



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD MNDC OLC 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 landlord requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord 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 the landlord and tenants were duly served with the Applications and evidence.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

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

Are the tenants entitled to the return of their security deposit?

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

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

### **Background and Evidence**

This month-to-month tenancy began in March of 2015, with monthly rent was set at \$1,450.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$700.00, which they still hold. The tenants moved out on March 31, 2017, and provided a forwarding address to the landlord on April 1, 2017, which was confirmed by the landlord in the hearing.

The tenants are requesting the return of their deposits, testifying that they had moved out, leaving the unit in clean and undamaged condition. The tenants submitted photos in their evidence to support this, and requested the return of their deposits as well as compensation for the landlord's failure to return their deposits within the time period required by the *Act*. The tenants testified that they did not give permission for the landlord to retain any portion of their deposits.

The landlord testified in the hearing that the tenants did not properly clean the home, and submitted the following monetary claim as listed below:

<b>Item</b>	<b>Amount</b>
Time spent cleaning entry, kitchen, living & dining room (13 hours x \$26.11/hour)	\$339.43
Time spent cleaning stairwell, main bath, bedrooms, exterior (11 hours x \$26.11/hour)	287.21
Time spent cleaning exterior & garage (9 hours x \$26.11/hour)	234.99
Professional cleaning of windows & cabinets	70.00

Mop	19.99
Cleaning supplies	157.08
Rental Loss (12 days x \$50.12/day)	601.46
Carpet Cleaning	80.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$1,890.16</b>

The landlord testified that they had performed both a move-in and move-out inspection, and included a copy of the Condition Inspection Report, colour photos, as well as invoices in their evidence to support the above claims. The landlord provided a detailed summary of the cleaning that was performed. The landlord testified that the carpet was last replaced in 2014, and had clumps of pet hair as pictured in the photos provided in evidence. The landlord testified that they attempted to re-rent the home after the tenants moved out, with no success, and submitted a claim for 12 days of lost rental income. The landlord could not recall when the home was advertised for rental, but subsequently sold the home. The landlord testified that the washing machine was last replaced in 2012, and contained animal hair. The landlord testified that the home was built in 1981.

The tenants dispute the landlord's testimony and monetary claim, stating that they did had vacated the home and left it undamaged condition. The tenants testified that there was no pet damage, and that the landlord was unjustified in their monetary claim for lost rental income when they had decided to upgrade the home and sell it. The tenants testified that the claim for cleaning was exaggerated, and should not have exceeded 35 hours of cleaning. The tenants testified that the landlord's expectations were simply too high, and that it was unreasonable for the home to be restored to new condition upon move-out considering the age of the home.

### **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 landlord receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord 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 landlord did not return the tenants’ security and pet damage deposits in full within 15 days of receipt of the tenants’ forwarding address in writing. The landlord filed for dispute resolution on April 17, 2017, 16 days after the provision of the forwarding address. 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 and pet damage deposits.

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.*

In this case, I find that the landlord has not returned the tenants’ security deposit and pet damage deposit within 15 days of the provision of their forwarding address, nor did they file their application for dispute resolution within this prescribed time period. The tenants gave undisputed sworn testimony that the landlord had not obtained their written authorization to retain any portion of the deposits. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the deposits.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite by leaving the home in a reasonably clean condition. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlord supported their claims with receipts and invoice, as well as photos. Accordingly, I find the landlord is entitled to compensation related to the tenants’ failure to leave the home in a reasonably clean condition. I issue a

monetary award for the cleaning, and cleaning supplies, as listed in the landlord's monetary claim.

The landlord is granted a monetary claim of \$1,188.70 for the tenants' failure to comply with section 37(2)(a) of the *Act*.

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 or 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. In this case, the onus is on the landlord to demonstrate that they suffered a monetary loss due to the tenants' failure to comply with the *Act* or tenancy agreement.

The landlord submitted a monetary claim for 12 days of lost rental income, but was unable to provide sufficient evidence support that they suffered a monetary loss, or the amount of that loss. The landlord was unable to provide any details about when the landlord had re-listed the home for rent, or what efforts were made to obtain a new tenant. The landlord did not dispute the fact that they had decided to sell the home instead finding a new tenant. The landlord did not provide sufficient evidence to support that they had made any effort to mitigate the tenants' exposure to the landlords' monetary loss of rent, as is required by section 7(2) of the *Act*. Taking all this in consideration, I dismiss the landlord's monetary claim for loss of rental income.

As both parties were successful in their applications, no order will be made in regards to the recovery of their filing fees.

### **Conclusion**

I issue a Monetary Order of \$1,611.30 in the tenants' favour under the following terms which allows the tenants to recover the original security and pet damage deposits plus a monetary award equivalent to the value of these deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*.

The tenant's monetary award will be reduced by \$1,188.70 for the tenants' failure to comply with section 37(2)(a) of the *Act*.

The remaining portion of the landlord and tenants' applications are dismissed.

<b>Item</b>	<b>Amount</b>
Return of Security & Pet Damage Deposit	\$1,400.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,400.00
Time spent cleaning entry, kitchen, living & dining room (13 hours x \$26.11/hour)	-339.43
Time spent cleaning stairwell, main bath, bedrooms, exterior (11 hours x \$26.11/hour)	-287.21
Time spent cleaning exterior & garage (9 hours x \$26.11/hour)	-234.99
Professional cleaning of windows & cabinets	-70.00
Mop	-19.99
Cleaning supplies	-157.08
Carpet Cleaning	-80.00
<b>Total Monetary Order</b>	<b>\$1,611.30</b>

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: October 18, 2017

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Residential Tenancy Branch