



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- a monetary order for damage or monetary loss 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 the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for damage or monetary loss pursuant to section 67;
- the return of their 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 landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other party's materials for this hearing including all evidence submitted.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit and other loss?  
Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order? Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary order for damage or loss as a result of this tenancy? Are the tenants entitled to the return of their security deposit? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

Tenant CD testified this tenancy began on February 1, 2012. The landlord testified that the tenancy began on March 1, 2012. The parties agree that, on February 12, 2012, a security deposit in the amount of \$800.00 was paid by the tenants. The Residential Tenancy Agreement between the parties was submitted as evidence in this hearing. It reflected a rental amount of \$2176.00 payable on the first of each month. The parties agreed that Tenant ND vacated the rental unit on October 31, 2014 and Tenant CD vacated the rental unit on November 30, 2014. Both parties agree that, after vacating the rental unit, the tenants did not and have not to the date of this hearing provided the landlord with a forwarding address.

Tenant CD testified that she and her family were evicted from the rental unit. She testified that she received a 2 Month Notice to End Tenancy and, as a result of that notice she chose to vacate the rental premises. She testified that she was not charged rent for her final month of tenancy in compensation for the receipt of a two month notice to end tenancy.

At this hearing, the landlord sought \$517.55 to be satisfied by the retention of a portion of the tenant's security deposit. The tenants sought \$4952.00 including the return of their security deposit as well as compensation under section 51 of the Act. Tenant CD testified that the landlord did not use the rental premises for the stated purpose on the 2 Month Notice in a reasonable amount of time after the tenants moved out. Therefore, Tenant CD submitted that the landlord was required to compensate the tenants for an amount double their monthly rental amount.

The landlord testified that notice to end tenancy was given to the tenants so that her daughter and son could move into the suite that had been previously rented to the tenants. She testified that the daughter moved in on December 3, 2014. She provided a notarized affidavit from the daughter stating that she has resided in the rental unit since that date.

The landlord testified that the tenants were good tenants but that they left the rental unit unclean and with some need for repair at the end of their tenancy. She testified that the carpets were not cleaned at the end of the tenancy; that the rental unit needed to be repainted; and that she replaced blinds that were in ill repair. Finally, she testified that

one of the house keys was not returned by the tenants. The landlord provided invoices as follows;

- Carpet cleaning dated December 5, 2014 in the amount of \$189.00;
- Paint purchase dated December 10, 2014 in the amount of \$61.06;
- Blinds purchase dated December 4, 2014 in the amount of \$174.11; and
- Deadbolt purchase dated December 1, 2014 in the amount of \$60.98.

Tenant CD testified that both tenants made attempts to complete a walk through inspection with the landlord at the end of the tenancy. Tenant ND testified that, when the tenants were ultimately able to arrange to meet with the landlord, it was clear to her that the landlord and her sister had already gone into the rental unit. Tenant ND also testified that the carpets had been cleaned on September 2, 2014 and so did not need to be cleaned again on move-out. As well, she testified that the rental unit was very dirty when they moved in and that they took responsibility for a substantial amount of cleaning as well as painting when they moved in. The tenants submitted witness statements. Those unsworn, handwritten statements indicated that the unit was unclean at move-in and that the tenants had painted with authorization.

The landlord testified that she did not have photographs from move-in. Her photographic evidence from move-out included photographs of;

- A dirty oven;
- Stains on the carpet;
- Colourfully painted walls;
- Worn door frames;
- Dirty windows and windowsills; and
- Food-stained blinds.

The landlord sought to retain a portion of the tenant's security deposit to reflect her out of pocket expenses for repairing the rental unit after the tenants' move-out. She also sought to recover the costs of filing this application, including photographic evidence preparation as well as her filing fee.

Included in the amount sought by the landlord was an amount to replace the locks at the rental unit. The tenants testified that, as the locks had not been changed or rekeyed prior to their move-in, they bought new locks. The tenants also testified that, at the end of tenancy, they removed the lock they had purchased, leaving the original lock and returning the original key.

Both tenants claimed that the landlord did not have her daughter move in to the rental unit within a reasonable time as required by the *Act* and therefore sought compensation in the amount of double the monthly rent. Tenant CD testified that she did not believe that the landlord's daughter had moved in to the rental unit. She testified that she had driven by the residence several times and only recently saw evidence of someone residing in the unit. Further, both tenants applied for the return of the entire security deposit claiming that the landlord's rights were extinguished by her failure to follow the requirements of the *Act* at the end of tenancy and also that they were not responsible for the damage claimed by the landlord. Specifically, the tenants submitted that the landlord did not file her application to retain the security deposit within the required timelines. Further, the tenants submitted that, because the landlord has not prepared or provided move-in and move-out condition inspection reports, she is not entitled to recover for any claimed damage to the rental unit.

### 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 security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). 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, both tenants and the landlord testified that the tenants had never provided a forwarding address to the landlord. Therefore the landlord's obligations to return it had not yet been triggered. In this case, it is unnecessary to examine further policy provisions with respect to the doubling of the security deposit on return to the tenant given that the landlord was not required to return the security deposit to the tenants as of the date of this hearing. I also note that the landlord filed her application within 15 days of the tenants' move-out from the rental unit.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." Both tenants testified that they did not give written authorization to the landlord at the end of this tenancy to retain any portion of their security deposit and no written evidence of an agreement has been submitted. Therefore, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The landlord seeks to retain the deposit in partial satisfaction of their claim for damage to the rental unit and out of pocket monetary loss as a result of this tenancy. With respect to a monetary order, 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.

Contrary to the requirements of the *Residential Tenancy Act*, the landlord did not complete or submit condition inspection reports at the start and end of tenancy. These reports provide the best evidence of the state of the rental unit at move-in and move-out. Without the completion and provision of these reports, the landlord faces a more difficult task in proving that damage has occurred over the course of the tenancy.

In this case, the evidence of both parties is that the tenants did not clean the carpets on move-out. The tenants testified that they felt it sufficient that the carpets had been cleaned just over a month prior to move out. The landlord provided photographic evidence that shows that the carpets were stained when the tenants had moved out of the rental unit. The tenants testified that some of those carpet stains existed prior to the start of their tenancy. They provided a receipt to show that the carpets had recently been cleaned. Given that the landlord has been unable to provide compelling evidence as to the state of the carpets prior to the tenancy, given the tenants' testimony that they were stained at the outset and given that the tenants produced a receipt for a recent cleaning, I find that that landlord has not proven that this damage is as a result of some action violating or contravening the tenancy agreement or *Act*.

During this hearing, the evidence of both parties was that the tenants repainted the interior of the rental unit during their tenancy. The tenants testified and provided written evidence that they both had authorization and received compensation for the cost of paint. The tenants argue that this authorization to paint during the course of their tenancy nullifies any responsibility to return the unit to the state it was in prior to their tenancy. The landlord submitted photographs that prove the painting was colourful and not neutral. According to Residential Tenancy Policy Guideline No. 40, the useful lifetime of interior paint is approximately four years. The evidence at this hearing is that the tenants resided in the rental unit for approximately two and a half years and that the unit had not been painted when they moved in. While I find that the tenants have

some responsibility to return the unit to a neutral palette in these circumstances, I find the landlord is entitled to  $\frac{1}{4}$  of the cost of the paint purchased at the end of this tenancy to compensate for a need to paint earlier than otherwise required, an amount of \$15.26.

The evidence of both parties at this hearing was that some blinds were broken and stained within the residence. The landlord testified that the blinds were not broken prior to the tenancy while the tenants testified that the blinds were broken at the outset. The landlord supplied photographs that showed the disgusting state of the blinds at move-out. The evidence indicated that the blinds were very dirty but did not clearly show that they were broken. Therefore, I find that the disputed testimony of the landlord, coupled with a lack of evidence of the state of the blinds at the outset of the tenancy is insufficient to show that any damage to the blinds was as a result of actions or neglect by the tenants. I find that the landlord is not entitled to recover the \$174.11 cost of the blinds.

The undisputed evidence of the tenants at the hearing was that, contrary to the provisions of the *Act*, the locks were not changed prior to the start of this tenancy. Tenant ND provided sworn undisputed testimony that she changed the lock for security. However, she did not provide a key to the landlord or ensure that she was permitted to do so by the landlord as required by the *Act*. Tenant ND testified that, at the end of tenancy, she returned the original and only key that she had been provided with respect to the rental unit. The landlord did not provide evidence in contradiction of the tenant's testimony. Given all the circumstances, I do not find that the landlord has proven a loss that is directly connected to the actions of the tenants in contravention with the tenancy agreement or the *Act*. Therefore, I find that landlord is not entitled to be reimbursed for the cost of a new lock purchase.

The landlord also sought to have her costs related to this application, including printing photographs reimbursed. I find that the landlord is not entitled to recover the costs of preparing evidence for her application as she is responsible to determine how to meet her burden of proof in her application. I find, in the case of the lock, blinds and carpet costs she has been unsuccessful in doing so.

The landlord initially claimed \$150.00 in cleaning costs at the end of this tenancy. Given the photographic evidence of a dirty residence, and in consideration of the provisions of the *Act* that require a residence to be left clean and tidy, I find that the landlord is entitled to be compensated for her time and costs in cleaning the residence for a new tenancy.

The tenants applied to recover their security deposit. They also applied to be compensated under the *Act* for the landlord's failure to use the property as intended after the end of the tenancy. To end this tenancy, the landlords issued a 2 Month Notice in the proper form and with the appropriate compensation to the tenants. Pursuant to section 49(3) of the *Act*, a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlords submitted that their notice was given in good faith, with a supporting affidavit from their daughter provided. The tenant complied with the end to tenancy and vacated the rental unit on October 31, 2014.

Section 51 of the *Act* provides further requirements of a landlord with respect to the issuance of a 2 Month Notice to End Tenancy after the end of the tenancy:

51 (2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenant relies on section 51(2) submitting that the landlords neither took steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice (October 31, 2014) nor used the rental unit for the purpose stated for at least 6 months beginning within a reasonable period after the effective date of the notice.

I accept the landlord's submissions that the landlords did use the rental unit for the stated purpose within at least 6 months after the effective date of the notice. I note that the landlords provided documentation in support of their current use of the property. I also note that the tenants conceded in their testimony and in their documentary evidence that it was possible someone was residing in the rental unit. The tenants submitted no evidence that provided contradiction to the landlord's evidence to show the current use of their property. Therefore, I find the tenants are not entitled to compensation pursuant to section 51(2).

I dismiss the landlord's application with respect to the cost to replace blinds in the rental unit. I find that the landlord has provided sufficient proof of out of pocket expenses and

monetary loss totalling \$15.26 and \$150.00 for cleaning costs. I find that the landlord is entitled to a monetary order totalling \$165.26. I find the landlord is entitled to retain \$165.26 of the tenants' security deposit in order to recover this amount, leaving \$634.74.

I do not find the tenants are entitled to recover double their monthly rental amount. I do not find that the tenants have provided any evidence that the landlord has acted in contravention of the *Act* with respect to the landlord's 2 Month Notice. I find the tenants are entitled to return of the remainder of their security deposit in the amount of \$634.74.

Item	Amount
Return of Security Deposits	\$800.00
Deduction for Cleaning and Painting of Unit	-165.26
<b>Total Monetary Order</b>	<b>\$634.74</b>

Given that both parties were partially successful in their applications, I find that both parties are responsible for the payment of their application fees and dismiss both applications to recover those fees from the other party.

### Conclusion

I allow the landlord to retain \$165.26 of the tenants' original security deposit.  
 I order the landlord to return the remainder of the security deposit to the tenants.  
 I issue a monetary award in favour of the tenants in the amount of \$634.74.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: August 4, 2015

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Residential Tenancy Branch



