



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenants: MNDC MNSD  
For the landlord: MND MNR MNSD FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a monetary order for return of their security deposit under the *Act*, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement to recover the cost of \$140 paid towards utilities.

The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the tenants’ security deposit and to recover the cost of their filing fee.

The landlord, the tenants, and a support person for the tenants attended the hearing which was held by way of a teleconference. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure and that was presented; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties confirmed that they received the documentary evidence package from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties agreed that a verbal month to month tenancy began on October 1, 2014 and ended on May 28, 2015 when the tenants vacated the rental unit. The parties agreed that monthly rent was \$825 per month and was due on the first day of each month and included utilities; comprised of hydro, cable and internet. The tenants paid a security deposit of \$400 security deposit at the start of the tenancy which the landlord continues to hold.

The parties confirmed that the landlord did not initiate an incoming or an outgoing condition inspection with the tenants. The parties further agreed that a condition inspection report was not completed as a result.

### Evidence for Tenants' Claim

#### Tenants' Item 1

The tenants have applied for the return of their security deposit under the *Act*. The parties agreed that the tenants paid a security deposit of \$400 on August 24, 2014 and that their written forwarding address was served on the landlord on June 13, 2015 on the doorstep of the landlord, and that the landlord confirmed receiving the tenants' written forwarding address on her doorstep on June 19, 2015. The landlord applied for dispute resolution claiming towards the tenants' security deposit on June 19, 2015. The parties agreed that the tenants did not sign over any portion of their \$400 security deposit to the landlord. The tenants stated that they were not waiving their rights towards double their security deposit under the *Act*, if they were so entitled.

#### Tenants' Item 2

The tenants have also claimed \$140 for the return of \$140 paid to the landlord when the landlord requested a one-time extra payment of \$200 to offset what the landlord described as high utility bills during the tenancy. The tenants stated that while they paid

\$140 of the \$200 amount the landlord requested, they now realize that the landlord was not entitled to an extra payment for utilities as utilities were included in the monthly rent, and are requesting the amount of \$140 be returned to them as a result. The landlord stated that the tenants did pay \$140 of the \$200 amount the landlord requested to offset higher than expected utility bills.

*Evidence for Landlord's claim*

The landlord's monetary claim of 1,314.68 is comprised of the following:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Dishwasher repair	\$239.68
2	Carpet cleaning including labour and cleaning products, and advertising for new tenants	\$140
3	Unpaid rent for June 2015	\$825
4	Recovery of the cost of the filing fee	\$50
5	Unpaid hydro as agreed	\$60
	<b>TOTAL</b>	<b>\$1,314.68</b>

*Landlord Item 1*

The landlord has claimed \$239.68 for a dishwasher repair. As indicated above, the landlord did not complete an incoming or an outgoing condition inspection report to support the condition of the dishwasher at the start of the tenancy, versus the condition of the dishwasher at the end of the tenancy. The tenants denied damaging the dishwasher during the hearing.

The landlord submitted in evidence, an invoice for \$239.68 dated June 4, 2015 that indicates that the dishwasher was not advancing through the wash cycle. A control board part of \$139 is listed on the invoice plus labour of \$80, plus taxes for a total of \$239.68. The landlord confirmed that there were no photos taken of the dishwasher at the start of the tenancy submitted in evidence.

*Landlord Item 2*

The landlord has claimed \$140 for carpet cleaning including labour and cleaning products, and advertising for new tenants. The landlord confirmed that she did not have receipts for the cost of the carpet shampooer but did provide a receipt for \$19.69 for

cleaning supplies from a popular home improvement store. The landlord also provided a receipt for \$21 for the cost of advertising the rental unit due to the tenants vacating the rental unit early due to late notice to end the tenancy.

The landlord submitted an invoice for her time calculated at 5 hours at \$20 per hour for her cleaning labour, \$19.69 for cleaning supplies and for \$21 for advertising costs. The landlord also submitted nine colour photos, several of which the landlord referred to showing how the tenants left the rental unit at the end of the tenancy. The tenants confirmed that the photo of the inside of the freezer looked that way when they vacated the rental unit and described the photo as being a “reasonably clean” freezer.

The landlord indicates in her evidence that the rental unit carpet and rug were not vacuumed and that there was a stain on the bedroom carpet and that all carpets had to be shampooed.

### Landlord Item 3

The landlord has claimed \$825 for loss of June 2015 rent as the tenants provided late notice for vacating the rental unit on May 28, 2015. The tenants testified that they provided verbal notice to the landlord on May 10, 2015 that they would be vacating at the end of May 2015. The landlord agreed with the tenants that the landlord was able to re-rent the rental unit as of June 4, 2015 to new renters. The landlord testified that she received \$750 from the new renters for the month of June 2015 and only suffered a loss of \$75 for June 2015 as a result. The landlord stated that she was revising this portion of her claim to be reduced to \$75 as she was able to minimize her loss by re-renting the rental unit for \$800, having only received \$750 for June 2015 as the new renters moved into the rental unit on June 4, 2015.

### Landlord Item 4

The landlord has claimed \$50 for the recovery of the filing fee. The filing fee will be dealt with at the end of this decision.

### Landlord Item 5

The landlord has claimed \$60 for the unpaid portion of hydro the landlord claims the tenants owe her. The tenants testified that they should not have to pay any additional hydro utilities, as utilities were included in the original terms of the tenancy agreement formed between the parties on October 1, 2015. The landlord stated that when she asked the tenants to pay extra for hydro utilities, it was because her hydro bills were

higher than in the past and that due to the tenants agreeing and having already paid \$140 of the \$200 amount agreed upon, she is seeking the remaining \$60 that the landlord feels she is owed.

The tenants stated that the thermostat for the heating was not inside the rental unit and that the landlord had control of the heating as she lived in the other portion of the home. The landlord confirmed that she controlled the heating of the rental unit from the thermostat located on the landlord's area of the home.

### Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

#### Tenants' Claim: Item 1

For this portion of their claim, the tenants have claimed for the return of their security deposit under the *Act*. The tenants testified that if they entitled to double the return of their security deposit under the *Act*, they do not waive their right to double the security deposit under the *Act*.

Firstly, there is no dispute that a security deposit was paid. The parties agreed that the tenants paid a \$400 security deposit at the start of the tenancy, which the landlord continues to hold. Secondly, there is no dispute that an incoming and outgoing condition inspection report was not completed by the landlord as required by section 23 and 35 of the *Act*, respectively. Section 38 of the *Act* states that if a landlord has extinguished their right to claim against a security deposit pursuant to section 24(2) of the *Act* by failing to complete an incoming condition inspection report or pursuant to section 36(2) of the *Act* by failing to complete an outgoing condition inspection report, the landlord may not make a claim against the security deposit and must pay double the amount of the security deposit.

In the matter before me, I find the landlord breached section 23 and 35 of the *Act* by failing to complete an incoming and outgoing condition inspection report as required by sections 23 and 35 respectively.

Therefore, I find that once the landlord breached section 23 of the *Act*, she extinguished any rights of claiming towards the security deposit and must pay double the amount of the security deposit as she continues to hold the security deposit, without any authority to do so, having failed to return the full deposit within 15 days of June 19, 2015, the date she received the written forwarding address from the tenants.

As a result of the above, and taking into account that the tenants did not waive their right to double the amount of the security deposit, I find the tenants have met the burden of proof and are entitled under section 38 of the *Act* to double the amount of their original \$400 security deposit, for a total of **\$800**. I note that the security deposit accrued no interest since the start of the tenancy.

#### Tenants' Claim: Item 2

The tenants have claimed for the return of the \$140 already paid to the landlord towards the landlord's request for \$200 in extra hydro utilities. For this portion of the tenants' claim, I have considered the testimony of the parties, where there was no dispute that the original terms of the tenancy included hydro, cable and internet in the monthly rent. I have also considered the testimony of the landlord indicating that the request for \$200 to assist with higher than expected hydro bills was made on a one-time basis.

Based on the above, I find the landlord had no authority under the *Act* to request an additional \$200 towards utilities, and that the hydro, cable and internet were included in the monthly rent of \$825 per month. Therefore, I find that the tenants have met the burden of proof, and are entitled to the return of the **\$140** amount already paid to the landlord.

**I caution** the landlord to comply with section 13 of the *Act* and section 12 of the *Residential Tenancy Act Regulation* by ensuring that all future tenancy agreements are in writing, so that both parties have a clear understanding of the agreed-upon terms of the tenancy agreement.

Landlord's Claim Item 1

The landlord has claimed \$239.68 for a dishwasher repair. Given that there is no incoming or outgoing condition inspection report, I have considered the invoice submitted and find that the landlord has failed to meet the burden of proof for this portion of her claim. In reaching this decision, I have considered that the invoice dated June 4, 2015 indicates that the dishwasher was not advancing through the wash cycle and that a control board part of \$139 needed replacement. I find the landlord has provided insufficient evidence to prove that a control board dishwasher part is due to any negligence on the part of the tenants. Given the above, I dismiss this portion of the landlord's claim, without leave to reapply.

Landlord Item 2

The landlord has claimed \$140 for carpet cleaning including labour and cleaning products, and advertising for new tenants. The landlord confirmed that she did not have receipts for the cost of the carpet shampooer but did provide a receipt for \$19.69 for cleaning supplies from a popular home improvement store. The landlord also provided a receipt for \$21 for the cost of advertising the rental unit due to the tenants vacating the rental unit early due to late notice to end the tenancy.

Firstly, I dismiss the landlord's claim for \$21 for the cost of advertising as this tenancy was not a fixed term tenancy. I find that such a cost is the responsibility of the landlord when a month to month tenancy is entered into, which is the case in the matter before me.

Regarding the remaining \$119 for this portion of the landlord's claim, I find the landlord has met the burden of proof and I find the tenants breached section 37 of the *Act*, which states:

**Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

**[my emphasis added]**

In reaching this finding, I have considered the photos submitted and that the tenants testified that the freezer photo looked “reasonably clean” to them. I find the freezer photo and other photos do not represent a reasonably clean rental unit given the amount of dirt and spills shown in the photos. I also find that the amount being claimed by the landlord for cleaning is reasonable. Therefore, I find the landlord has met the burden of proof in supporting that **\$119** is owed by the tenants for cleaning costs, including cleaning supplies.

Landlord Item 3

Although the landlord had originally claimed \$825 for loss of June 2015 rent, the landlord confirmed during the hearing that she secured new renters who paid \$750 for June 2015 rent. As a result, the landlord confirmed that she only suffered a loss of \$75 for June 2015 as a result of the tenants failing to provide their one month notice in accordance with the *Act*. The tenants testified that they provided verbal notice to the landlord on May 10, 2015 that they would be vacating at the end of May 2015. Pursuant to section 45(1) of the *Act*, I find the tenants breached the *Act* by failing to provide proper one month notice in writing to the landlord as required by the *Act*. Therefore, I find the landlord has met the burden of proof for this portion of her claim, and is entitled to the **\$75** rent differential for loss of that amount of June 2015 rent.

Landlord Item 4

The landlord has claimed \$50 for the recovery of the filing fee. The filing fee will be dealt with below.

Landlord Item 5

The landlord has claimed \$60 for the unpaid portion of hydro the landlord claims the tenants owe her. Consistent with my finding above that the landlord had no authority under the *Act* to request an additional \$200 towards utilities, I dismiss this portion of the landlord's claim, without leave to reapply.

As only some of the landlord's claim had merit, I grant the landlord the recovery of one half of her \$50 filing fee in the amount of **\$25**.

The tenants have established a total monetary claim in the amount of **\$940**, comprised of double their \$400 security deposit, plus \$140 for the return of the extra utility payment previously paid to the landlord.

The landlord has established a total monetary claim in the amount of **\$219**, comprised of \$119 for cleaning costs including supplies, \$75 for the June 2015 rent differential, plus recovery of \$25 of the filing fee.

I offset the landlord's monetary claim of \$219 from the tenant's monetary claim of \$940, leaving a balance owing by the landlord to the tenants in the amount of **\$721**. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$721**.

#### Conclusion

The tenants have successfully proven a claim for \$940, while the landlord has successfully proven a claim for \$219. I offset the landlord's monetary claim of \$219 from the tenant's monetary claim of \$940, leaving a balance owing by the landlord to the tenants in the amount of \$721.

The tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$721. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 19, 2015

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Residential Tenancy Branch

