



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed on the following. The tenancy began on August 1, 2012 at which time the tenants paid a \$625.00 security deposit and a \$625.00 pet deposit. In October 2014, the landlord advised the tenants that he had sold the home and that the purchasers did not want to continue the tenancy. He asked them to vacate the unit by January 31. The tenancy ended on November 30, 2014 and the tenants emailed their forwarding address, which was the female tenant's work address, to the landlord on December 1. The landlord responded to the email on December 4 stating "I have 15 days from receiving your forwarding mailing address to give you your deposit back which would be December 16, 2014."

The tenants seek the equivalent of 2 months' rent as compensation for having to move because the rental unit was sold. They also seek an award of double their security deposit as the landlord did not return the deposit to them by December 16.

The landlord claimed that on 2 occasions, he attended the female tenant's workplace to personally return the deposit, but she was not at work when he was there. He provided evidence showing that on December 17, he contacted the Residential Tenancy Branch via email advising that he had mailed the deposit to the tenant but "apparently she has

not received it yet so I now have cancelled it". He further advised in the email to the Branch that he had requested an address but the tenants had not responded. An information officer with the Branch replied to this email on December 18 and stated, "If the tenants had provided you with their new address in writing (not e-mail, text or verbal), you may have been required to return the deposit within the 15 days."

The landlord claimed that it was on the basis of this advice that he considered that he had received the forwarding address on December 17 when he received the tenants' application for dispute resolution. The landlord argued that because he mailed the security deposit on December 31, he had acted within 15 days of receiving the tenants' forwarding address in writing.

The landlord testified that when the tenants vacated the rental unit, they left the carpet in very poor condition, with a significant number of stains and snags. He further testified that there was a significant odour in the carpet from the tenants' pets. The landlord provided photographs of the carpet and a receipt showing that he paid a total of \$2,426.28 to a flooring company to supply and install new carpet. He seeks to recover this cost from the tenants. The parties agreed that although they did a walk-through of the unit at the end of the tenancy, they did not create a written record of that inspection, nor did the landlord bring any issues to the tenants' attention during the walk-through. The landlord testified that the carpet was 5 years old at the end of the tenancy, having been installed in 2009.

The tenants testified that there was one stain when they moved into the rental unit and claimed that any further damage could be attributed to reasonable wear and tear. They testified that they did not attempt to clean the carpet because the landlord had advised them that he would be replacing the carpet at the end of the tenancy.

The landlord testified that the unit was unclean at the end of the tenancy and provided photographs showing what appear to be stains on the tile flooring as well as grease stains on the kitchen walls. The tenants claimed that they thoroughly cleaned the rental unit at the end of the tenancy. The landlord testified that he paid \$150.00 in cash to a cleaning service to spend 6 hours cleaning the rental unit. The landlord seeks to recover this cost from the tenants.

Both parties seek to recover the filing fees paid to bring their respective claims.

### Analysis

I will first address the tenants' claim. The Residential Tenancy Act is designed to provide to tenants a level of protection which would not exist under the common law. Whereas under the common law a landlord could end a tenancy without reason, the Act requires that unless the tenants agree to an end of the tenancy, the landlord must provide a notice in a form approved by the Director of the Residential Tenancy Branch. When a landlord intends to end a tenancy because a purchaser intends to reside in the unit, he is required to give the tenants a 2 month notice to end tenancy on an approved form and must give the tenants the equivalent of one month's rent in compensation.

The landlord may not have been aware of his obligation under the Act to provide the tenants with formal notice and compensation, but this does not relieve him of that obligation. I am satisfied that had the landlord not told the tenants they would have to leave because he had sold the property, the tenants would have continued to reside in the unit. I find that the landlord should not benefit from his failure to comply with the Act and despite the fact that he did not give them a formal notice to end tenancy as is required by the Act, I find that the tenants are entitled to the equivalent of one month's compensation as provided in section 51 of the Act. The tenants claimed that they are entitled to two months' compensation, but are misinformed. I award the tenants \$1,250.00.

Section 38 of the Act provides that within 15 days of the later of the end of the tenancy and the date the landlord receives the tenants' forwarding address in writing, the landlord must either return the security and pet deposits in full or file an application to retain those deposits. Although the Act does not contemplate the use of email in communicating a forwarding address, I find that an emailed address is the equivalent of writing as I find that the purpose of requiring the tenants to write their address is to reduce the possibility of a mistake being made which could occur if the tenants merely dictated the address to the landlord. I find that in his email of December 4, the landlord acknowledged having received the forwarding address and told the tenants that he had until December 16 to return the deposits. The landlord claimed to have mailed the deposits to the tenants at the address provided, but I find it unlikely that he did so as he did not provide proof of that mail having been returned. Further, he claimed that he tried to deliver the money with "court papers", but the landlord did not file a claim with the Residential Tenancy Branch until July 7, so I find it more likely than not that he simply told the tenants this on December 16 when he became aware that he had missed the deadline he had set out in his December 4 email.

Although the Branch told the landlord that it was not sufficient for the tenants to provide their forwarding address by email, I find that the landlord did not rely on this advice in delaying sending the deposits back to the tenants as he did not send his query to the Branch until December 17.

I find that the landlord failed to comply with the requirements of section 38 of the Act and is therefore liable to pay the tenants double the amount of the deposits. The parties agreed that the tenants received the base amount of the deposits on January 6, 2015. I therefore award the tenants \$1,250.00 which represents the section 38 penalty.

Turning to the landlord's claim, the tenants were responsible to leave the rental unit in reasonably clean condition and undamaged except for reasonable wear and tear. The tenants acknowledged that there was 1 small stain on the carpet at the beginning of the tenancy and claimed they could not recall anything else about the condition of the carpet at the beginning of the tenancy. Looking at the landlord's photographs, it is clear that extensive damage has been done to the carpet and I find it cannot be characterized as reasonable wear and tear. I find that the carpet had to be replaced as a result of the tenants' failure to preserve it from excessive damage. I accept that the carpet was 6 years old at the end of the tenancy. Residential Tenancy Policy Guideline #40 identifies the useful life of carpet as 10 years. I find the tenants deprived the landlord of 4 years of the useful life of the carpet and should therefore be responsible for 4/10 of the cost of replacement. I award the landlord \$485.26.

The landlord provided very few photographs of the remainder of the rental unit and without the benefit of a written condition inspection report or witness testimony, it is difficult to determine the cleanliness of the unit. However, I am persuaded that the tenants failed to adequately clean the floors in several areas and that they failed to clean grease off of the kitchen walls. I am unable to find that there was 6 hours of cleaning required in the unit. I find that 1 hour of cleaning will adequately compensate the landlord for the cleaning he has proven was required and I award him \$25.00.

As both parties have enjoyed success in their respective claims, I find they should each bear their own filing fees.

The landlord has been awarded a total of \$510.26 and the tenants have been awarded a total of \$2,500.00. Setting off these awards as against each other leaves a balance of \$1,989.74 owing by the landlord to the tenants. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

Each of the parties have enjoyed some success as outlined above. The tenants are granted a monetary order for \$1,989.74.

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: July 23, 2015

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Residential Tenancy Branch

