room that she added to that report, she testified that she added an arrow to a section stating that the male tenant had agreed to a deduction of \$800.00 from the security deposit and \$592.67 from the pet damage deposit. She explained that she added these figures after her husband and the tenants had signed the joint move-out condition inspection report once the landlords determined the costs of the damage to the items cited in that report.

The tenants applied for a monetary award of \$3,200.00, an amount equivalent to double the value of their deposits.

The landlord confirmed that the landlords were provided with the tenants' forwarding address in writing on August 30, 2013, as part of the joint move-out condition inspection report. The landlord testified that she returned \$207.33 from the tenants' deposits to the tenants by email transfer of funds to the tenants on September 10, 2013. The landlords retain the remaining \$1,392.67 from the tenants deposits.

The tenants entered into written evidence a copy of a September 12, 2013 letter to the tenants in which the landlords outlined the following list of expenses, which the landlords had decided to deduct from the tenants' deposits.

<b>Item</b>	<b>Amount</b>
Carpet Cleaning	\$100.80
Locks Rekeyed	165.20
House Cleaning (5 hours @ \$25.00 per hour = \$125.00)	125.00
Yard Cleanup and Waste Removal	250.00
Dump Run	15.00
Vanity Replacement	526.38
Plumbing to Reconnect Sink & Faucet after Vanity Replacement	140.23
Broken Curtain Rod, Towel Bar and Stove Burner	70.00
<b>Total for Damages and Cleaning</b>	<b>\$1,392.61</b>

The landlord confirmed that the landlords did not obtain the tenants' written authorization to withhold \$1,392.61 for damages arising out of this tenancy. She also confirmed that the landlords had not applied for dispute resolution to obtain the legal authority to withhold any portion of the tenants' deposits.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, there is undisputed evidence that the tenants provided their forwarding address to the landlords on August 30, 2013, the same date that their tenancy ended. The landlords had 15 days after August 30, 2013 to either apply for dispute resolution or

return all of the tenants' deposits. They did not take either of these actions. Rather, they returned only \$207.33 of the tenants' deposits and arbitrarily withheld the remainder of their deposits.

The tenants did sign the joint move-out condition inspection report, in which they agreed that they were responsible for damage to the vanity and that cleaning and yard cleanup were required. However, there is undisputed evidence that they did not sign any statement specifying the amount that the landlords could withhold from their deposits for this damage. As I noted at the hearing, a landlord cannot arbitrarily add information and specific figures to a document such as the joint move-out condition inspection report after the parties have signed that document. I find that the female landlord acted most improperly by adding information to a signed and completed joint move-out condition inspection report regarding the condition of the rental unit at the end of this tenancy and by inserting specific figures for the cost of the damage that the landlords incurred. I find that the tenants have not given their authorization to retain the amounts shown in the landlords' altered joint move-out condition inspection report. As such, I find that the tenants are entitled to a monetary order amounting to double the deposits less the amount returned to them by the landlords and a reasonable amount for the damage they admitted that they were responsible for having committed. No interest is payable over this period.

Although the tenants did not agree to a specific deduction from their security deposit, their agreement on the joint move-out condition inspection report that the vanity was damaged and that cleaning and yard cleanup were required leads me to believe that they did agree to some form of deduction from their deposits for these items.

At the hearing, I heard sworn testimony and reviewed written and photographic evidence regarding the extent of the damage to the vanity and the replacement costs incurred by the landlords. The landlords claimed that they discovered that the entire vanity had to be replaced, which resulted in costs of \$526.38 plus a reconnection cost of \$140.23 to hire a plumber to reconnected the plumbing to that vanity. They entered into written evidence receipts to demonstrate their expenses for these items. The tenants testified that they saw no need to replace the entire vanity assembly, as only the top of the vanity was damaged. Based on a balance of probabilities, I find some merit to the tenants' claims in this regard and find that the tenants agreed to allow the landlords to deduct a reasonable amount for the damage to the vanity that arose during their tenancy. Under these circumstances, I find that the tenants' monetary award is reduced by \$300.00 for the replacement of the vanity plus the \$140.23 plumbing costs incurred by the landlord during these repairs.

I also find that the tenants did not leave the premises reasonably clean at the end of this tenancy as is required by section 37(2) of the *Act*. They also signed the joint move-out condition inspection report that confirmed that the premises required cleaning and yard cleanup at the end of their tenancy. However, the tenants maintained that the premises were not properly cleaned at the beginning of this tenancy and that at least some of the debris that the landlords have included in their application for a “dump run” remained from the previous tenancy. The tenants gave undisputed testimony that the rental unit had not been rented for some time prior to the commencement of their tenancy as they later learned that the premises had been used as an illegal grow operation by the previous tenants. The landlord confirmed that the premises had not been occupied for 1 ½ years prior to the commencement of this tenancy as a result of extensive repairs that the landlords had to undertake due to the activities of the previous tenants. Under these circumstances, I find that the tenants’ agreement to a deduction for cleaning and yard cleanup in the joint move-out condition inspection report leads to a \$100.00 deduction for general cleaning and cleanup of the premises.

I emphasize that I only allow the above two deductions (i.e., \$440.23 for the vanity and \$100.00 for cleaning), as a result of the tenants’ signed confirmation on the joint move-out condition inspection that they were responsible for this damage. I make no other deduction for damage arising out of this tenancy, as I am not satisfied that the landlords provided the tenants with a copy of the joint move-in condition inspection report until after this tenancy ended and the female landlord substantially altered the joint move-out condition inspection report the tenants signed. I find that the landlords are not eligible to any further deduction for damage from the tenants’ deposits.

As the tenants have been successful in their application, I find that the tenants are also entitled to recover their filing fee from the landlords.

### Conclusion

I issue a monetary Order in the tenants’ favour under the following terms, which allows the tenants an award of double their deposits, less the amount already returned to them and the amounts deducted for vanity replacement and cleaning, plus the recovery of their filing fee:

Item	Amount
Return of Double Tenants’ Security and Pet Damage Deposits as per section 38 of the Act (\$1,600.00 x 2 = \$3,200.00)	\$3,200.00

Less Returned Portion of Deposits	-207.33
Less Vanity Replacement (\$300.00 + \$140.23 = \$440.23)	-440.23
Less Cleaning and Yard Cleanup	-100.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,502.44</b>

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 22, 2014

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Residential Tenancy Branch

