



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD MNDC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 29, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed.

Both the Landlord and the Tenants attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence, and took no issue with the service of these documents.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to compensation for loss or money owed?

### Background and Evidence

Both parties agree that the Tenancy ended on March 31, 2018. Both parties also agree that monthly rent was \$2,500.00 and that the Landlord still holds a \$1,000.00 pet deposit and a \$1,250.00 security deposit. The Tenants stated that they provided their forwarding address via email on April 12, 2018. The Landlord stated that she received this email on April 12, 2018.

The Tenants stated that no formal agreement could be reached about how much they should pay the Landlord for any damage to the rental unit, so now they are looking for the full amount of their deposit back.

The Tenants also provided a monetary order worksheet with 5 items as follows:

1. BC HYDRO - \$186.12
2. CRD WATER BILL - \$10.52

The Tenants stated that they had an agreement with the Landlord where she would pay them 10% of their total utilities during the tenancy. The Landlord agreed that this was true, and stated that she is willing to pay the above amounts. The Landlord stated that she didn't initially reimburse the Tenants because they never gave her copies of the bills. The Landlord stated that her son lives in one of the rooms, so she agreed to pay this amount, totalling \$196.64.

3. Costco – flooring materials - \$682.36
4. Home Depot – flooring underlay - \$245.31

The Tenants stated that they did not pay for these items, and they wished to remove these items from their monetary worksheet. The Tenants stated that it was a mistake to include these items as part of their claim for compensation.

5. Labour Cost - \$950.00

The Tenants stated that they damaged some of the flooring in one of the rooms, and they were okay with fixing that particular room. However, the Tenants stated that this particular item is to pay for the Tenants' labour to replace extra flooring in the house, which the Landlord had requested. In the hearing, the parties agreed that since the Tenants were already replacing some of the floors that they damaged, that they would enter into an additional agreement whereby the Tenants would replace some of the other flooring. The Tenants stated that they are not seeking any costs for the floors they damaged, and replaced, but this amount, \$950.00, is for the extra portions where the Landlord hired the Tenants to replace other areas of flooring. The Landlord does not feel this amount is reasonable or that she should have to pay this full amount.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

The parties agreed that the tenancy ended on March 31, 2018. Also, the Landlord confirmed that she got the Tenants' forwarding address in writing on April 12, 2018, via email.

I note the parties never reached any formal agreement about any deductions from the security or pet deposit. Neither party presented any evidence with respect to extinguishment of the other party's right to claim against the deposit. As such, I find there is no evidence that either party extinguished their right to claim against the deposit.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from receipt of the forwarding address in writing (until April 27, 2018) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did not return the deposits in full nor did she file an application for dispute resolution and I find the Landlord breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenants are entitled to recover double the amount of the security and pet deposit (\$2,250.00 x 2).

Next, I turn to the Tenants' request to recover money for utilities (item #1 and #2 of the worksheet). Since both parties agreed in the hearing that the Landlord would pay these amounts, I award the Tenants \$196.64 as laid out above.

The Tenants withdrew item #3 and #4 and I will not be addressing these items any further. With respect to item #5, I note that the parties had an agreement about the Tenants fixing and replacing the flooring that the Tenants damaged as part of the tenancy. The Tenants stated that their agreement to replace the flooring they damaged is not part of this item #5. They stated that item #5 is comprised of their contract to replace the additional flooring in the house, as requested by the Landlord. After considering this matter, I find this item relates to a separate agreement and contract which falls outside the scope of the Residential Tenancy Act. It appears the Landlord contracted the Tenant to replace flooring above and beyond what was damaged by the tenancy. I find I lack jurisdiction to hear this item #5 as it is a separate contract for labour and materials which is outside of any tenancy obligations, or damages caused by the Tenants.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were largely successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I find the Tenants are entitled to a monetary order as follows:

- Double the security and pet deposit  $\$2,250.00 \times 2 = \$4,500.00$
- Utility bills, as above, \$196.64
- Filing fee - \$100.00

Total: \$4,796.64

### Conclusion

The Tenants are granted a monetary order pursuant to Section 38 and 67 in the amount of **\$4,796.64**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 30, 2018

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Residential Tenancy Branch