



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cressey Development Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenants – MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order to recover double their security deposit, for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?
- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on August 01, 2013. The landlord testifies that this was a fixed term tenancy for nine months due to end on April 30, 2014. The tenants testify that it was supposed to be a month to month tenancy so they refused to sign the fixed term tenancy agreement. The parties do agree that rent for this unit was \$875.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$440.00 on July 08, 2013. Both parties attended the move in and move out inspections of the unit. The tenants provided a forwarding address in writing on August 27, 2013 and vacated the unit on September 30, 2013.

The landlord testifies that the tenants were told this was a fixed term tenancy and it was noted at the top of the tenants' application to rent. The landlord testifies he did not provide a copy of the tenancy agreement to the tenants to sign until August 10, 2013 when the landlord also provided the tenants with a mailbox key.

The landlord testifies that the tenants gave written notice to end the tenancy and a move out inspection was conducted. At that inspection it was noted that the balcony had not been cleaned, the stove, both inside and outside, was dirty, the fridge had not been

cleaned behind and there was dust and scratches on the flooring. The landlord testifies that the tenants along with some other tenants also left garbage outside the building. The landlord testifies that he recognised some of this to be items that had been in the tenants unit such as a wooden framing from a wardrobe. The tenant had also left a television which she did remove when challenged by the landlord.

The landlord testifies that he had estimated the cost of cleaning and garbage removal to be \$550.00 on the application. However, the actual cost came to \$880.00. The landlord testifies that there is no further monetary claim for money owed or compensation for damage or loss. The landlord requests an Order to keep the security deposit of \$440.00 to offset against the monetary claim. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

The tenants dispute the landlords claim. The tenants testify that they swept and scrubbed down the balcony at the end of the tenancy. The tenants testify that they did clean inside the stove but it was already stained with baked on grease. The stove top was also cleaned. The tenant agrees they did not pull out the fridge to clean behind it as it was not on wheels. The tenant disputes that there were any scratches on the floor and the floor was mopped and swept at the end of the tenancy. The tenant testifies that this is a laminate flooring which is difficult to make clean.

The tenants dispute the landlord's claim that they disposed of garbage outside the building. The tenant testifies that they did not throw away any part of a wardrobe or any other wooden framing. The tenant testifies that there is an area in the building where tenants leave items that may be of use to other tenants. The tenants picked up a television from this area and did initially leave it outside by the garage buns. When the landlord threatened to charge the tenants to remove it, the female tenant carried it back inside and left it where they had found it originally for other tenants to use as is the common practise in the building. The tenants testify that they only lived in the unit for two months and recycled all their garbage or disposed of it properly.

The tenants testify that they gave notice to end the tenancy because the landlord did not tell the tenants this was a fixed term tenancy; the landlord did not provide a copy of the tenancy agreement or mailbox key until the last week in August and had told the tenants that parking was included in the rent. The tenant testifies that they refused to sign this agreement as they had wanted a month to month tenancy and the landlord did not tell them he had changed it to a fixed term tenancy or that parking was not included in rent.

During the last month the tenants testify that the landlord showed the unit three or four times a day without proper notice over a two week period between 2.00 p.m. and 8.00 p.m. The landlord gave them a document which stated that the landlord will enter between 8.00 a.m. and 9.00 p.m. every day for viewings. The landlord was supposed to let the tenants know in advance of a viewing however this only happened on two occasions when the landlord called first. The tenant testifies that this disturbed the tenants quiet enjoyment of the rental unit over that two week period and the tenants seek compensation of \$200.00 from the landlord.

The tenants seek a further amount of \$120.00 in compensation due to not having parking for the period of their tenancy. The tenant testifies that the advert for the unit states parking and the tenants assumed this was included in the rent as the landlord had indicated that parking was part of the rent. The tenants had to chase the landlord for three weeks to get the parking space and eventually the landlord gave them a document stating that it was \$60.00 a month to rent parking and the landlord also required an \$800.00 security deposit for the parking key.

The tenants seek \$25.00 compensation for not having a mailbox key until August 23, 2013. The tenant testifies that she called the landlord every other day to get the key so they could access their mail. The landlord did offer the tenants a reduction in the rent of \$25.00 but withdrew that offer when the tenants refused to sign the tenancy agreement.

The tenants seek to recover \$100.00 for laundry fees due to having to do extra laundry when they found a bedbug and cockroaches in the unit. The tenant testifies that they had to wash all their belongings and vacuum all the furniture to prevent bedbugs being transferred to their new unit.

The tenants seek to recover double the security deposit because the landlord has failed to return it without reason. The tenants also seek to recover the \$50.00 filing fee from the landlord.

The landlord disputes the tenants' claim. The landlord testifies that after the tenants gave notice to end the tenancy the landlord gave the tenants a letter explaining that the landlord would show the unit. The tenants wanted to have an exact time to do this and the landlord testifies that he left messages or spoke to the tenants prior to each viewing taking place. The landlord testifies that he would arrive at the tenants unit and knock on the door and the tenants gave verbal permission for the landlord to show the unit at that time.

The landlord disputes the tenants' claim concerning parking. The landlord testifies that the tenants did not have a car at the start of the tenancy and they were informed that there was parking with conditions. Two weeks into the tenancy the tenants asked for a parking space for someone else. The landlord testifies that residents do get free parking but they have to pay a security deposit.

The landlord disputes the tenants' claim concerning the mailbox key. The landlord testifies that the tenants avoided speaking to the landlord when they found out about the lease agreement. The landlord testifies that they had the mailbox key by August 10, 2013 and the lease agreement by August 05 or 06, 2013.

The landlord disputes the tenants' claim for bedbugs. The landlord testifies that they have a company that comes to the building each month to inspect for bedbugs. If the tenants had bedbugs or cockroaches then they did not inform the landlord. The landlord

testifies that if the tenants needed to do washing there is a laundry room in the building which is open 24 hours.

The tenants dispute the landlord's evidence. The tenants testify that they did have a car and the parking was one of the reasons they wanted to rent in this building. The tenants deny telling the landlord it was for someone else. The tenants testify that the landlord would not return the tenants' calls until the last part of August and that's when he brought both the tenancy agreement and the mailbox key. At that time the landlord also asked the tenant to stop contacting him.

The tenants testify that they did not inform the landlord of cockroaches or bedbug as documentation provided by the landlord states that a tenant will be charged for any treatments. As the tenants were already moving out they decided to just deal with it themselves.

The tenant asks the landlord to explain why they only received two or three voice messages when there were two to four viewings a day. The landlord responds and testifies that he spoke to the tenants each time; he either called or left a message and either one or both tenants were always there when a viewing took place.

The landlord asks the tenants what was the problem with the laundry in the building. The tenant responds that they had used it along with another laundry after they moved out. The tenants testify that the laundry was not free and had to be paid for. The landlord asks the tenants what was their motive to move out. The tenants respond that the last straw was the parking issues. The landlord only told the tenants that there was parking with conditions and not that they would have to pay rent or a security deposit of \$800.00.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application for damage to the unit, site or property; the landlord has provided a copy of the inspection reports for the unit. These reports indicate that the unit was left dirty at the end of the tenancy. The tenants refused to sign the move out report as they did not agree to the findings. The landlord has also provided some photographic evidence showing the balcony, oven and stove top under the elements and these do not appear to be clean. The landlord has also provided pictures of abandoned furniture outside by the garbage bins.

Having reviewed the landlord's evidence I find the pictures of the balcony show some heavy staining which I am not wholly satisfied occurred solely in the two month duration of this tenancy. I am also not satisfied that the landlord has shown that the tenants did not leave the floors clean or that the flooring was scratched by the tenants. It is also my decision that the tenants are not required to clean behind appliances unless they are on wheels and I have insufficient evidence before me to show that the fridge was on wheels. I will however accept that the tenants may not have fully cleaned the oven or stove top. However, Under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlord has not shown that the tenants failed to meet the "reasonable" standard of cleanliness required particularly as the tenants' photographic evidence does show a clean unit.

The landlord has provided no corroborating evidence to meet the burden of proof that the tenants abandoned furniture or other garbage outside the building. Although the landlord's photographic evidence does show a great deal of abandoned furniture there is insufficient evince that any of this belonged to the tenants, particularly when the

tenants contradict the landlord's testimony. Consequently the landlord's claim for \$880.00 is dismissed.

The landlords claim to keep the tenants security deposit is also dismissed and the landlord must bear the cost of filing their own application.

With regard to the tenants' claim to recover double the security deposit; s. 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on August 27, 2013 and the tenancy ended on September 30, 2013. As a result, the landlord had until October 15, 2013 to return the tenants' security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord filed an application to keep the security deposit on October 15, 2013. Therefore the tenants are not entitled to recover double the security deposit however they are entitled to recover the amount paid of **\$440.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants' claim for money owed or compensation for damage or loss; the tenants seek \$200.00 for a loss of quiet enjoyment of their rental unit. The landlord is entitled to show the unit to prospective tenants. However a landlord is required to give tenants 24 hours written notice of viewings each time the unit is shown unless the tenants give the landlord permission to enter the unit. I am not satisfied in this case that the tenants did not provide verbal permission to entry the unit each time the landlord showed up. While I appreciate those viewings can be time consuming on a tenant. The



landlord is still entitled to show the unit and this would be considered an inconvenience rather than a loss of quiet enjoyment. Consequently the tenants' application for compensation is dismissed.

With regard to the tenants claim for compensation for not having parking of \$120.00; The tenants seek the cost of the parking however they never actually paid any parking fees. The advertisement does not state that parking is free only that it is available. The tenants should have ensured they had something in writing from the landlord prior to renting the unit if the tenants were told something else concerning parking. In this matter it is one person's word against that of the other. As the tenants have the burden of proof then that burden of proof has not been met. This section of the tenants' claim is dismissed.

With regard to the tenants' claim for compensation for not having the mailbox key at the start of their tenancy; the landlord is required to provide tenants with a mailbox key so the tenants can access any mail or notices from the landlord. The tenants testified that they did not receive this until August 23, 2013 the landlord testifies that they received the key on August 10, 2013. I have no proof when the tenants did actually receive the mailbox key but find in favour of their claim for **\$25.00** as the landlord should have provided this from August 01, 2013.

With regard to the tenants claim for compensation of \$100.00 for having to do additional laundry due to bedbugs and cockroaches; the burden of proof falls to the tenants to provided evidence that they had bedbugs or cockroaches and that they had informed the landlord of this so the landlord could take appropriate steps to deal with the issues. The tenants have provided insufficient evidence to show that they did find a bedbug or that they had cockroaches. Furthermore the tenants agree they did not inform the landlord of finding these bugs. The tenants have also failed to provide any receipts for the laundry costs. This section of the tenants' claim is therefore dismissed.

As the tenants have been partially successful with their claim I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$515.00. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court 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 17, 2014

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Residential Tenancy Branch

