



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, MNDC, OLC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other and give closing submissions.

During the course of the hearing, the landlord advised that the second evidence package provided to the Residential Tenancy Branch on March 14, 2017 was not provided to the tenants. The Residential Tenancy Branch Rules of Procedure require any evidence that a party wishes to rely upon be provided to the other party. Therefore, that evidentiary material is not considered in this Decision. No other issues with respect to service or delivery of documents or evidence were raised, and all other evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically double the amount of the security deposit?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically by returning the security deposit?

### Background and Evidence

**The tenant** testified that this fixed term tenancy began on August 1, 2015 and expired after 6 months, was renewed and the second agreement expired on August 31, 2016. The landlord did not want to renew the tenancy agreement and told the tenants they had to move out, which they did on August 31, 2016.

Rent in the amount of \$2,000.00 per month was payable under the first tenancy agreement, and was \$2,100.00 per month for the second tenancy agreement, payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The rental unit is the upper suite in a house with 2 suites in the basement, both of which are tenanted. A copy of the tenancy agreement has been provided.

The tenant further testified that at the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenants gave the landlord a forwarding address in writing by email on August 20, 2016, prior to moving out of the rental unit, and a copy has been provided by the landlord. The landlord does not reside on the rental property or in the same community as the rental unit, so the parties often communicated by email.

On September 10, 2016 the landlord sent an email to the tenants containing a summary of damages, and the tenants replied that they did not accept the summary. No move-in or move-out condition inspection reports were completed. The landlord attempted to send an email transfer of a portion of the security deposit on September 15, 2016 in the amount of \$398.53, but the tenants declined the payment on September 20, 2016 because they did not want the landlord to believe the tenants were accepting the damages.

The landlord served the tenants with an application for dispute resolution claiming damages on March 9, 2017 which is scheduled for hearing on August 14, 2017. The tenants have provided a copy of the landlord's application and notice of the hearing with a letter asking that the landlord's application be dismissed.

The landlord has not returned the security deposit to the tenants, and the tenants claim double the amount and recovery of the \$100.00 filing fee.

**The landlord** testified that there were two 6-month leases between the parties, and the landlord received the security deposit from one of the tenants and another tenant, which transferred to the second tenancy agreement with the tenants named in this application. The landlord sent \$1,000.00 back to the tenants at the address they provided on or about September 1, 2016 by

regular mail. The cheque has not been cashed or returned to the landlord, and assumes that it's been lost in the mail.

The first address provided by the tenants was incorrect, and the landlord received another by email on or about September 12, 2016 but it does not contain a City, Province or Postal Code.

The tenants moved out at the end of August, 2016 and the landlord then went through the house. On September 10, 2016 the landlord sent both tenants a breakdown of damages with a suggested settlement. The proper forwarding address was received by the landlord on or about September 12, 2016 which contained the tenants' response about the landlord's summary of damages.

Neither a move-in nor a move-out condition inspection report was completed, and the landlord completed a walk-through at the end of the previous tenancy, but not a report.

### Analysis

Firstly, the *Residential Tenancy Act* and the regulations put the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into great detail of how that is to happen. If the landlord fails to ensure the reports are completed accordingly, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the parties agree that there were no such reports, and therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

The *Act* also requires a landlord to return to a tenant any security deposit or pet damage deposit in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

I have reviewed the evidentiary material of the parties and it is clear that communication was done by email on a regular basis. The parties agree that the tenancy ended on August 31, 2016.

The landlord testified that he returned \$1,000.00 to the tenant on or about September 1, 2016 but the cheque has not been returned in the mail or cashed. I find that difficult to accept given that the landlord later sent a partial payment by email to the tenants. On September 10, 2016 the landlord attempted to negotiate with the tenants, and sent the email transfer to the tenants on September 15, 2016 in the amount of \$398.53 which was declined by the tenants.

The landlord testified that he received the correct mailing address on September 12, 2016. Having found that the landlord's right to claim against the security deposit for damages is extinguished, the only claim the landlord could make against the security deposit would be for a claim other than damages. The tenant testified that there are no rental arrears.

However, the landlord attempted to return \$398.53. Since the landlord has not returned the other portion, I find that the tenants have established a claim for return of the \$1,000.00 security deposit and double the amount of the portion not returned by email, or \$601.47.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Although the landlord's right to make a claim against the security deposit for damages is extinguished, the landlord's right to make a claim for damages is not extinguished. That matter is scheduled for hearing on August 14, 2017, and without hearing from the parties with respect to damages, it would be premature and unjust for me to pre-determine that matter and dismiss it as requested in the tenants' evidentiary material. The hearing will proceed on the scheduled date.

#### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,701.47.

This order is final and binding and may be enforced.

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: March 31, 2017

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Residential Tenancy Branch