



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD MNRT MNDCT FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the Residential Tenancy Act (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; 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. The tenant MW primarily spoke on behalf of both co-tenants (the "tenant").

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the other's materials. Based on the undisputed evidence I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed? Are the tenants entitled to recover the security deposit for this tenancy? Are the tenants entitled to recover the filing fee for their application?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in October, 2016 and ended in January, 2018. The monthly rent was \$850.00 payable on the first of each month. A security deposit of \$425.00 was paid at the start of the tenancy and is still held by the landlords. No condition inspection report was prepared at either the start or the end of the tenancy. The tenants provided a forwarding address to the landlord in February, 2018 and have not authorized the landlord to deduct any amount from their security deposit.

The tenants submit that between August to December, 2017 the rental unit suffered several water leaks causing damage to property, considerable inconvenience to the tenants and a loss of quiet enjoyment of the rental unit. The tenants detailed their attempts at having repairs made by the landlord. The tenants submit that despite informing the landlords of the damage they failed to take adequate action and the problem endured. The tenants seek a monetary award in the amount of \$5,500.00 for their losses arising from the water damage to the rental unit.

The tenants submit that they performed emergency repairs to the rental suite for which they have not been compensated by the landlord. The tenants submit that they fixed the interior doors of the suite and repainted them. The tenants seek a monetary award in the amount of \$250.00 for the cost of emergency repairs.

The landlord testified that the tenancy agreement with the tenants provides that the tenants are obligated to pay a portion of the utilities for the rental building. The landlord said that the tenants have not paid the utilities and they calculate the amount owing to be \$464.63. The landlord said that they were informed at the previous hearing that they may simply deduct the amount owing from the security deposit for this tenancy.

The landlord testified that they were not notified of the water damage to the suite in a timely fashion. The landlord said that the first time the issue was raised was after they had issued a Notice to End Tenancy on the tenants in September, 2017. The landlord said that they took reasonable steps in inspecting the rental unit, arranging for some repairs and contacting professionals to ensure the rental suite was inhabitable

### 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).

I accept the undisputed evidence of the parties that the tenants provided their forwarding address in February, 2018. The landlord has not filed an application for dispute resolution for authorization to retain the deposit nor have they returned any portion of the deposit to the tenants. I accept the tenants' evidence that they have not provided written authorization that the landlord may retain any portion of their deposit.

Furthermore, the parties gave undisputed evidence that no condition inspection report was prepared at any time during this tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I do not find the landlord's submission that they were authorized to make unilateral deductions from the security deposit at their previous hearing to be true. The written decision by the previous arbitrator makes no such order. I find that the landlord was not permitted to simply make deductions without complying with the *Act*.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$850.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

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 to support the full amount claimed by the tenants. The tenants claim for the costs of emergency repairs but have not submitted receipts, invoices or documentary evidence in support of their losses. In any event, replacing or repairing interior doors in a rental suite does not meet the definition of emergency repairs outlined in section 33 of the *Act*. I dismiss this portion of the tenants' claim.

I find that this tenancy ended by way of the settlement reached at the earlier hearing. I therefore find that costs for moving are not losses arising as a result of the landlord's breach and accordingly not recoverable.

I accept that there was some impact on the tenants' ability to enjoy the rental unit caused by the water damage. I accept the evidence that the issue was ongoing and that they informed the landlords of the need for work. I find that while the landlord did take some steps to rectify the issues the extent of their response was not sufficient to resolve the issues.

I find that the amount suggested by the tenants to not be supported in their evidence and not commensurate with the loss suffered. By their own testimonies the tenants were able to continue to reside in the rental unit and make full use of the suite. While the issues they found may have been an inconvenience there is no evidence that the tenants were unable to reside in the suite during the term of their tenancy. The tenants suggest that the issues in their rental suite may have caused health problems but have provided no details of their failing health, no doctor's note or examination showing that they have suffered ill effects which can be traced back to the conditions of the suite.

Based on the totality of the evidence, the testimonies of the parties and the materials submitted, I find that the tenants did suffer some loss due to the state of the rental suite. I find that the landlords were contacted but the attempts to rectify the situation by the landlords were inadequate. I find that the tenants suffered some minor inconvenience during the tenancy but were able to utilize the rental unit and the issues had little impact

on their daily routines. I find therefore that a nominal award of \$200.00 to be appropriate under the circumstances.

As the tenants' application was successful the tenants are also entitled to recover the filing fee for their application.

### Conclusion

I issue a monetary award in the tenant's favour in the amount of \$1,150.00 on the following terms:

Item	Amount
Double Security Deposit (2 x \$425.00)	\$850.00
Loss of Quite Enjoyment	\$200.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$1,150.00</b>

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with 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 30, 2018

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Residential Tenancy Branch