



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "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 retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

This hearing also addressed the tenant's cross application for:

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

The tenants and landlord's two agents (collectively the "landlord") attended the hearing. The landlords confirmed they were each agents of the landlord named in this application, and had authority to speak on her behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

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

Is the landlord entitled to retain the security deposit or is the tenant entitled to a return of the security deposit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the latest tenancy began on May 1, 2013 on a fixed term until May 31, 2016. Rent in the amount of \$950.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$475.00 at the start of the tenancy. The parties agreed to mutually end the tenancy and the tenants vacated the rental unit on April 15, 2016.

The parties agreed a written condition inspection report was not completed at move-in. and that the landlord completed a written condition inspection report on May 4, 2016 in the tenants' absence.

*Landlord*

The landlord testified that she is seeking \$2,500.00 in damages. She explained that she has incurred costs in the total amount of \$542.82 but understood she was at liberty to apply for the anticipated costs of additional damages provided her total claim was within \$2,500.00. Therefore she seeks the \$542.82 for costs already incurred and the remaining \$1,957.18 to cover the anticipated costs of carpet replacement. The landlord testified that she has paid \$267.25 for cleaning, \$177.95 for carpet cleaning and \$128.68 for electrical work. The landlord has submitted receipts.

*Tenants*

The tenants testified that they cleaned the rental unit and shampooed the carpets on April 23, 2016. It is their position that additional cleaning and shampooing was not

required. In relation to the electrical costs, the tenants acknowledged that they exchanged two ceiling fans and did not return them to their original locations. The tenants testified that the other work conducted by the electrician was in relation to some plugs that were damaged prior to the tenants' tenancy.

The tenants seek double the amount of their security deposit as they did not agree in writing to the retention of it. The tenants are seeking to recover the \$100.00 filing fee for this application from the landlord.

### Analysis

Under 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 test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 37 of the *Act*, establishes that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the tenants breached the *Act*, when they failed to clean the rental unit in its entirety. The photographs support that the tenants left some portions of the rental unit dirty. Therefore I find the landlord is entitled to recover the cleaning costs as per the submitted receipt in the amount of \$236.25.

Residential Tenancy Policy Guideline # 1 "Landlord & Tenant – Responsibility for Residential Premises," establishes that typically after a tenancy of one year the tenants will be held responsible for steam cleaning or shampooing the carpets. Although the tenants testified that they shampooed the carpets they have provided insufficient documentary evidence to substantiate this. For this reason I find the landlord is entitled to recover the carpet shampooing as per the submitted receipt in the amount of \$177.45.

As per the Residential Tenancy Policy Guideline # 1 "Landlord & Tenant – Responsibility for Residential Premises," any changes to the rental unit not consented to by the landlord must be returned to the original condition. The tenants provided insufficient evidence to establish they had permission to exchange the ceiling fans.

Based on the tenants' admission that they did not return the ceiling fans to their original locations I find the landlord is entitled to some compensation. The submitted electrical receipt indicates other electrical work was done. In the absence of a move-in condition inspection report, I find I cannot hold the tenants liable for other electric work that may be a result of damages that were present prior to the tenants' tenancy. For this reason, I grant the landlord a nominal award in the amount of \$75.00 for the electrical work required to switch the ceiling fans back to their original location.

Although the landlord anticipates other costs, I find this portion of the landlords claim to damages premature as the repairs or work have not been conducted and accordingly receipts have not been submitted. For these reasons I dismiss this portion of the landlord's claim for damages with leave to reapply. Therefore, I find that the landlord is not entitled to any compensation other than the cleaning, carpet shampooing and some electrical work in the total amount of \$488.70.

Sections 23, 24, 35 and 36 of the *Act* establishes that joint move-in and move-out condition inspections must be conducted and reports of inspections must be issued to the tenants. The right of a landlord to claim against the security deposit is extinguished if these report requirements are not met.

In the absence of a move-in condition inspection report, I find that the landlord's entitlement to claim against the tenants' security deposit is extinguished. The landlord lost her right to claim against the security deposit for damage to the property.

As per section 38 of the *Act*, the landlord is required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' forwarding address in writing. In this case, the landlord received the tenants' forwarding address on April 29, 2016 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenants' security deposit within 15 days of having received their forwarding address, section 38 of the *Act* requires that the landlord pay the tenants double the amount of the deposit.

As the tenants were successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$488.70 of the \$950.00 security deposit in full satisfaction of the monetary

award. The tenants are entitled to the remaining \$461.30 security deposit balance and \$100.00 filing fee for a total award of \$561.30.

### Conclusion

The landlord is entitled to \$488.70. I order the landlord to retain \$488.70 from the security deposit in full compensation of this amount.

The tenants are entitled to the return of the balance of the security deposit. I therefore grant the tenants a monetary order for the balance of the deposit, in the amount of \$461.30 plus the \$100.00 filing fee for a total award of \$561.30.

The landlord's application for damages in relation to anticipated costs is dismissed with 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: November 02, 2016

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Residential Tenancy Branch