



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order to retain the tenants' security deposit under the *Act* and to recover the cost of the filing fee.

The landlord and an agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing and Application were served on the tenants by separate registered mail packages mailed one to each tenant to the forwarding address provided by the tenants on the outgoing condition inspection report. According to the landlord, both packages were mailed on November 28, 2016 however the landlord could not locate the registered mail tracking numbers. The landlord testified that her documentary evidence was served by registered mail also, with one package addressed to each of the two tenants on May 1, 2017 and two registered mail tracking numbers were submitted in evidence which has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, the tenants signed for and accepted both registered mail packages on May 8, 2017. Based on the above, I am satisfied that the tenants were sufficiently served according to the *Act*. Firstly, the tenants are deemed served five days after November 28, 2016 with the Application and Notice of Hearing, and I find that the tenants were served with the documentary evidence on May 8, 2017, the date the tenants signed for and accepted the registered mail packages containing documentary evidence. As the tenants were sufficiently served, the hearing continued without the tenants.

### Issue to be Decided

- Is the landlord entitled to retain all or a portion of the tenants' security deposit under the *Act*?

### Background and Evidence

The landlord affirmed that a month to month verbal tenancy agreement began in 2007 but could not recall a specific time in 2007. According to the landlord, the tenancy ended on November 4, 2016 and that monthly rent at the end of the tenancy was \$1,131.90 per month and was due on the first day of each month. The landlord stated that the tenants paid a \$600.00 security deposit at the start of the tenancy, which the landlord continues to hold. The landlord stated that in error, she claimed for the security deposit in the amount of \$550.00 which I advised the landlord could not be increased as the landlord did not properly amend her Application in accordance with the Rules of Procedure.

The landlord stated that while the tenants caused approximately \$7,000.00 in damage to the rental unit she is only claiming to keep their security deposit and to recover the cost of the filing fee. The landlord described that all the carpets in the rental unit had to be replaced due to the tenants damaging them. In addition, the landlord affirmed that the tenants burned the tops of the countertops and that they caused water damage around the toilet. The landlord testified that the rental unit required new countertops as a result of damage of the tenants and that the rental unit was left dirty also by the tenants even though a minor attempt was made by the tenants to clean on November 4, 2016.

The landlord referred to 86 photos submitted in evidence in support of her Application.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, and taking into account that I find the landlord's documentary evidence and testimony support that the tenants damaged the rental unit well in excess of the tenants' security deposit claimed amount of \$550.00, I find the landlord's application is fully successful in the amount of **\$550.00**.

In reaching this finding I have considered the photographic evidence on undisputed testimony of the landlord. In addition, I find that the tenants breached section 37 of the *Act*. Section 37 of the *Act* requires that tenants leave the rental unit in a reasonably clean condition less wear and tear and I find that the photographic evidence supports that the tenants breached section 37 by failing to leave the rental unit in a reasonably clean condition at the end of the tenancy.

As the landlord's claim is successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

As the landlord failed to create a written tenancy agreement, the landlord stated that she could not recall when in 2007 the tenancy began. As a result, and in the interests of fairness, in calculating the tenants' security deposit interest, I will use the date of January 1, 2007 which results in the interest on the tenants' security deposit balance of \$600.00 being \$18.14. As a result, I find the tenants' security deposit balance held by the landlord is \$618.14.

Based on the above, I find the landlord has established a total monetary claim of **\$650.00** comprised of \$550.00 to retain that amount claimed from the tenants' security deposit, plus the recovery of the cost of the \$100.00 filing fee. Based on the above, and pursuant to section 67 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit including interest of \$618.14, keeping in mind that the landlord had inadvertently only claimed for \$550.00 of the \$600.00 security deposit before applying interest, in partial satisfaction of the landlord's monetary claim. I also grant the landlord a monetary order for the remaining balance owing by the tenants to the landlord in the amount of **\$31.86**.

As the tenancy agreement was not in writing, I caution the landlord to comply with section 13(1) of the *Act* in the future which requires that all tenancy agreements entered into after January 1, 2004 to be in writing.

### Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$650.00 and has been authorized to retain the tenants' full security deposit including interest of \$618.14 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order for the balance owing by the tenants to the landlord in the amount of \$31.86. Should the landlord wish to enforce the monetary order, the landlord must first serve the

tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 12, 2017

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Residential Tenancy Branch