



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT MNSD RPP FFL MNDCLS MNDL-S MNRL-S

### Introduction

This hearing dealt with application from both the landlords and tenants under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- A monetary award for damages and loss pursuant to section 67;
- Recovery of personal property pursuant to section 65; and
- A return of the security deposit for this tenancy pursuant to section 38.

Both parties attended and were given a full opportunity to be heard, to give affirmed testimony, to present evidence, make submissions and call witnesses. The landlord SB primarily spoke on behalf of the co-landlords (the “landlord”). The tenant KG primarily spoke on behalf of the co-tenants (the “tenant”).

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other’s application for dispute resolution and evidentiary materials. Based on the undisputed testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Originally, I was scheduled to hear only the landlord's application today. The parties confirmed that they were in receipt of both applications and evidence and were prepared to proceed today. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

During the hearing the tenant expressed confusion with the amount of their own monetary claim. Their application is for a monetary award in the amount of \$4,722.13. While the tenants testified that they were seeking a larger amount and some documents submitted in their evidence reference a different amount, the tenants' application provides the amount of \$4,722.13 and the tenant did not file an amendment of their claim. Including a monetary order worksheet in their documentary evidence is not an acceptable manner to amend a claim. The tenant was unable to explain what caused the discrepancy in the amounts claimed. The tenant was unable to articulate what additional items they are seeking which would increase the amount of their monetary claim. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, as I find it would be prejudicial to the landlords to amend the amount of the monetary claim without an explanation of why the amount is being increased, I decline to amend the tenants' monetary claim.

#### Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Should the security deposit be ordered returned to the tenants or are the landlords entitled to retain any portion of the deposit?

Should the landlords be ordered to return personal property to the tenants?

Are the landlords entitled to recover the filing fee for the application from the tenants?

#### 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 parties' respective claims and my findings around each are set out below.

This tenancy ended by way of a settlement reached at a hearing under the file number on the first page of this decision. The settlement agreed to by the parties was that the

tenancy would end on February 1, 2018 by which time the tenants would have vacated the rental unit.

The tenants failed to vacate the rental unit as agreed and remained in the rental unit until February 16, 2018. The tenants did not participate in a move out inspection and did not sign the condition inspection report. The landlord retains the security deposit for this tenancy in the amount of \$612.75. The tenant submits that they did not authorize the landlord to retain any portion of the security deposit.

The landlord claims the amount of \$4,712.00 for various items including legal fees, obtaining and enforcing a writ of possession, landfill costs, and loss of rental income as they were unable to have a new tenancy start due to the tenants' overholding. The landlord submitted into documentary evidence receipts and invoices representing the damages and losses they claim were incurred.

The tenant disputes the landlord's evidence and submits that the damage to the rental unit was no more than the expected wear and tear after occupation. The tenant testified that they do not believe that this tenancy ought to have been ended. The tenant confirmed that they entered into a settlement agreement that the tenancy would end on February 1, 2018 but submitted that they did not agree with the landlords' issuance of a Notice to End Tenancy which led to the previous hearing.

The tenants seek a monetary award of \$4,722.13 for a number of items including legal fees, loss of quiet enjoyment, cost of replacing items that were left in the rental unit, loss of income, and costs related to preparing the claim.

### Analysis

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).

Section 35 of the *Act* outlines the requirement for the landlord and tenant to inspect the condition of the rental unit at the end of the tenancy. The *Act* provides that the landlord

must offer the tenant at least 2 opportunities for the inspection. Regulations 16 and 17 provide that the parties must attempt in good faith to agree on a date and time for a condition inspection. I accept the parties' evidence that the tenants did not participate in the move-out inspection of February 16, 2018 nor did they sign the condition inspection report. I find that there is insufficient evidence that the tenants were offered 2 opportunities, as required under the *Act*, to participate in a move out inspection. There is insufficient documentary evidence of correspondence between the parties attempting to set a time and date for the condition inspection. There is insufficient documentary evidence showing that the landlord provided the tenant with a notice in the approved form proposing a second and final opportunity. As I am not satisfied that the landlord has complied with the requirements of section 35(2) in providing the tenants with 2 opportunities for inspection, I find that pursuant to section 36(2) the landlords have extinguished their right to claim against the security deposit for damage to the rental property. Accordingly, pursuant to section 38(6) of the *Act* I find that the landlord must pay the tenant double the amount of the security deposit, \$1,225.50.

I find that there is insufficient evidence in support of the tenants claim for a return of personal property. The tenants have submitted a list of items and various screenshots of online marketplaces showing the value of said items but have not established that these items were ever owned by the tenants or that they are held and not returned by the landlords. While some reference is made in the correspondence between the tenants and the landlords' counsel, I find that the tenants do not refer to specific items. I do not find that the tenants' claim is supported in documentary evidence nor do I find that it has the air of reality. I find that there is insufficient evidence to demonstrate that the items claimed by the tenants existed, were the possessions of the tenants, or that they are held or were disposed of by the landlords. Consequently, I dismiss this portion of the tenants' claim.

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 find that there is insufficient evidence in support of the tenants claim. The tenant testified that they are seeking a monetary amount that is different from that recorded on their application for dispute resolution. The monetary order worksheet included in the tenants' evidence claim items including lost wages, loss of quiet enjoyment, legal fees and filing fees. While the tenant has submitted some receipts in support of their monetary claim I find that they have not established that there has been a violation by the landlord which gives rise to any portion of their claim.

The main point of the tenant's testimony was that they do not believe this tenancy should have ended as the landlord had no basis for issuing a Notice to End Tenancy. This tenancy ended by way of a settlement agreement and the reasons for the issuance of a Notice to End Tenancy is irrelevant. I find that the submissions of the tenants consist of subjective complaints, accusations and conjecture regarding the landlords' motivations. The correspondence submitted in their documentary evidence shows a relationship between the parties deteriorating into antagonism on both sides. I find that there is insufficient evidence to show that the landlords have violated the Act, regulations or tenancy agreement such that it gives rise to a basis for the tenants' monetary claim. Accordingly, the tenants claim for a monetary award is dismissed.

I accept the undisputed evidence of the parties that the tenants did not vacate the rental unit as agreed to by February 1, 2018. I accept that there was a settlement agreement wherein the parties agreed to the end of tenancy date and the tenants violated that agreement by remaining in the rental unit. Consequently, I find that the landlords are entitled to the cost of having the tenants removed by obtaining a writ of possession, the loss of rental income as the new tenants were not able to move in at the scheduled time and pursuant to section 57(3) of the Act are entitled to compensation for the period that the tenants overheld after the tenancy had ended.

I accept the landlord's evidence that the tenants left the rental unit in a state of disarray necessitating considerable repairs, cleaning and monetary losses. I accept the landlords' evidence that the losses incurred include numerous trips to the landfill, replacement of fixtures and the cost of general cleaning and repairs.

I accept the landlords' evidence that the total amount of damages and losses suffered as a result of the tenants is \$4,712.00. Accordingly, I issue a monetary award in that amount to the landlords.

As the landlords' application was successful the landlords are entitled to recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' \$1,225.50 double security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary award in the landlords' favour in the amount of \$3,586.50 on the following terms:

Item	Amount
Landlord's Monetary Award	\$4,712.00
Filing Fee	\$100.00
Less Double Security Deposit (2 x \$612.75)	-\$1,225.50
<b>TOTAL</b>	<b>\$3,586.50</b>

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: October 5, 2018

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Residential Tenancy Branch