



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND MNR MNSD MNDC FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, 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.

The tenants requested:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both parties were duly served with each other’s Applications and evidence.

**Issue(s) to be Decided**

Are the landlords entitled to a Monetary Order for Unpaid Rent and Utilities?

Are the landlords entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to the return of all or a portion of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in January 2013, with monthly rent set at \$2,300.00. The landlords collected, and still hold, a security deposit the amount of \$1,000.00. The tenants moved out on January 31, 2017.

The tenants testified that they had provided the landlords with their forwarding address by email on February 7, 2017, which the landlords acknowledged. The tenants testified that they had moved into the rental unit in 2013, and no move-in inspection was done at the beginning of the tenancy. The tenants stated that a joint move-out inspection was scheduled for the end of the tenancy, but the landlords were late to the meeting, and the tenants were unable to stay for the duration of the move-out inspection. The tenants received one mail key, and during the tenancy the strata had changed the FOB entry system, and the tenants had purchased three FOBS which the landlord had never reimbursed them for. The tenants indicated that there was a partial joint move-out inspection, but nothing was recorded in writing. The tenants testified that the rental unit was in disrepair including a broken fan in the master bathroom, a broken refrigerator, broken toilet seat, and holes in the walls. The tenants admitted that they had accidentally taken the mail key upon move-out, which they mailed back to the landlord.

The tenants testified that the majority of the landlords' claims are the result of wear and tear, and not considered damage. The tenants also testified that no move in or move out inspections were done with the previous tenants, and that the landlords were now holding them responsible for prior damage to the rental.

The tenants testified that the landlords failed to return any portion of their security deposit within 15 days of them providing their forwarding address, and they had never agreed in writing to allow the landlords to retain any portion of their deposit.

The landlords submitted the following list of items for their monetary claim:

<b>Item</b>	<b>Amount</b>
Various repairs by maintenance man	\$372.83
Bifold doors	79.49
Curtains	180.00
Painting & Cleaning	965.00
Paint Supplies	183.86
Carpets	420.00
Door Locks	54.98
Hemming of curtains (9 hours x \$50)	450.00
Damage to hardwood floors	200.00
Repairs to Fireplace	70.00
Damage to the refrigerator	200.00
Damage to the ceiling (repainting)	No amount provided
Compensation for 1/2 a month's rent	1,150.00
Recovery of tenants' unauthorized rent reduction for additional FOBS	80.00
Recovery of tenants' unauthorized rent reduction for refrigerator repair	77.00
Security Deposit	-\$1,000.00
<b>Total Monetary Order Requested</b>	<b>\$3,483.16</b>

The landlords testified that the tenants had moved out, leaving behind considerable damage as listed above. The landlords testified that there were two sets of keys, plus mail keys that were never returned by the tenants, and the tenants failed to pay the full January 2017 rent. The landlords testified that they never gave permission for the tenants to withhold \$80.00 and \$77.00 respectively for the additional FOBS or refrigerator repair. The landlords testified that no move-in inspection was done as the tenants were referred to the landlords by the previous tenants. The landlords testified that they had attempted to do a move-out inspection with the tenants, but they left before it was completed. The landlords replied to the tenants in writing on February 18, 2017 requesting compensation for the damages listed above.

The landlords testified that they had difficulty finding new tenants after this tenancy ended, and sold the home instead. The landlords testified that they were able to find a tenant on February 13, 2017, after an extensive process, stating that prospective tenants lost interest after seeing the condition of the home. The landlords included the email correspondence from the new tenant, who expressed interest in renting the home. The home was listed for sale at the same time that the landlords were seeking a new tenant and indicated that if the home was not sold, then the suite would be rented March 1, 2017 to the new tenant. As an offer was made and accepted, the landlords sold the home. The landlords entered into written evidence a purchase contract dated February 19, 2017, indicating a possession date of May 1, 2017. The landlords requested compensation equivalent to half a month's rent for the difficulty they faced in trying to find a new tenant.

In support of the monetary claim, the landlords provided various receipts and invoices. The landlord also provided a USB with digital photos of the home showing damages.

The tenants did not dispute that they withheld a portion of the January 2017 rent by \$157.00, but testified that the landlord had agreed to reduce the rent.

### **Analysis**

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlords receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlords to retain the deposit. If the landlords fail to comply with section 38(1), then the landlords may not make a claim against the deposit, and the landlords must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlords did not return the tenants' security deposit in full within 15 days of receipt of the tenants' forwarding address in writing. The landlords did not apply for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit until March 10, 2017, well past the 15 day time limit for doing so. The tenants gave sworn testimony that the landlord had not obtained their written

authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

I also note that the landlords had failed to comply with sections 23 and 35 of the *Act* which requires the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit.

I considered the testimony of both parties, and I find that it was undisputed that the tenants withheld rent. Section 26(1) of the *Act* states that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

In this case, the tenants did not have permission from the landlord nor an Arbitrator to withhold rent for the FOBs or the refrigerator. Accordingly, I find the landlords are entitled to a monetary order for the \$157.00 withheld by the tenants.

The landlords provided a very detailed summary of the damages caused by the tenants, which were supported by receipts and invoices. The tenants did not dispute that there was damage to the suite, but they did argue that these damages occurred prior to their tenancy. Without any move-in or move-out inspection reports, I find that there is no way to determine which damages occurred during this tenancy, and what the pre-existing condition of the home was. Although I acknowledge that the landlord did incur

considerable cost in repairing the home in order to rent it to the new tenants, I find that the landlords have not supplied sufficient information to make any kind of finding that the tenants are responsible. In the absence of documentation or witness testimony to support whether the damage was caused by the tenants, I am dismissing the landlord's application for monetary compensation.

The landlords applied for monetary compensation equivalent to half a month's rent stating that they had difficulty finding a suitable tenant due to the condition of the rental unit left by the previous tenants. The landlords did not provide any witness testimony to support this claim, and as mentioned above, in the absence of any move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this tenancy. Although I accept that the landlords mitigated their losses by listing the home for sale and for rent at the same time, I find the landlords did not provide sufficient evidence to establish that the tenants left the rental suite in a condition that contributed to this loss. Accordingly I dismiss the landlords' application for an award for loss of one half-month's rent.

The recovery of the filing fee is normally awarded to the successful party after a hearing. As both parties' applications contained some merit, no order will be made in regards to the recovery of their filing fees.

### **Conclusion**

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the portion of the security deposit retained by the landlords, plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. A deduction will be made from this Monetary Order for the tenants' failure to comply with section 26 of the *Act*.

<b>Item</b>	<b>Amount</b>
Return of the Security Deposit retained by the landlords	\$1,000.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,000.00
Less Overholding Rent Owed to the Landlords	-157.00
<b>Total Monetary Order</b>	<b>\$1,843.00</b>

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlords' monetary claim is dismissed.

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: May 15, 2017

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Residential Tenancy Branch