



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNDC FF MNR

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlords sought:

- a monetary order for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants sought:

- a return of their security deposit pursuant to section 38 of the *Act*;
- a monetary order for loss or other money owed pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*.

Tenant T.G. attended the hearing on behalf of the tenants, while landlord D.V. appeared for the landlords. The landlords were assisted by their advocate J.A. All parties were given a full opportunity to be heard, to present their testimony and to make submissions.

Both parties acknowledged receipt of each other's applications for dispute resolution and evidentiary packages. I find that both parties were duly served with each's others applications for dispute and evidence in accordance with the *Act*.

### Issue(s) to be Decided

Is either party entitled to a monetary award?

Can the landlords retain the tenants' security deposit? If not, should it be returned to the tenants?

Is either party entitled to a return of the filing fee?

### Background and Evidence

Testimony provided to the hearing by the landlords' advocate, along with a copy of the Residential Tenancy Agreement showed that this tenancy began on January 1, 2017. Rent was \$1,500.00 per month, and a security deposit of \$750.00 collected at the outset of the tenancy continues to be held by the landlords.

Both parties have applied for monetary awards related to this tenancy which ended in August 2017. The landlords have applied for a monetary award of \$829.35. This amount reflects alleged unpaid rent for 19 days in the month of August 2017, along with repairs for \$560.00 which the landlords argued were required in the rental unit following the conclusion of the tenancy. The landlords have also applied to retain the tenants' security deposit and for a return of the filing fee.

The tenants are seeking a monetary award of \$9,100.00 which includes a claim for \$7,500.00 for loss of quiet enjoyment related to the tenancy, along with a return of their security deposit x2, and a return of the filing fee.

The landlords argued that following a hearing before an Arbitrator with the *Residential Tenancy Branch*, they were granted an Order of Possession for the rental unit which they served on the tenants on August 4, 2017. They said that the tenants did not vacate the rental unit until August 19, 2017 and the landlords are seeking compensation for rent they say was unpaid for this time. The landlords are also seeking a monetary award related to damage to the walls that they alleged the tenants caused during the tenancy. As part of their evidentiary package, the landlords supplied photos purporting to show the damage, along with a note signed by tenant T.G. agreeing to pay for the damages, two separate invoices for repair, and a copy of the condition inspection report performed at the conclusion of the tenancy.

The tenants disputed the landlords' application, saying they vacated the rental unit on either August 15 or 16, 2017 and argued that the rental unit was damaged at move in. A copy of the condition inspection report submitted to the hearing shows that tenant agreed that the report fairly represented the condition of the rental unit at the end of the tenancy, and contained the tenants' forwarding address. The landlords confirmed receipt of the tenants' forwarding address on August 19, 2017.

As mentioned previously, the tenants have applied for a monetary award of \$9,100.00 related to purported loss of quiet enjoyment, and a return of their security deposit with an inclusion of the penalty provision as per section 38 of the *Act*.

The tenants explained to the hearing that they had been the victims of constant and ongoing harassment at the hands of the landlords. They said that the police had been called to their premises by landlords, that the landlords had ignored their requests to communicate solely through tenant T.G., and that numerous and repeated disturbances had been experienced. As part of their evidentiary package, the tenants supplied; numerous written accounts of their alleged interactions with the landlords, a usb stick containing disagreement that occurred between tenant T.G. and landlord D.V., and a timeline purporting to show various times their quiet enjoyment had been interrupted by the landlords.

Landlord D.V. disputed the tenants' allegations and presented a different version of events than those presented at the hearing by tenant T.G. The

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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. In this case, the onus is on both parties to prove their entitlement to a claim for a monetary award.

I will begin by analyzing the landlords' application and then turn my attention to the tenants' application.

The landlords have applied for a monetary award of \$829.35 related to unpaid rent, and damage to the rental unit. At the hearing, the landlords explained that the tenants were served with an Order of Possession on August 4, 2017 and remained in occupation of the home until August 19, 2017. The tenants did not dispute that they remained in the home after being served with the notice, but placed their day of departure on approximately August 15 or 16, 2017.

Section 58(3) of the *Act* allows a landlord to obtain compensation for losses incurred as a result of a tenant's overholding of a rental unit after the effective date of a notice to end tenancy. In this case, the landlord explained that the tenants remained in the rental unit for at least two weeks after the issuance of a 7 day Order of Possession was served to them on August 4, 2017. The tenants acknowledged remaining in the rental unit after being served with the Order of Possession. I find that sufficient evidence was presented at the hearing by the landlords showing that the tenants remained in the rental unit for the majority of the month of August 2017 without paying any rent. I find that the tenants' overheld in the rental unit and allow the landlords' to collect rent for the time in which the tenants overheld in the rental unit. While the parties disagree on the exact date of departure, I find that the condition inspection report signed by the parties at the end of the tenancy was done so on August 19, 2017. I therefore, allow the landlords to collect the total amount for which they are seeking compensation related to unpaid rent; in this case, \$919.35.

The second portion of the landlords' application concerns a monetary award for repairs to a wall which were reportedly required following the tenants' departure. The tenants disputed that this work was necessary, arguing that the walls were damaged upon their move-in. A review of the condition inspection report submitted to the hearing, reveals that some comments regarding the walls and trim were present on the report; however, I find these comments to be illegible on the copy of the condition inspection report presented as evidence. In addition to this report, the landlord submitted a hand-written note/receipt from F.L. which described work which is purported to have taken place in the rental unit. I find that this receipt lacks sufficient detail allowing me to identify when it was issued, the location and address where these repairs purportedly took place, or an adequate breakdown of the \$500.00 figure cited on the note/receipt. For these reasons, I dismiss this portion of the landlords' application.

As the landlords were partially successful in their application they may pursuant to section 72 of the *Act*, recover the \$100.00 filing fee.

I now turn my attention to the tenants' application for a monetary award of \$9,100.00. The tenants have applied for a return of their rent of \$7,500.00 due to a breach of quiet enjoyment during their tenancy, along with a return of the damage deposit x2 as per section 38 of the *Act*. I will begin by examining the tenants' application for a return of their security deposit and then focus on their application related to a breach of quiet enjoyment.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. These provisions in section 38 require landlord to either return a 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 and, or upon receipt of the tenant's forwarding address in writing. Evidence presented at the hearing showed that the landlords were in receipt of the tenants' forwarding address on August 19, 2017 and applied to retain the tenants' security deposit on August 29, 2017. I find that the landlords have therefore fulfilled their obligations related to retention of the security deposit and dismiss this portion of the tenants' application.

As mentioned previously, the second portion of the tenants' application seeks a monetary award of \$7,500.00 for breach of quiet enjoyment.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential *Tenancy Policy Guideline #6* further discusses the right to quiet enjoyment explaining:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

After reviewing the tenants' evidentiary package and considering their oral testimony, I find that the tenants have failed to demonstrate that they suffered from *frequent* and *ongoing* interference or unreasonable disturbances. Many of the issues cited by the tenants related to personal disagreements with the landlords. The landlords provided opposing testimony related to the issues cited by the tenants in their application for a monetary award and disputed nearly all of the evidence submitted by the tenants. A reading of the letters supplied to the tenants by the landlords and included in the evidentiary package reveals that the landlords were respectful in the language they used with the tenants and informed them of any changes to the premises or inspections which they deemed necessary. For these reasons, I dismiss this portion of the tenants' application.

As the tenants were unsuccessful in their application they must bear the cost of their own filing fee.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlords' to retain the tenants' security deposit in its entirety, in partial satisfaction of their monetary award.

### Conclusion

I issue a Monetary Order of \$1,713.32 in favour of the landlords as follows:

Item	Amount
Unpaid rent for August 2017	\$919.35
Return of Filing Fee	100.00
Less Security Deposit	(-750.00)
<b>Total =</b>	<b>\$269.35</b>

The landlords are provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 tenants' application is dismissed without leave to reapply.

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: March 27, 2018

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Residential Tenancy Branch