



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      mnsd, ff

### Introduction

The landlords apply for a monetary order for cleaning and damage following the ending of this tenancy, and to retain this sum from the security deposit. The tenants apply for the return of their security deposit, doubled.

### Issue(s) to be Decided

- Are the landlords entitled to a monetary award?
- What should happen to the security deposit?

### Background and Evidence

This tenancy began September 1, 2012 and ended on April 30, 2016. The tenants paid a security deposit of \$850.00 at the start of the tenancy, none of which has been returned. The landlord offered the tenants two opportunities to participate in a final walk through of the premises, neither of which opportunities were taken by the tenants. The landlord also advised the tenant on one of these occasions that their participation was not necessary. The tenants declined to participate in a final inspection.

The landlord prepared a final inspection report, indicating the premises were left unclean, but not itemizing any damage. The landlord hired a professional cleaner, and paid \$299.78 for cleaning of the appliances (which had been left in a poor condition), various spills, dirty grout, and dusting.

Although the inspection report indicated no damage, the landlord advised the tenants that there was damage to the bathtub and to a wall. The tenants had attempted to repair small chips to the tub and a large hole in the drywall, but the repairs were not well done. No repairs to this damage were ever done by the landlord, but estimates to make repair were obtained. These damages became a point of discussion with a purchaser who bought the premises three days after the tenancy ended.

### Analysis

The landlords' claim to recovery their cleaning costs of \$299.78 is proven and awarded. I accept the landlord's evidence that the tenants failed to properly clean the appliances, the grout, and other areas of the premises, before they vacated the premises. A lack of cleanliness is distinct from the issue of wear and tear, and I accept the landlord's evidence as to the extent of the uncleanliness and cost to rectify. I further note that the Conditional Inspection Report clearly sets out that the premises were not left sufficiently clean. The tenants' evidence fails to satisfy me that I must discount the report: on the contrary the tenants ask that I rely upon the report and find that no damage was

specified or awardable. The sum of \$299.78 is therefore awarded to the landlords, representing the costs of cleaning. As the landlord is successful with this portion of the claim, the landlord is also awarded recovery of his filing fee of \$100.00. The total award to the landlord is \$399.78.

The landlord's claim for the estimates of damage to the premises is dismissed. I am guided in this decision in part by the fact the landlords' inspection report did not disclose any damage. I note that section 21 of the Residential Tenancy Regulation provides that this report is evidence of the state of repair and condition, unless either the landlord or tenant has a preponderance of evidence to the contrary. No such preponderance of evidence is provided in this case by either party. Additionally, I note that although the alleged damages were stated by the landlord to be a "point of discussion" with the purchaser, the landlords' evidence fails to prove that the sale price of the premises was reduced by a specific sum equal to the landlord's estimates for damage to the tub and drywall.

Both parties make claim to the security deposit. A key issue over the disposition of the security deposit is whether the rights of either party have been extinguished. In this regard it is a clear requirement under sections 23 and 35 of the Residential Tenancy Act that landlords and tenants together inspect the rented premises before and after the tenancy. In this case the landlord participated in both inspections, but the tenants did not participate in the final inspection, even though being offered two opportunities. As is oft quoted and applicable in this case, ignorance of the law is no excuse. The tenants should have known that by failing to participate in a closing inspection that their rights to recovery of their deposit was in jeopardy. While under these facts the tenants' right to the deposit would ordinarily be extinguished, I also note that the landlords must accept some of the blame for this failure by the tenants. Section 16(1) of the Residential Tenancy Regulation requires that the landlord attempt in good faith with the tenants to mutually agree on a time and date for a condition inspection. In this regard, I find that the good faith of the landlord was jeopardized when the tenants were advised it was not necessary that they participate in the inspection at the end of the tenancy.

These unusual circumstances are not covered by Policy Guideline 17, or specifically contemplated by the legislation, and leave open the issue of how to deal with the disposition of the deposit. I have therefore taken a common sense approach and concluded that the tenants' right to a doubling of the deposit has been extinguished, but not their right to recover the balance of their deposit, once the landlords' award is satisfied.

The deposit totals \$850.00. The landlords may retain the sum awarded of \$399.78 from the deposit. The landlords must return the balance of the deposit in the sum of \$450.22 to the tenants. I note that the tenants' make no claim to recover a filing fee.

Conclusion

The landlords shall retain a portion of the deposit, and shall pay the balance of the deposit of 450.22 to the tenants, immediately.

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: August 15, 2016

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Residential Tenancy Branch