



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via courier. Both parties also confirmed that the landlord served the tenants with their submitted documentary evidence via Canada Post Registered Mail on August 10, 2017. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss, 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 applicant's claim and my findings are set out below.

Both parties confirmed that there was a signed tenancy agreement in which the tenants paid a \$1,350.00 security deposit.

The tenants seek a monetary claim of \$24,850.00 which consists of:

\$2,700.00	Return of Original \$1,350.00 Security Deposit
	Compensation, Sec. 38(6) Fail to Comply
\$12,150.00	Compensation, No Heat for 9 months @ 50%/Monthly Rent
\$10,000.00	Compensation, Exposure to Black Mold

Both parties confirmed that the tenancy ended on March 10, 2017 and that the landlord received the tenants' forwarding address in writing via courier on April 7, 2017. The landlord provided testimony that she still holds the tenants' \$1,350.00 security deposit. The landlord stated that a term of an addendum condition of the tenancy agreement provides that the tenants would forfeit their security deposit if rent was unpaid. The landlord stated that at no time has the landlord filed an application for dispute for returning the security deposit.

The tenants also claimed that they suffered with no heat over a 9 month period and as such the rental unit was unsafe and uncomfortable. The tenants have provided no specific reasoning or details of selecting the monetary amount of \$12,150.00 which equals 50% of the monthly rent. The landlord disputes this claim stating each time the tenants notified them of a heat issue, the landlord would engage a furnace technician. The landlord states that each time a furnace technician would attend it was determined that there were no issues with the furnace. The landlord also claims that the tenants keep turning off the furnace as it has been noted on the furnace technician invoice(s) that the "furnace switch was off". The landlord has provided multiple invoice(s) of furnace service calls where there were no issues with the furnace.

The tenants claim that they were exposed to black mold over their tenancy and seek \$10,000.00 in compensation. The tenants were unable to provide a reason for this dollar amount or how it was calculated. The tenants stated that "there was no reason" for this amount. The landlord disputes the tenants' claims stating that they were never notified of black mold issues during the tenancy and that the tenants did not suffer any losses that would require compensation. The tenants stated that the only evidence of black mold is shown in tenants' evidence, applicant photo #3-4.

### Analysis

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.

I accept the undisputed affirmed evidence of both parties and find that the tenancy ended on March 10, 2017 and that the landlord was provided with the tenants' forwarding address in writing on April 7, 2017. The landlord stated that they had the permission of the tenants' to retain the security deposit as part of an addendum condition. No evidence of this addendum condition was provided. I find that the landlord's claim that the tenants forfeited the security deposit contrary to the Act as unconscionable and unenforceable. As such, the landlord has no claim against the security deposit. I order that the landlord return the original \$1,350.00 security deposit to the tenants. As well, the landlords having failed to comply with section 38(1) of the Act is required under section 38(6) of the Act to pay the tenants an amount equal to the \$1,350.00 security deposit.

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.

As for the tenants' monetary claim for compensation of no heat and exposure to black mold, I find that the tenants have failed. The tenants have failed to provide sufficient evidence to satisfy me of an actual amount of loss caused by the landlords or a basis in which it was determined. I also find that the tenants have failed to provide sufficient evidence of no heat or of exposure to black mold. The landlord has disputed the tenants' claims and has provided copies of furnace technician invoice(s) for each reported claim of the tenant regarding no heat. No issues were found with the furnace and insufficient evidence of no heat over the 9 month period. These portions of the tenants' monetary claims are dismissed.

As the tenants have only been partially successful in their application, I grant the recovery of \$50.00 for the filing fee.

#### Conclusion

The tenants are granted a monetary order for \$2,750.00.

This order must be served upon the landlord. Should the landlord 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: August 24, 2017

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Residential Tenancy Branch