



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNR, 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 unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenants were both served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 18, 2016. The tenants both state that they have not received the landlord's notice of hearing package and the submitted documentary evidence. The landlord stated that both packages were returned by Canada Post and marked as "Moved/Unknown". The tenants confirmed that they had moved since filing the application and have not updated their mailing address.

The tenants provided affirmed testimony that the landlord was served with both the notice of hearing package on November 28, 2015 and their submitted documentary evidence on May 27, 2016 and again on June 1, 2016 via courier. The landlord confirmed receipt of the tenants' notice of hearing and submitted documentary packages as claimed by the landlord.

I accept the undisputed affirmed evidence of both parties and find that the landlord had properly served both the tenants with the notice of hearing packages to the known and listed address provided by the tenants as per sections 88 and 89 of the Act. Although the tenants did not receive the landlord's notice of hearing package and the submitted documentary evidence, I find that the tenants are both deemed to have received them, 5 days later as per section 90 of the Act.

I also find based upon the undisputed affirmed testimony of both parties that the landlord was properly served with the tenants' notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

At the outset the landlord's application for dispute was described and explained in detail to both tenants as they did not have a copy before them due to their failure to update their mailing address change. Both tenants acknowledged their understanding of the landlord's application. During the hearing the contents of the landlord's evidence was described in detail to both tenants who acknowledged their understanding of the specific evidence referred to by the landlord.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation, return of the security deposit and recovery of the filing fee?

Is the landlord entitled to a monetary order for damage, for unpaid rent or utilities, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on March 1, 2015 on a fixed term tenancy ending on March 1, 2016 as shown by the submitted copy of the signed tenancy agreement dated March 1, 2015. The monthly rent was \$1,300.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$650.00 was paid on February 24, 2016.

A condition inspection report for the move-in was completed by both parties on February 24, 2015 and a condition inspection report for the move-out was completed by landlord only on August 31, 2015 without the tenant. Both parties confirmed that the tenancy ended on August 31, 2015. The tenants provided testimony that the condition inspection report was completed by both parties, but that the tenants in dispute over some issues, refused to sign the move-out report.

During the hearing the tenants clarified that they were seeking a monetary claim of \$1,125.00 which consists of:

\$475.00	remaining portion of the original security deposit not returned.
\$650.00	compensation for failing to comply with section 38 of the Act.

Both parties confirmed that the tenancy ended on August 31, 2015 and that the tenants provided their forwarding address in writing to the landlord on August 31, 2015. The tenants provided evidence that the landlord withheld \$475.00 without the permission of the tenants.

The landlord claimed that she provided a detailed list of why the \$475.00 was not returned to the tenants. The landlord confirmed in her direct testimony that she had explained why she was not returning the \$475.00, but that she did not have the permission of the tenants or an order from the Residential Tenancy Branch.

The landlord clarified that she seeks a monetary claim of \$2,725.75 which consist of:

\$2,050.00	Compensation for loss of rental income after tenant prematurely ended tenancy. (September, \$1,300.00 and ½ October, \$650.00)
\$181.13	Cleaning Services
\$115.00	Damage Repairs
\$89.60	Patio Door Repair
\$290.02	Replacement of kitchen and bedroom blinds

The landlord provided testimony that the tenants left the rental unit dirty and damaged requiring cleaning and repairs. The tenants dispute the landlord's claims, but agreed to leaving the rental premises dirty that required cleaning. The tenants also agreed that the patio doors were left damaged. The landlord provided testimony that the tenants chose to vacate the rental unit after breaching the tenancy agreement by having a pet that was not in accordance with the strata bylaws. The landlord stated that the rental unit was new and that the tenants were the first occupants. The landlord has provided for comparison a copy of the completed condition inspection report for the move-in and photographs provided of the rental unit at the end of tenancy.

The landlord has submitted in support of her claim:

- Invoice dated September 2, 2015 for cleaning
- Invoice dated September 2015 for detailed repairs
- Invoice dated September 15, 2015 for patio blind repairs
- Copy of Strata Bylaws
- Copy of signed form "k"
- Copy of completed condition inspection report for move-in

Copy of incomplete condition inspection report for move-out  
Copy of new tenancy agreement beginning October 15, 2015

The landlord stated that after repeated attempts at showing the rental premises a tenant was not secured to begin a tenancy until October 15, 2015.

### Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has 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.

In this case it is clear based upon the undisputed affirmed evidence of both parties that the landlord withheld \$475.00 of the original \$650.00 security deposit without permission of the tenants or from the Residential Tenancy Branch. Both parties confirmed that the tenancy ended on August 31, 2015 and that the landlord had received the tenants' forwarding address in writing on August 31, 2016. A review of the landlord's application shows that she did not file for dispute resolution to dispute the return of the security deposit until May 13, 2016, which is approximately 255 days after the end of tenancy and when the landlord received the tenants' forwarding address in writing. On this basis, I find that the landlord failed to comply with section 38 of the Act and is required to pay a monetary award equal to the \$650.00 security deposit as per section 38 (6) of the Act. The tenants are entitled to a monetary award totalling, \$1,125.00.

The tenants having been successful in their application are entitled to recovery of the \$50.00 filing fee.

The tenants have established a total monetary claim of \$1,175.00.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case the landlord has provided largely undisputed evidence that the tenants left the rental premises with damaged blinds, damaged baseboards, a damaged kitchen cabinet, drywall damage in the master bedroom and that the tenants left the rental premises requiring extensive cleaning. The landlord has provided in support undisputed photographs which showing:

- Dirty fridge freezer
- Damaged Oven Door
- Dirty burners under stove
- Dirty Kitchen Sink
- Corner Wall Damage
- Door Frame Damage in Master Bedroom
- Dirty Dryer Vent
- Scuffed Walls in storage area
- Patio Door Blinds Damaged

The landlord has also provided:

- Invoice dated September 2, 2015 for cleaning
- Invoice dated September 2015 for detailed repairs
- Invoice dated September 15, 2015 for patio blind repairs
- Copy of Strata Bylaws
- Copy of signed form "k"
- Copy of completed condition inspection report for move-in
- Copy of incomplete condition inspection report for move-out
- Copy of new tenancy agreement beginning October 15, 2015

I find on a balance of probabilities based upon the substantially undisputed evidence of the landlord that the tenants left the rental unit dirty and damaged as claimed by the landlord. I find that the landlord also reasonable steps to re-rent the unit, but was unsuccessful until October 15, 2015 based upon the undisputed evidence of the landlord. The landlord has established a total monetary claim of \$2,725.75 which consists of:

\$2,050.00	Compensation for loss of rental income after tenant prematurely ended tenancy. (September, \$1,300.00 and ½ October, \$650.00)
\$181.13	Cleaning Services
\$115.00	Damage Repairs
\$89.60	Patio Door Repair
\$290.02	Replacement of kitchen and bedroom blinds

The landlord having been successful in her application for dispute is entitled to recovery of the \$50.00 filing fee.

The tenant has established a total monetary entitled of \$1,175.00.

The landlord has established a total monetary entitled of \$2,725.75.

In offsetting these claims, I find that the landlord is entitled to a monetary order for \$1,550.75.

Conclusion

The landlord is granted a monetary order for \$1,550.75.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 18, 2016

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Residential Tenancy Branch