



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, FF;    MNDC, MNSD, O, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlord, LL and his English language translator, MF (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had authority to represent his wife, "landlord XS," the other landlord named in this application, as an agent at this hearing. The landlord confirmed that his translator had authority to assist him at this hearing. This hearing lasted approximately 61 minutes in order to allow both parties to fully present their submissions.

The landlords intended to call "witness DB" to testify at this hearing. The landlord had not notified the witness prior to the hearing or arranged for the witness to be available to

testify. I provided the landlord with ample time during the hearing to contact this witness personally. The landlord provided me with a phone number to contact the witness and after the telephone operator tried to call the witness three times with no answer during the hearing, I concluded the hearing without obtaining witness testimony, as witness DB was not available.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

I asked the landlord to provide me with identical coloured copies of photographs, as was submitted to the tenant, after this hearing by way of facsimile. The tenant confirmed receipt of the landlords' coloured photographs prior to the hearing. I had only received black and white photographs from the landlords prior to the hearing. The landlord said that he tried to submit coloured copies to the RTB office prior to the hearing, but it was rejected. Accordingly, I received, reviewed and considered the landlords' coloured photographs in my decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the names of both landlords, as the landlord agreed to this amendment request from the tenant during the hearing.

#### Issues to be Decided

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary award for the return of his security deposit?

Is the tenant entitled to other unspecified remedies?

Is either party entitled to recover the filing fee for their application?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this tenancy began on April 2, 2015 and ended on August 31, 2015. Both parties agreed that monthly rent in the amount of \$500.00 was payable on the first day of each month and a security deposit of \$250.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties agreed that no written tenancy agreement governs this tenancy, as only a verbal agreement was reached. The rental unit is one of two bedrooms in the basement of a house. Witness DB lives on the main floor of the house.

Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. The tenant could not recall whether he provided the landlords with a forwarding address in writing and the landlord said that he never received one from the tenant. The landlord agreed that the landlords did not have written permission from the tenant to keep any amount from his security deposit. The landlords filed their application on December 15, 2015.

The landlords seek \$2,163.72 to replace laminate flooring in the rental unit and \$50.00 for the recovery of the filing fee. The landlords provided coloured photographs of the damage. The landlords provided an email estimate for cost of the replacement. The landlord said that the tenant caused water damage to the laminate flooring, causing it to bubble and "arch." The landlord maintained that the flooring was in good condition when the tenant moved in. The landlord stated that he purchased the house in December 2014 and that only one other student lived in one of the other rooms in the basement from March to June 2015. The landlord said that he checked the flooring when the student vacated the rental unit and the flooring was in good condition at the time so he returned the security deposit to the student.

The landlords also provided a letter from witness DB saying that he works in home renovations, he saw the rental unit before he decided to move in to the main floor of the house, he saw the floor damage after the tenant moved out, that the tenant was the only one living there at the time, and that his estimate for the damage was \$4,000.00.

The tenant denied causing any water damage to the laminate flooring in the rental unit. He stated that there were bubbles and arches in the flooring when he moved in and it is pre-existing damage. He stated that no floods or other water damage occurred during

his tenancy, including while the student was living there in the other room of the basement.

The tenant seeks the return of his security deposit of \$250.00 and to recover the \$50.00 filing fee paid for his application. The tenant also seeks to recover \$242.65 for a loss of groceries, due to a power outage at the rental unit in August 2015, causing his food and drinks to spoil in the refrigerator and freezer. Both parties agreed that power at the rental unit was lost for a few days in August 2015 and that the tenant had food and drinks that spoiled. During the hearing, the landlord agreed to pay \$20.00 for this loss, saying that he only saw ice cream and soft drinks in the tenant's refrigerator at that time. The landlords provided coloured photographs of the items that he observed in the tenant's refrigerator. The tenant said that he had approximately \$90.00 in protein and \$90.00 in dairy that was lost. The tenant was unable to provide a breakdown of the specific items lost or any documentary evidence such as photographs or receipts of the losses. The tenant claimed that he went to the local grocery store and added up the items lost, totaling \$242.65.

### Analysis

As per section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### Landlords' Application

I dismiss the landlords' application for \$2,163.72 to replace the laminate flooring in the rental unit. I find that the landlords failed to meet part 2 of the above test to show that the tenant caused the damage. I find that the landlords failed to produce photographs of the condition of the rental unit when the tenant moved in. The landlord also failed to complete and produce a move-in condition inspection report to show the condition of the rental unit when the tenant moved in. There was also another student living there with the tenant, who may have caused or contributed to this damage in some way. I find that by failing to show the condition of the unit when the tenant moved in, the landlords were

unable to contest the tenant's allegation that the damage was pre-existing. Although the landlords provided a written witness statement, witness DB is not an independent witness as he is a tenant of the landlords. Further, he noted that he did not see any "problem" in the unit before he moved in upstairs, and that he was told by the landlord that there were "problems" after the tenant moved out. Moreover, the witness did not see the unit at the time that the tenant moved in, was not living there in the unit with the tenant, and did not see the condition of the unit during the tenancy. Therefore, I give limited weight to witness DB's written statement.

As the landlords were wholly unsuccessful in their application, I find that they are not entitled to recover the \$50.00 filing fee from the tenant.

### Tenant's Application

I award the tenant \$20.00 for a loss of groceries due to the power outage in the rental unit. The landlords agreed to this amount. However, I find that the tenant failed to meet part 3 of the above test to demonstrate the total value of the items lost. The tenant was even unable to provide a breakdown of the items during the hearing, when questioned. Therefore, I provide the above limited award, based on the landlords' agreement.

Section 38 of the *Act* requires landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlords' right to claim against the security deposit for damage was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. However, the tenant did not provide a written forwarding address to the landlords to trigger the doubling provisions of section 38 of the *Act*. Therefore, I find that the tenant is not entitled to double the value of his security deposit. The tenant is only entitled to the return of his original security deposit of \$250.00 from the landlords. No interest is payable on the security deposit during the tenancy term.

As the tenant was partially successful in his Application, I find that he is entitled to recover the \$50.00 filing fee from the landlords.

### Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$320.00 against the landlords. The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for other unspecified remedies is dismissed without leave to reapply, as no evidence was provided by the tenant regarding this claim.

The landlord's entire application is dismissed without leave to reapply.

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: April 13, 2016

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Residential Tenancy Branch

