



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

Tenant: MNSD

Landlords: MNDCL-S, MNDL-S

### Introduction

On June 26, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order for the return of her security deposit.

On June 27, 2018, the Landlords submitted an Application for Dispute Resolution under the Act. The Landlords requested a Monetary Order for compensation for damages and money owed, and to be compensated for the cost of the filing fee. The Landlords’ Application was crossed with the Tenant’s Application and the matter was set for a participatory hearing via conference call.

The parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Tenant:

Should the Tenant receive a Monetary Order for the return of her security deposit, in accordance with Sections 38 and 67 of the Act?

Landlords:

Should the Landlords receive a Monetary Order in compensation for damages to the rental unit and apply the security deposit to the claim, in accordance with Section 67 of the Act?

Should the Landlords receive a Monetary Order in compensation for loss of rent and apply the security deposit to the claim, in accordance with Section 67 of the Act?

Should the Landlords be compensated for the cost of the filing fee?

### Background and Evidence

Although there was no Tenancy Agreement submitted as evidence, the parties agreed on the following terms of the tenancy:

A one-year, fixed term tenancy began on December 1, 2016 and was renewed on December 1, 2017 for another year. The monthly rent of \$1,200.00 was due on the first of each month and the Tenant paid a security deposit of \$600.00, which the Landlords currently holds.

Landlord's Evidence:

The Landlord testified that no move-in inspection or written report was completed at the beginning of the tenancy. The Landlord stated that she did not arrange a move-out inspection of the rental unit with the Tenant and no report was completed when the Landlord walked through the unit after the Tenant moved out of the unit on May 29, 2018.

The Landlord stated that the Tenant provided her forwarding address, via text on May 29, 2018, and that the Landlord responded with information that the Landlord would not be returning the security deposit because of damages. The Landlord acknowledged that she didn't apply for Dispute Resolution or obtain consent from the Tenant to keep any portion of the security deposit.

The Landlord stated that the Tenant did not clean the carpets of the rental unit and that she left them stained. The Landlord did not obtain an estimate to professionally clean the carpets; however, she did submit an estimate to have them replaced for \$1,580.25. The Landlord did state that the carpets were likely original, and that the rental unit was approximately eight years old when the tenancy began.

The Landlord provided pictures of a damaged kitchen sink. She stated it cost about \$100.00 to fix; however, did not provide any invoices.

The Landlord provided a picture of a dent/scratches on the wall and stated that it required fixing; however, did not have an invoice or any idea of how much it would have cost to fix.

The Landlord is claiming compensation for a total loss of \$1,200.00, with respect to damages to the rental unit.

The Landlord testified that the Tenant provided written notice on May 4, 2018, to advise that she was moving out of the rental unit by the end of the month. The Landlord stated that a friend of the Landlords was interested in renting the unit; however, learned, later in May, that their friend could not move into the rental unit until June 15, 2018. The Landlords were thinking of selling the rental unit and when their friend didn't rent it, they decided to list it. The Landlords' realtor met with the Tenant on May 29, 2018, to look through the rental unit and subsequently, listed the rental unit for sale on June 2, 2018. The Landlord admitted that they did not attempt to advertise the rental unit before listing it on June 2, 2018. The rental unit sold on September 12, 2018.

The Landlord stated that both the Tenant's June and July 2018 cheques were returned, and as a result, the Landlord is claiming a loss of two month's rent in the amount of \$2,400.00. The Landlord is not claiming for the August 2018 rent.

#### Tenant's Evidence:

The Tenant testified that she met the Landlord's realtor at the rental unit on May 29, 2018. The Tenant said that the realtor told her that the stain on the carpet either had to be professionally cleaned or the carpet replaced and, therefore, not to clean it as the realtor would be consulting with the Landlord.

The Tenant stated there was no damage to the sink, only that the seal around the kitchen sink began to peel as a result of common wear and tear.

The Tenant stated that the scratch on the wall was minimal and part of common wear and tear.

The Tenant acknowledged that she gave the Landlord short notice on May 4, 2018, for the move-out of the rental unit. The Tenant stated that the Landlord did not show or

advertise the rental unit and had arranged for a realtor to attend and look around the rental unit prior to the Tenant moving out. The Tenant stated that the Landlords did not show reasonable effort to mitigate their losses and therefore, the Tenant did not pay the June 2018 rent.

The Tenant is claiming for the return of double her security deposit as the Landlord did not return it, apply for Dispute Resolution, or obtain her consent to keep it.

### Analysis

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that they requested their \$600.00 security deposit and notified the Landlord of their forwarding address on May 29, 2018, by providing a text message to the Landlord and that the Landlord acknowledged the forwarding address and request for the security deposit by replying by text.

I have no evidence before me that the Landlord returned the balance of the security deposit, reached written agreement with the Tenant to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit within fifteen days of the Tenant moving out and providing her forwarding address. For these reasons, I find the Landlord must reimburse the Tenant double the amount of the security deposit for a total of \$1,200.00, pursuant to Section 38 of the Act.

Section 23 and 35 of the Act directs a Landlord and Tenant to inspect the condition of a rental unit at both the beginning and end of the tenancy. The Landlord must offer the Tenant at least two opportunities for the inspections and the Landlord must complete condition inspection reports in accordance with the *Residential Tenancy Regulations*. Both parties must sign the condition inspection reports and the Landlord must give the Tenant a copy of the reports. The Landlord must make each inspection, complete and sign the reports without the Tenant if the Landlord has offered two opportunities for both the beginning and end of tenancy inspections and the Tenant does not participate on either of the occasions.

Sections 24(2) and 36(2) of the Act explain that the Landlord's right to claim against a security deposit for damage to the residential property is extinguished if the Landlord does not comply with Sections 23 or 35 of the Act. In this case, the Landlord has testified that both move-in and move-out condition inspections were not completed and, that no condition inspection reports were ever completed; therefore, copies were not provided to the Tenant. As a result, I find that the Landlords have extinguished their right to claim against the security deposit for damages to the residential property, pursuant to Sections 24(2) and 36(2) of the Act.

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Although the Landlord has extinguished their right to apply the security deposit to their claim of damages, they still have a right under Section 67 to be compensated for any damages or losses. However, as the Landlord testified, condition inspections of the rental unit and the subsequent reports were never completed; therefore, I find that the Landlord was unable to provide sufficient evidence to establish that any damage or loss stemmed directly from a violation of the Tenancy Agreement or the Act on the part of the Tenant. As a result, I dismiss without leave to reapply, the Landlords' claim for a Monetary Order in compensation for damages to the rental unit and to apply the security deposit to the claim.

In regard to the Landlords' claim for a Monetary Order in compensation for loss of rent, I have to consider Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss. I accept the undisputed testimony of the Landlord that the Tenant provided less than 30 days of notice to end the tenancy and did so while in a fixed term tenancy. However, I find that the Landlord failed to provide sufficient evident

to prove that any mitigation occurred. Without any supporting evidence that the Landlord attempted to rent out the unit and with the Landlord's undisputed evidence that they made the choice to sell the rental unit prior to the Tenant moving out, I find that the Landlords' losses stemmed from their own choice versus as a result of the Tenant's breach of the Tenancy Agreement. I dismiss without leave to reapply, the Landlords' claim for a Monetary Order in compensation for the loss of rent.

I find that the Landlords' Application was unsuccessful and therefore, the Landlords should not be compensated for the filing fee.

The Tenant's Application is upheld, and I award the Tenant a Monetary Order for double the amount of the security deposit, for a total of \$1,200.00, in accordance with Section 38 and 67 of the Act.

### Conclusion

I grant the Tenant a Monetary Order for the amount of \$1,200.00, in accordance with Section 67 of the Act. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims 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 29, 2018

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Residential Tenancy Branch