



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

Both parties were represented at the hearing and given a full opportunity to make arguments, present evidence, call witnesses and submit written evidence. The landlords were represented by their agent, RG (the "landlord"), who is the wife of one of the two landlords and had personal knowledge of the application and the events discussed.

As both parties were represented I confirmed there were no issues with service. The landlord confirmed they were served with the tenant's application for dispute resolution and evidence. The tenant confirmed she was served with the landlords' evidentiary materials. Pursuant to sections 88 and 89 I find that the landlords were duly served with the tenant's application package and the tenant was duly served with the landlord's evidence.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed? Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began on May 1, 2016. The monthly rent was \$575.00 payable on the first of each month. A security deposit of \$285.00 was paid by the tenant. The rental unit is a basement suite in a detached family home and the landlords reside in the upper level.

The tenant seeks a monetary award for the following items:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$285.00
Half Carpet Cleaning Cost	\$26.87
Recovery of Half of June, 2017 Rent	\$287.50
Filing Fee	\$100.00
Land Titles Search & Mail Costs	\$32.13
<b>TOTAL</b>	<b>\$708.82</b>

The tenant gave notice to the landlord on June 10, 2016 of her intention to terminate the tenancy. The tenant moved out on June 12, 2016. The tenant had paid the full monthly rent for the month of June. The landlord did not participate in a condition inspection at the start of the tenancy nor at the end. The landlord testified that while they customarily performed walk-throughs to visually inspect the unit they have never prepared a condition inspection report for any of their previous tenants.

The tenant testified that she had her boyfriend and father return the keys for the rental unit to the landlord on June 13, 2016. The tenant's boyfriend appeared as a witness and gave sworn testimony that he and the tenant's father attended at the landlord's home on June 13, 2016. They were met at the door by a child, whom the witness identified as the daughter of one of the landlords. The child informed the witness that the landlords were unavailable. The witness returned the rental unit key to an unidentified adult family member of the landlords who attended at the door with the child. In addition to the key the witness gave the adult a letter from the tenant which included the tenant's forwarding address. The witness said that he was not given any written confirmation of the return of the key nor was he given the security deposit for the tenancy.

The landlord disputes that the events of June 13, 2016 occurred. The landlord testified that on June 17, 2016 at about 5:30pm the tenant attended at the landlords' residence

and returned the key to the rental unit. The landlord testified that the tenant was alone at that time. The landlord said that the full security deposit of \$285.00 was given to the tenant, in cash, at that time. The landlords' witness, CS is a family friend who testified that he was present at that time and saw the landlord give the cash to the tenant.

The tenant said that at the start of the tenancy the tenant and landlord agreed that carpet cleaning would be arranged by the tenant and the landlord would compensate the tenant for the full cost. The landlord said that the agreement was that the tenant and landlord would each be responsible for half of the cleaning costs. The tenant submitted receipts showing the full cost of carpet cleaning was \$53.74. The parties testified that the landlord has compensated the tenant half of the cost of cleaning in the amount of \$26.87.

The tenant said that as she moved out of the rental unit on June 12, 2017 she should be entitled to a reimbursement of half of that month's rent. The parties confirmed that the tenant paid the full rent in the amount of \$575.00 for June, 2017.

The tenant said that she incurred costs in performing a land title search to confirm the legal names of the landlords for the present application. The tenant submitted into written evidence copies of the land title search and receipts.

### Analysis

Given the conflicting testimony by the parties and their witnesses, where there is a discrepancy I must first turn to a determination of credibility. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

In regards to the return of the security deposit, I do not find the evidence of the landlord and the landlord's witness to be credible. I found the testimonies by the landlord and the landlord's witness to be superficial and lacking recollection of details that would be reasonably expected. While they testified that the time the tenant came by was 5:30pm, they could give no explanation of why they noted the time. I found the landlord's witness to be argumentative, evasive and generally unbelievable. His testimony parroted the landlord's without additional details. He was unable to answer direct questions posed to him. He was unable to describe the tenant's appearance, the most he could say was that the tenant was "a lady".

I found the testimony of the tenant and the tenant's witness to be more convincing. The tenant's witness gave cogent, forthright answers about the circumstances of returning the rental unit keys to the landlords' family members. I found the evidence to be consistent and in line with what a reasonable person would be expected to do. I find, on a balance, that the security deposit of \$285.00 has not been returned to the tenant.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the tenant that the tenant provided written notice of the forwarding address in a letter dated June 13, 2017. The landlords have not filed an application for authorization to retain the full security deposit.

Furthermore, the parties have testified that no condition inspection report was prepared at either the start or end of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
...  
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the landlords have extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy in accordance with the *Act*.

Based on the evidence before me, I find that the landlords had extinguished their right to apply to retain the security deposit for this tenancy and have failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is

entitled to a \$570.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the tenant's evidence that there was an agreement with the landlord that the landlord would pay the full cost of carpet cleaning. I accept that the landlord has failed to pay the amount of \$26.87. Accordingly, I issue a monetary award in that amount.

The tenant testified that she gave notice to end the tenancy on June 10, 2017 and moved out on June 12, 2017. I do not find that pursuant to sections 26 or 45 of the *Act*, the tenant has sufficiently established entitlement to a return of the rent paid for the month of June, 2017. Therefore, I dismiss this portion of the tenant's claim.

I find that the cost of land title search in preparing the application or the cost of registered mail are not costs for which the tenant may seek reimbursement from the landlord pursuant to the *Act*. This portion of the tenant's application is dismissed.

As the tenant's application was primarily successful the tenant is entitled to recover the \$100.00 filing fee of this application from the landlords.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$696.87 against the landlords on the following terms:

Item	Amount
Double Security Deposit (2 x \$285.00)	\$570.00
Half Carpet Cleaning Cost	\$26.87
Filing Fee	\$100.00

<b>TOTAL</b>	<b>\$696.87</b>
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The tenant is provided with a Monetary Order in the above terms and the landlords must be served with 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.

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: September 5, 2017

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Residential Tenancy Branch