



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:47 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30. The landlords both attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Landlord NR testified that he served the tenant with the Application for Dispute Resolution by registered mail on January 6, 2015. The landlords submitted receipts and Canada Post tracking information to support this testimony. Based on the evidence provided and pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's Application for Dispute Resolution on January 11, 2015, 5 days after its mailing.

### Issue(s) to be Decided

Are the landlords entitled to retain all or a portion of the tenant's security deposit towards any monetary award? Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

Landlord NR testified that this tenancy began on November 26, 2013 on a fixed term basis. After an initial term of 60 days, the tenancy was extended for 6 further months. Following that term, the tenancy continued on a month to month basis. The rental amount was \$750.00 payable on the first of each month. Landlord NR testified that the landlords continue to hold a security deposit in the amount of \$375.00 paid by the tenant on December 26, 2013, after the start of the tenancy. The landlords applied to retain this deposit.

The landlord testified that the rental unit was in good condition at the start of this tenancy. He testified that condition inspections were done with the tenant at the start of the tenancy and without the tenant at the end of the tenancy. Both landlords provided sworn undisputed testimony that, while the condition inspections and required reports were prepared, they have not been able to locate the condition inspection reports. The landlord both testified, stating they believe that the tenant has the copies of these reports. As evidence to support their claim, the landlords submitted a copy of the residential tenancy agreement, indicating that the tenant is responsible to clean the carpets professionally at the end of the tenancy. The landlord also submitted photographs into evidence that showed a substantial amount of debris and junk left behind by the tenant. The photographs documented bottles, pizza boxes in the oven and general refuse about the rental unit.

Landlord NR testified that the tenant had become difficult to communicate with over the past four months. Landlord NR testified that, after receiving a request by the landlords for the tenant to leave, the tenant vacated the rental unit on December 24, 2015. Landlord NR testified that the landlords were notified that the tenant had vacated the rental unit when they found a christmas card with a forwarding address and the rental unit key in their mailbox that evening. Landlord NR testified that, after the tenant vacated, the landlord attempted to speak with the tenant and allow him time to complete cleaning of the residence. However, the tenant did not make any attempts to return and clean the unit. The tenant's Christmas card and subsequent communication merely stated that he requested the return of his security deposit.

Both landlords testified that a cheque in the amount of \$119.84 had been mailed with the dispute resolution hearing package to the tenant on January 6, 2015. The landlords applied to retain the balance, \$255.16, to reflect their costs to clean the rental unit as well as the filing fee for this application. The landlords submitted an invoice for cleaning totalling \$80.00 to dispose of the items left behind, clean the appliances including the stove and clean all the surfaces throughout the unit. That invoice is marked "paid". As

well, the landlords submitted both a quote and an invoice from a professional carpet cleaning company. That invoice totaled \$125.16 and also indicates “paid”.

### 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 deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant’s provision of the forwarding address. In this case, the end of tenancy and the provision of a forwarding address occurred on the same day, December 24, 2014.

The landlords have applied within the 15 day timeline to retain a portion of the tenant’s deposit. The landlords also both provided undisputed sworn testimony that they had returned the remainder (\$119.84) of the tenant’s deposit to his forwarding address.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlords have both provided undisputed sworn testimony with respect to the condition of the unit before and after this tenancy. The landlords have submitted photographs to reflect the condition of the rental unit after the tenant vacated the unit. I accept the evidence of the landlords that the tenant is responsible for the mess and minor damage from lack of cleaning in the rental unit. The landlords have provided evidence reflecting reasonable cost and effort to improve the condition of the rental unit after the tenancy. They have provided receipts documenting the costs that they incurred.

In accordance with the *Act*, I find that the landlords are entitled to retain \$205.16 of the tenant’s security deposit for carpet cleaning and general cleaning services as a result of the tenant’s failure to leave the rental unit neat and clean as required by the *Act*. As the landlords were successful in their application, they are also entitled to recovery of the filing fee for this application by retaining a further \$50.00 from the tenant’s security

deposit pursuant to section 72(2)(b) of the *Act*. I find the landlords entitled to retain \$255.16 of the tenant's security deposit paid on December 26, 2013. I will provide a monetary order to the tenant for the remainder of the security deposit amount to ensure that amount (\$119.84) is returned to him.

### Conclusion

I order the landlords retain \$255.16 of the tenant's security deposit paid on December 26, 2013. The tenant's security deposit is reduced from \$375.00 to \$119.84. I order the landlords to return the remainder of the security deposit in the amount of \$119.84.

I provide a monetary order in the amount of \$119.84 to the tenant in the event that the tenant has not received the portion of the security deposit to which he is entitled.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: April 23, 2015

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Residential Tenancy Branch

