



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPN, MNDC, MNSD, FF; OLC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's agent (collectively the "tenant") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's application. The tenants confirmed receipt of the landlord's evidence and testified that they did not provide any documentary evidence of their own for this hearing. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

The parties testified that the tenants vacated the rental unit on August 1, 2016. Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

Issue(s) to be Decided

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

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

Is either party authorized to recover the filing fee for this application?

Background and Evidence

Although the parties testified a written tenancy agreement exists, neither party provided a copy. As per the testimony of the parties, the tenancy began June 1, 2009 on a fixed term until May 31, 2010 at which time it continued on a month to month basis. Rent in the amount of \$1,050.00 was payable each month. The tenants remitted a security deposit in the amount of \$450.00 at the start of the tenancy.

The parties agreed that neither move-in nor move-out inspection reports were completed by the landlord or provided to the tenants. The landlord confirmed she received the tenants' forwarding address in writing on September 5, 2016.

Landlord Claim

The landlord applied for a monetary order in the amount of \$625.00 for the following;

Item	Amount
Cleaning and garbage removal	\$500.00
Reinstallation of gas meter	\$25.00
Filing Fee	\$100.00
<b>Total Monetary Claim</b>	<b>\$625.00</b>

The landlord testified that the unit was left unclean and the property contained garbage at the end of the tenancy. The landlord alleges that because the tenants did not initiate gas service the gas company removed the meter sometime during the tenancy. In order to prepare the unit for rental, the landlord had to have the gas meter reinstalled. In an effort to support her claim, the landlord provided photographs, a cleaning and garbage removal receipt, a gas invoice and a written statement.

In reply, the tenants testified that they cleaned the unit and any garbage left behind was bagged and tagged for city pick up. It is the tenants' position that something or someone spread the garbage about the rental property after they had vacated. The tenants acknowledged that some personal items were left behind in the kitchen but testified that any other items left behind belonged to the landlord. The tenants acknowledged that they did not utilize gas because they were advised by the gas company they would have to pay to activate service. The tenants testified that they did not have gas service and were unaware the meter was removed.

#### Tenants Claim

The tenants applied for a monetary order in the amount of \$550.00 for the following;

Item	Amount
Security Deposit	\$450.00
Filing Fee	\$100.00
<b>Total Monetary Claim</b>	<b>\$550.00</b>

#### 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 this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Under section 1 of the *Residential Tenancy Branch Guideline* ("*RTB Guideline*"), tenants are responsible for the removal of garbage at the end of tenancy, unless an agreement exists to the contrary.

Upon review of the photographs and testimony of the parties I am satisfied that the tenants left the rental unit contrary to section 37(2) of the *Act* and section 1 of the *RTB Guideline*. The photographs support the landlord's claim that some portions of the rental unit remained dirty and contained garbage. Based on the submitted receipt I find the landlord is entitled to \$500.00 for cleaning and garbage disposal.

I am satisfied the landlord suffered a loss in relation to the gas meter and that the loss occurred due to the actions or neglect of the tenants in violation of the *Act*. Under section 32 of the *Act*, a tenant must maintain a reasonable health, cleanliness and sanitary standard throughout the rental unit and residential property. I find the maintenance of gas service constitutes a reasonable health standard and the tenants' failure to do so is in direct contravention of section 32 of the *Act*. For this reason I award the landlord \$25.00 for the reinstallation of the gas meter.

Sections 23, 24, 35 and 36 of the *Act* establish that joint move-in and move-out condition inspections must be conducted and reports of inspections must be issued to the tenant. When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to claim the security deposit for damage to the property.

The landlord was therefore 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. The landlord received the tenants' forwarding address on September 5, 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 tenant double the amount of the deposit, in total \$900.00.

The landlord has established a damage claim, therefore I find in accordance with the offsetting provisions of section 72 of the *Act*, that the landlord is entitled to retain \$525.00 of the \$900.00 security deposit in full satisfaction of the monetary award. The tenants are entitled to the remaining \$375.00 security deposit balance.

As both parties breached the *Act*, I find that the neither are entitled to recover the filing fee.

### Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

The landlord is entitled to \$525.00 in damages. I order the landlord to retain \$525.00 from the \$900.00 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 \$375.00.

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: April 12, 2017

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Residential Tenancy Branch