



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on September 3, 2015. The Landlords filed seeking a Monetary Order for: money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by one of the Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

No one was in attendance at the hearing on behalf of the Tenants. The Landlord provided affirmed testimony that each Tenant was served notice of this application and this hearing by registered mail September 10, 2015. Canada Post tracking receipts were submitted in the Landlords' documentary evidence. The Landlord stated she had confirmed the female Tenant had received her package and the male Tenant's package had been returned unclaimed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the undisputed evidence of the Landlords, I find the female Tenant was sufficiently served notice of this application and hearing, in accordance with Section 89(1) (c) of the Act. I further find the male Tenant was deemed served notice of this application and hearing on September 15, 2015 pursuant to section 90 of the *Act*. Accordingly, the hearing continued to hear the undisputed evidence of the Landlords in absence of the Tenants.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

### Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy agreement that began on December 1, 2013. Rent of \$875.00 was payable on or before the first of each month. On November 16, 2013 the Tenants paid \$440.00 as the security deposit. A move in condition inspection report was completed in the presence of a Landlord and a Tenant on December 1, 2013.

On July 15, 2015 the Landlords received a notice to end tenancy from the Tenants via email. The email indicated that the Tenants' notice would be effective August 31, 2015. The move out condition report was completed and signed by one Landlord and one Tenant on August 31, 2015.

The Landlord testified the Tenant agreed to a deduction of \$99.62 from the security deposit at the time the move out inspection report was completed. The Landlord stated the Tenant and her had further agreed the Tenant would paid for the remaining costs for cleaning, to replace the keys, and replacement of a rug that could not be fully cleaned once those costs were determine. She submitted evidence that those costs added up to \$397.56.

In addition to the \$397.56 the Landlord stated she was also seeking to recover their filing fee and \$38.61 for their costs for compiling and serving their evidence.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

I accept the Landlords' undisputed evidence that the Tenants left the rental unit requiring additional cleaning and the throw rug needed to be replaced. Therefore, I find the Tenants breached section 37 of the Act. In addition, I find the Tenants' breach caused the Landlords to suffer a loss of \$397.56 in cleaning and repair costs. Accordingly, I grant the undisputed application for cleaning and replacement of the throw rug in the amount of **\$397.56**.

In regards to the claim for registered mail fees and creation of evidence in support of bringing this application forward, I find that the Landlords have chosen to incur those costs which cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and to recover the cost of their filing fee. Costs incurred due to a service method choice or choice of how or what evidence is created and submitted do not solely result from a breach of the Act. Rather, the Act provides for various methods of service and evidence that may be less expensive. Therefore, I dismiss the Landlords' claims for service and evidence costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$440.00 security deposit since November 16, 2013.

This monetary award meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit plus interest as follows:

Cleaning and repairs	\$ 397.56
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$ 447.56
<b>LESS:</b> Security Deposit \$440.00 + Interest \$0.00	<u>-440.00</u>
<b>Offset amount due to the Landlords</b>	<b><u>\$ 7.56</u></b>

The Tenants are hereby ordered to pay the Landlords the offset amount of \$7.56, forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$7.56** which may be enforced through Small Claims Court upon service to the Tenants.

### Conclusion

The Landlords have succeeded with their application and were awarded monetary compensation of \$447.56 which was offset against the Tenants' security deposit leaving a balance owed to the Landlord of \$7.56.

This decision is final, legally binding, 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: March 10, 2016

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Residential Tenancy Branch