



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR, MND, MNSD, FF  
MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order reflecting compensation for double a portion 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 month-to-month tenancy began on March 01, 2010. By the time tenancy ended, monthly rent was \$1,250.00; it is understood that \$1,100.00 of this amount was normally paid in advance on the first day of each month, and the balance of \$150.00 was thereafter paid within 2 weeks. A security deposit of \$600.00 was collected on February 22, 2010. While the tenancy agreement provides that no pets are permitted in the unit, and a pet damage deposit was not collected, at some point during the tenancy the tenants obtained pet guinea pigs. The tenancy agreement also provides that the tenants will be responsible for 50% of the monthly hydro and gas bills; it is understood that payment was collected around early to mid-month of the month following the month for which costs were incurred. A move-in condition inspection report was completed with the participation of both parties.

By letter dated June 25, 2014, the tenants gave notice to end tenancy effective August 01, 2014. Subsequently, the tenants completed cleaning of the unit on August 02, 2014, and returned the unit keys on that same date. There is no conclusive documentary evidence that a move-out condition inspection report was completed, and it appears that the parties did not complete a walk - through of the unit together at the

end of tenancy. Thereafter, by letter dated August 12, 2014, the tenants informed the landlord of their forwarding address, and by cheque dated August 11, 2014 the landlord repaid \$300.00 of the tenants' original security deposit of \$600.00.

The tenants filed an application for dispute resolution on August 30, 2014. The landlord's application for dispute resolution was filed on January 12, 2015.

During the hearing the parties were argumentative and frequently undertook to speak over one another.

### Analysis

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

#### **ACT**

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

#### **REGULATION**

Section 17: **Two opportunities for inspection**

Based on the documentary evidence which includes, but is not limited to, utility bills, bank statements and photographs, in addition to the testimony of the parties, the various aspects of the respective applications and my findings are set out below.

#### **TENANTS**

**\$900.00:**  $[(2 \times \$600.00) - \$300.00]$  *double return of the security deposit minus the portion already repaid*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section 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 / pet damage 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 / pet damage deposit, and must pay the tenant double the amount of the security deposit / pet damage deposit.

In the circumstances of this dispute, I find that the landlord did not either repay the entire security deposit, or file an application for dispute resolution within 15 days of being informed by the tenants of their forwarding address. Accordingly, I find that the tenants have established entitlement to net compensation of **\$900.00** as claimed, which is calculated as follows:

\$1,200.00: (2 x \$600.00) *double the amount of the original security deposit*

**MINUS:**

\$300.00: *the amount already repaid by the landlord to the tenants*

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**Total Entitlement: \$900.00**

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**LANDLORD**

\$108.00: *hydro for the period July 2014*

\$57.50: *gas for the period July 2014*

I find that the amounts claimed by the landlord reflect 50% of the amounts billed for July 2014, and I find no evidence that the tenants made any payment toward these amounts. In the result, I find that the landlord has established entitlement to the total amount claimed of **\$165.50**.

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\$682.96: *replacement of damaged carpet*

The landlord testified that he has not presently incurred this cost and that the amount claimed reflects an estimate. The parties are informed of Residential Tenancy Policy Guideline # 40 which addresses the "Useful Life of Building Elements," and provides that the useful life of carpet is 10 years. The landlord also claimed that the carpet was approximately 8 years old when tenancy began. There is no evidence that the landlord offered the tenants "at least 2 opportunities, as prescribed, for the inspection" when tenancy ended. Further, there are no comparative results of move-in and move-out condition inspection reports before me in evidence. Arising from all of the foregoing, I find that the landlord has established a claim to compensation in the nominal and limited amount of **\$50.00**.

\$483.00: *repairs to door, door frame and drywall*

The landlord's documentary evidence includes an invoice for this cost, even while the landlord has not included this amount on his monetary order worksheet. However, even if the landlord had claimed this cost in his application, his application would have been dismissed on the basis, principally, that there are no comparative results of move-in and move-out condition inspection reports before me in evidence, and there is no evidence that the landlord offered the tenants "at least 2 opportunities, as prescribed, for the inspection" at the end of tenancy.

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**\$77.40:** *rent for over holding of unit on August 01 & 02, 2014*

I find that rent paid on July 01, 2014 and thereafter later in the month of July 2014, applies to the rental period from July 01 to 31, 2014. As the tenants finished cleaning the unit and returned the unit keys to the landlord on August 02, 2014, I find that the landlord has established entitlement to unpaid rent for the 2 day over holding period of August 01 and 02, 2014 as claimed.

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**Total Entitlement: \$292.90**

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Offsetting the respective entitlements, I find that the tenants have established entitlement to a net claim of **\$607.10** (\$900.00 - \$292.90).

Both applications to recover the filing fee are hereby dismissed.

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$607.10**. 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: March 11, 2015

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Residential Tenancy Branch

