



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied 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 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 their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlords served to the tenants the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties were unable to provide a date of service. Both parties confirmed that the tenants served to the landlords their notice of hearing package and their submitted documentary evidence via Canada Post Registered Mail on January 16, 2017 and that the tenants have provided a copy of the Canada Post Customer Receipt Tracking label as confirmation of service for both landlords. Both parties have confirmed that there were no issues with service of the documents and that both parties are ready to proceed with the hearing. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence of the other

party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

### 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.

Both parties confirmed that a tenancy agreement exists that started on September 1, 2015 on a month-to-month basis and that monthly rent was \$1,100.00 which was payable on the 1<sup>st</sup> day of each month.

The landlords claim that the tenants paid a \$550.00 security deposit and the tenants claim that a \$600.00 security deposit was paid. A condition inspection report for the move-out was completed on August 3, 2016 with both parties in which the landlords and the tenants disputed the condition of the rental premises.

The landlords seek a monetary claim of \$467.50 which consists of:

\$367.50	\$327.50	Professional Suite Cleaning
	\$80.00	Carpet Cleaning
\$100.00		Cleaning by Landlords (labour 5 hours at \$20/hr.)
\$100.00		Recovery of Filing Fee

The tenants seek a monetary claim of \$1,200.00 which consists of:

\$600.00	Return of Original Security Deposit
\$600.00	Compensation for Failing to Comply with Section 38(6)
\$100.00	Recovery of Filing Fee

The landlords stated that upon a “walk through” with the tenants on August 3, 2016 the landlords noted:

- Walls, Doors and baseboards were full of dirty, cat hair and cobwebs
- Bedroom Carpets were not cleaned or sanitized
- Kitchen Appliances were not cleaned
- Kitchen Cabinets were greasy and dirty
- Washroom was not cleaned
- Window sills were not cleaned
- Washer/dryer was not cleaned
- Entrance to the suite was dirty

The landlords stated that the tenants vacated the rental premises leaving it dirty which required 10 hours of their own time to clean the premises. The landlord clarified that because of the condition of the rental unit as per the noted condition inspection report dated August 3, 2016, the landlord hired a cleaning service for \$367.50 to clean the suite and provide carpet cleaning services. The landlord explained that the majority of the cleaning service was for the kitchen and bathroom as the majority of the general cleaning was performed by the landlords. The tenants dispute the claims of the landlord stating that the premises were left clean as shown by the tenants' notations on the condition inspection report dated August 3, 2016. Both parties also confirmed that the landlord had begun renovations on July 31, 2016 that carried on until the end of tenancy on August 3, 2016.

Both parties confirmed that the tenancy ended on August 3, 2016 when the condition inspection report for the move-out was completed with both parties. The landlords confirmed that on this date the tenants provided their forwarding address in writing to the landlords. The tenants stated that the forwarding address in writing was given to the landlords within a few days before the end of the tenancy on August 3, 2016. The tenants are unable to provide any additional evidence to support their claim that a \$600.00 security deposit was paid to the landlords. The landlords rely upon page 3 of an excerpt page from the sale of the property, regarding the terms and conditions and states,

*The seller warrants that...is a month to month tenant; the monthly rent is \$1,100.00 including...;payable on 1<sup>st</sup> of month a security deposit of \$550.00 was taken on September 15/2015 and the last rental increase was never.*

In support of this application the landlord has provided 30 color photographs showing the condition of the rental unit at the end of tenancy, 3 pages of text messages, a 1 page excerpt from the purchase of the property and a copy of a completed condition inspection report for the move-out dated August 3, 2016.

### Analysis

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/loss and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlords over that of the tenants. Although the tenants have disputed that the rental premises were left clean, I find that in reviewing the disputed condition inspection report for the move-out which was completed by both parties on August 3, 2016 in conjunction with the 30 photographs provided by the landlords that I prefer the evidence of the landlords over that of the tenants. In reviewing the landlords' photographs, I note:

- damage drywall and chipped baseboard in photograph #1
- some hair noted at the top of the baseboards and on the bottom portion of the walls in photographs #1, #2 and #5.
- water mark stains on the bathroom sink faucet in photograph #6.
- slightly dirty toilet in photograph #8
- dirty bathtub and tiles in photograph #9.
- dirty stove with food stains in photograph #14.
- dirty, dusty and garbage underneath stove in photograph #15.
- dirty dishwasher in photograph #17 and #18.
- dirty and dusty under fridge in photograph #20.
- dirty kitchen cupboard doors in photograph #21.
- dirty and stained kitchen cabinet cupboards in photograph #23.
- thick layer of lint in dryer filter in photograph #24.
- dirty washer in photographs #25 and #26

In reviewing the tenants 16 photographs, I find that they are of no relevant assistance as they depict primarily renovation work. I do note:

- Although the tenants rely upon photograph #10 that it was freshly vacuumed and free of stains, I note that it shows a discoloration in the master bedroom carpet near the closet and along the window wall.
- confirmation that photograph #14 shows stains inside the kitchen cabinet cupboard.

I also note that the completed condition inspection report for the move-out was completed on August 3, 2016 was noted by both parties. The landlord has provided notations which confirm that the rental unit was left dirty and unclean in the outside entryway, kitchen cabinets, under the stove, oven, under the fridge, dishwasher, cat hairs noted along the living room walls and trim, cat hairs along the bedroom walls and trim, cat hairs noted along the laundry room walls and trim and a thick layer of lint in the dryer filter. The notations made by the tenants were noted as "cleaned to our satisfaction" and "no wheels" in reference to the fridge and dishwasher.

As such, I am satisfied that the landlords have provided sufficient evidence to show that the tenants vacated the rental premises leaving it dirty requiring cleaning. I also find that the landlords have provided sufficient evidence of an actual amount based upon the receipt for cleaning of \$367.50. The tenants did not challenge the receipt of the amounts claimed by the landlord or the landlords' claim of \$100.00 for 5 hours of cleaning at \$20.00 per hour and as such, I find that the landlords have established a monetary claim of \$467.50.

The landlord having been successful in their application is entitled to recovery of the \$100.00 filing fee.

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.

In this case, both parties confirmed that the tenants provided their forwarding address at the end of the tenancy. The tenants have claimed that this was provided a few days before the end of tenancy. The landlords have claimed that the forwarding address in writing was provided to them on August 3, 2016 when the condition inspection report was completed. The tenants did not dispute this claim. In reviewing the landlord's application for dispute, I note that the landlords applied for dispute resolution to retain the security deposit on August 18, 2016 as filed. As such, I find that the landlord applied to dispute the return of the security deposit on the 15<sup>th</sup> day. I also find that in

the absence of any other evidence that the tenants claim that the security deposit was \$600.00 has not been established. I base this upon the documentary evidence of the landlord (a 1 page excerpt, terms and conditions of the sale) which show that the original landlord declares that a \$550.00 security deposit was paid by the tenants on September 15, 2015. The tenants provided no further evidence to support their claim.

As the landlords have established a claim against the security deposit and have properly filed an application to retain this claim against the claim, I find that the tenants are not entitled to compensation under section 38 (6) of the Act.

I find that the tenants are not entitled to recovery of the \$100.00 filing fee.

In offsetting these claims, I authorize the landlords to retain the \$550.00 security deposit against the \$567.50 established claim. The landlord is granted a monetary order for \$17.50,

### Conclusion

The landlords are granted a monetary order for \$17.50.  
The landlords may retain the \$550.00 security deposit.

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: February 21, 2017

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Residential Tenancy Branch