



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF, O; MNSD, FF, O

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid utilities pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the Act for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties set out that they sought an "other" remedy. The tenants' "other" remedy relates to a claim for double the return of the tenants' security deposit pursuant to section 39 of the Act. The landlords' "other" remedy relates to a claim for damage to a door that the landlords allege was caused by a dog in the tenants' care.

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. Both tenants attended. The landlord DW attended.

The landlord and the tenants both testified that they provided their dispute resolution packages and all evidence to the other party by registered mail. Each party confirmed receipt. On the basis of this evidence I find that the dispute resolution packages and evidence were served pursuant to sections 88 and 89 of the Act.

Preliminary Issue – Application of Limitation Period in Section 60

This tenancy ended 31 January 2013. The tenants filed their application for dispute resolution on 31 January 2015. The landlords filed their application for dispute resolution on 14 February 2015.

Subsection 60(1) of the Act sets out that an application for dispute resolution must be made within two years of the date that the tenancy to which the matter relates ends. Accordingly, the parties to the tenancy had until 31 January 2015 to file their applications.

However, subsection 60(3) of the Act sets out that

- (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Although the landlords filed their application after the two-year limitation period provided for in subsection 60(1) of the Act, the landlords filed their application before the commencement of the dispute resolution proceeding. Accordingly, the landlords' application is not statute barred.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid utilities and damage to the rental unit? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposits? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit 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 this application from the landlords?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlords' cross claim and my findings around each are set out below.

This tenancy was subject to a tenancy agreement that was signed by the parties 7 April 2012. The tenancy began 1 May 2012. Monthly rent of \$1,095.00 was due on the first of the month. Pursuant to an addendum to the tenancy agreement, the tenants were responsible for paying one third of the utilities for the residential property. The landlord testified that the landlords continue to hold the tenants' security deposit in the amount of \$547.50, which was collected 7 April 2010.

The tenants gave notice by email that they would be vacating the rental unit at the end of February. As the tenants and landlord were in a fixed-term tenancy agreement, the landlords suggested that they enter into a mutual agreement to end the tenancy. The tenants and landlords mutually agreed to end the tenancy 31 January 2013.

The landlords and tenants did not complete a move-in or move-out condition inspection report.

I was provided with email correspondence that indicated that the security deposit was applied to part of the last month's rent; however, both parties testified that the tenants paid rent in full and that the security deposit was not applied to rent.

On 22 March 2013, the tenant BQ sent an email to the landlord DW that provided the tenants' forwarding address.

The landlord testified that he was surprised to receive notice of the tenants' application for dispute resolution as he had sent a cheque to the tenants in the amount of \$209.29. The landlord testified that he sent the cheque to the tenants by mail. The landlords provided me with a copy of their check book, which shows that the landlord wrote a cheque on 22 March in the amount of \$209.29. The landlord testified that after he received notice of the tenants' application he checked with his bank to see if the cheque had cleared. The landlord testified that he confirmed that the cheque had not been cashed.

The landlords provided me with a spreadsheet that set out the amount the landlords claimed was outstanding at the end of the tenancy:

Item	Amount
Unpaid Utilities	\$238.21
Damage to Door	100.00
<b>Total Monetary Order</b>	<b>\$338.21</b>

The landlords provided me with a screen shot of the spreadsheet document that shows that the file had not been altered since 1 April 2013.

The landlords provided me with copies of the utility bills that substantiate the landlords' claim for unpaid utilities.

The landlords provided me with copies of four pictures of a door. The pictures show scratches on the lower right-hand portion of the door extending from the door handle to the floor. The landlord testified that he believes that the tenants' sister's dog caused the scratch-mark damage to the bathroom door. The landlord testified that he could hear the dog scratching and excessive whining when the dog was left unattended at the rental unit. The landlord testified that the rental unit was a non-pet suite and that pets did not occupy the rental unit prior to the tenants' occupation. The landlord testified that the door cost \$100.00 to replace.

The tenants testified that the dog was at the rental unit for three weeks in July 2012. The tenant BQ testified that the dog slept in the common area. The tenant BQ testified that the dog does not have a history of scratching. The tenant BQ testified that the dog would slip if it extended on its hind legs to reach the areas that were scratched on the door. The tenants testify that they don't know how the door was damaged. The tenants submit that the landlords have relinquished their right to claim against the damage deposit as they failed to conduct move-in and move-out condition inspection reports with the tenants.

### Analysis

Section 35 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit. Subsection 35(2) provides that that the landlord must offer the tenant two opportunities for inspection. The landlords did not comply with subsection 35(2) of the Act.

Pursuant to subsection 36(2) of the Act, the landlord's right to claim against a security deposit is extinguished if the landlord does not comply with subsection 35(2) of the Act. As the landlords failed to comply with subsection 35(2) of the Act, the landlord's right to claim against the tenants' security deposit was extinguished. This extinguishment does not prevent a landlord from seeking compensation for damages or losses under the Act.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

Section 88 of the Act sets out how documents may be delivered. Email is not an acceptable method of service pursuant to section 88 of the Act. As the tenants provided their forwarding address by email to the landlord, the tenants have not provided the landlords with their forwarding address in writing.

Section 39 provides that:

**Despite any other provision of this Act**, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis added]

The tenants have not provided the landlords with a forwarding address in writing within one year after the end of the tenancy, that is, on or before 31 January 2014. The language "despite any other provision of this Act" means that it is irrelevant that the landlords failed to comply with section 35 of the Act. This means that the landlords are entitled to keep the tenants' security deposit as the tenants' right to its return is extinguished.

The tenants' application is dismissed without leave to reapply. As the tenants have been unsuccessful in their application, they are not entitled to recover their filing fee from the landlords.

The landlords have claimed for outstanding utility amounts and damages. The landlords seek a total monetary order in the amount of \$388.21:

Item	Amount
Unpaid Utilities	\$238.21
Damage to Door	100.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$388.21</b>

I find, on a balance of probabilities that the landlords have shown that they are entitled to the unpaid utility amounts. The tenancy agreement establishes the tenants' obligation to pay one third of the rent and the landlords provided me with copies of the relevant bills.

The landlord testified that he could hear the dog scratching while it was unattended. The photos show damage to the door consistent with scratch marks. I accept the landlord's evidence that the rental unit was a non-pet suite. The tenants were unable to provide me with direct, first-hand evidence that the dog did not scratch the door as the dog was left unattended. Further the tenants' evidence regarding the dog's behaviour is based on general observations and is of low reliability. I find, on a balance of probabilities, that the damage to the door was caused by the tenants' sister's dog. The landlords have shown that they are entitled to compensation for the repair of the door. I accept the landlord's testimony that the door cost \$100.00 to replace.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

To assist with application of the security deposit provisions, the *Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" (Guideline 17) establishes the following:

In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

Guideline 17 means that the landlords are not entitled to both retain the security deposit and seek compensation above that amount. As the landlords' total monetary entitlement is less than the amount of the tenants' security deposit I make no monetary order in respect of this decision as the landlords' monetary entitlement is satisfied by the retained amount.

### Conclusion

The landlords are entitled to retain the full amount of the tenants' security deposit.

The tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 04, 2015

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Residential Tenancy Branch

