



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNR MNDC FF – Landlords' application  
                                 MNSD FF – Tenants' application

### **Introduction**

This hearing was convened to hear matters pertaining to cross Application for Dispute Resolution filed by both the Landlords and the Tenants. The hearing convened on February 18, 2016 for 22 minutes at which time I granted the Landlord's request for adjournment and issued an Interim Decision on February 18, 2016. Accordingly, this Decision must be read in conjunction with my February 18, 2016 Interim Decision.

The hearing reconvened on March 17, 2016 for 39 minutes. Each person gave affirmed testimony. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party confirmed receipt of the application for Dispute Resolution, hearing documents, and evidence served by the other party. No issues regarding service of receipt of the other party's evidence were raised. Accordingly, I considered all relevant evidence that was before me.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

### **Issue(s) to be Decided**

1. Have the Landlords proven entitlement to monetary compensation for unpaid utilities and damage to the rental unit?
2. Have the Tenants proven entitlement to the return of their security deposit?

### **Background and Evidence**

The parties entered into a written fixed term tenancy agreement that was signed by the female Tenant on October 4, 2013 and the male Tenant on October 30, 2014. The one year fixed term was set to expire on November 30, 2014 after which the tenancy

continued on a month to month basis. Rent of \$1,300.00 was payable on the first of each month on and or around October 4, 2013 the Tenants paid \$650.00 as the security deposit.

The rental unit was described as being one side of a duplex consisting of two levels. The main level had: living room; kitchen; half bathroom; and the upper level consisted of 3 bedrooms; and a full bathroom. The duplex was built in approximately 1984 and was purchased by the Landlords in 1993. The Landlords testified the duplex has always been a rental unit since they purchased it.

The Tenant initially gave the Landlord's verbal notice they would be ending their tenancy. Then on July 3, 2015, at the request of the Landlords, the Tenants gave the Landlords written notice they would be ending the tenancy effective July 31, 2015. The Tenants provided the Landlords with their forwarding address in writing on July 31, 2015.

No written inspection report forms were completed at move in or at move out by the Landlords. The male Landlord attended the rental unit on July 31, 2015 and entered into an agreement with the Tenants that he would arrange access to the rental unit in August 2015 for the Tenants to replace the broken or missing window blinds.

The Landlords testified they are seeking \$450.00 monetary compensation which is comprised of: \$90.00 for the patio door window blind; \$50.00 for the bedroom blind; \$20.00 for the living room blind; \$100.00 for a missing closet door; \$40.00 for the unpaid water/sewer bill; and \$150.00 for the bedroom carpet which was burned and ripped.

The Landlords stated they were leaving to go on vacation shortly after July 31, 2015 and agreed to call the Tenants upon their return to arrange for the Tenants to replace the broken blinds. The Landlords submitted they had arranged with the new tenant to allow these Tenants access to the rental unit on August 17, 2015 to install the replacement blinds. They then contacted the Tenants and told them they would meet them at the unit so they could install the blinds. They alleged the Tenants showed up empty handed and refused to go into the unit to install blinds.

The Landlords submitted there was a closet door missing at the end of the tenancy and the bedroom carpet had been burned and torn. They argued the rental unit was renovated just prior to this tenancy which included new carpet, new blinds, and new paint.

The Tenants confirmed they had entered into an agreement to meet with the Landlord at the rental unit on August 17, 2015. They argued the agreement was they would install the replacement blinds while the Landlord was there and he would return their security deposit at that time. The Tenants asserted they did not install the blinds because the Landlord did not attend the rental unit at the agreed upon time. They said they were worried they would install the blinds and the Landlord would not return their deposit so they left.

The Tenants submitted receipts into evidence to prove they had purchased the blinds. The Tenants submitted they still have the blinds they purchased and would like to give them to the Landlord in exchange for their security deposit as originally agreed.

The Tenants did not dispute the Landlords' claim for the \$40.00 water bill.

The Tenants stated the rental unit was renovated and clean at the start of their tenancy agreement; however, they do not believe the carpets were new. The Tenants confirmed the closet door was not attached at the time their tenancy ended. They argued the closet door did not work properly to begin with as it kept falling off. They stated they finally left it off and placed it in the exterior shed. The Tenants asserted they had verbally requested the Landlord install the closet door during the tenancy and the Landlord never did it.

The Tenants stated the bedroom carpet was not burned it was stained. They confirmed the stain occurred during the tenancy and did not know what caused the stain. They argued the carpet was not ripped or frayed it was only stained.

The Landlords denied being asked to replace the closet door. The Landlords asserted the Tenants always delivered their rent to the Landlords' house during the tenancy so it should not have been a problem for the Tenants to come to their house to pick up the security deposit after they installed the blinds. They argued they had asked their new tenant to tell the Tenants to pick up the security deposit after they installed the blinds.

### 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 that party to pay, compensation to the other party.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

### **Landlords' Application**

The tenancy agreement provided in evidence states the Tenants were required to pay the utilities including the water bill. The municipal bill submitted into evidence listed a billing date of June 30, 2015 and was for a total amount of \$259.58. The Tenants did not dispute the Landlords' claim of \$40.00 for payment of the final water/sewer bill and the Landlords did not submit evidence as to why they were not claiming the full amount of the bill. Accordingly, I find the Landlords submitted sufficient evidence to prove the amount as claimed and I grant them compensation for the unpaid water/sewer bill in the amount of **\$40.00**, pursuant to section 67 of the *Act*.

I accept the parties mutually agreed to meet at the rental unit on August 17, 2015 at which time the Tenants would install the replacement window blinds and the Landlords would return the Tenants' security deposit.

Notwithstanding the Landlords' submission that they had asked the new tenant to tell the Tenants to pick up their security deposit from the Landlords' house after the Tenants installed the blinds; I find the Landlords did not comply with the full terms of the verbal agreement, as neither one of the Landlords attended the rental unit at the prearranged time. I accept the Tenants' submission they did not install the blinds in absence of the Landlord as they felt they would not actually get their deposit back after they installed the blinds because the Landlord did not come to the rental unit as previously agreed.

I then considered the Tenants' documentary evidence which included receipts dated August 3, 2015 and August 11, 2015 which supports the Tenants' submissions that they purchased the replacement blinds. I further accepted the Tenants still have those blinds available to give to the Landlords in exchange for the security deposit.

Therefore, in absence of documentary evidence from the Landlords to prove the amounts claimed for the missing blinds; and in consideration of the Landlords' failure to attend the rental unit on August 17, 2015; I find the Landlords are entitled to have the blinds purchased by the Tenants and are not entitled to have those blinds installed into the rental unit, pursuant to section 62 of the *Act*. Accordingly, I hereby order the Tenants to deliver the three new window blinds to the Landlords' house no later than **March 31, 2016**. If the Tenants fail to comply with this Order, the Landlords will be at liberty to seek monetary compensation.

Sections 23 and 35 of the *Act* stipulate, in part, that the landlord and tenant together must inspect the condition of the rental unit at the start and at the end of a tenancy. The landlord must complete a condition inspection report form in accordance with the Regulations.

Section 21 of the Regulations provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

*Residential Tenancy Policy Guideline #16* states that an Arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

In this case the Landlords breached sections 23 and 35 of the *Act*, as they failed to complete condition inspection report forms at move in and at move out. Accordingly, I find the Landlords provided insufficient evidence to prove the condition of the rental unit at the start of the tenancy as being fully renovated with new paint and new carpet.

The Tenants did not dispute the closet door fell off during the tenancy and they allegedly put that door outside in the storage shed. The Tenants admitted the bedroom carpet had been stained during their tenancy, not burned or torn. In addition, the Tenants argued the carpet was not new at the start of their tenancy. Therefore, I find there was evidence of some damage to the carpet and closet door during the tenancy.

Based on the totality of the evidence before me I find the Landlords are entitled to nominal damages regarding the bedroom closet door and the carpet in the amount of **\$25.00**, pursuant to section 67 of the *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 partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$50.00**, pursuant to section 72(1) of the *Act*.

### **Tenants Application**

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

As stated above, this tenancy ended July 31, 2015, and the Landlords received the Tenants' forwarding address on July 31, 2015. Therefore, the Landlords were required to return the Tenants' full security deposit or file for dispute resolution no later than August 15, 2015. The Landlords did not return the deposit and filed their application on August 18, 2015; 3 days after the required timeframe.

Based on the above, I find that the Landlords failed to comply with Section 38(1) of the *Act* and the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. Accordingly, I find the Tenants submission sufficient evidence to prove their entitlement to the return of double their security deposit in the amount of **\$1,300.00** (2 x \$650.00).

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$650.00 deposit since October 2013.

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

### **Monetary Award**

I find both the Landlords' award and the Tenants' award meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

|  |                            |
|--|----------------------------|
| Landlords' award: (\$40.00 + \$25.00 + \$50.00)    | \$ 115.00                  |
| <b>LESS: Tenants' award (\$1,300.00 + \$50.00)</b> | <u>-1,350.00</u>           |
| <b>Offset amount due to the Tenants</b>            | <b><u>(\$1,235.00)</u></b> |

The Landlords are hereby ordered to pay the Tenants the offset amount of \$1,235.00, forthwith.

In the event the Landlords do not comply with the above order the Tenants have been issued a Monetary Order in the amount of **\$1,235.00** which may be enforced through Small Claims Court upon service to the Landlords.

### **Conclusion**

The Landlords were partially successful with their application and the Tenants were ordered to deliver the three new window blinds to the Landlords no later than March 31, 2016. The Landlords were awarded monetary compensation of \$115.00 which was offset against double the Tenants' security deposit. The Landlords were ordered to return the \$1,235.00 balance owed to the Tenants forthwith.

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 17, 2016

---

Residential Tenancy Branch