



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, MNDL, FFL  
                              MNSD, MNDCT, FFT

### Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlords’ Application for Dispute Resolution was made on July 15, 2018. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee. The Tenants’ Application for Dispute Resolution was made on July 20, 2018. The Tenants applied for a monetary order for losses due to the tenancy, for the return of their security deposit and the return of their filing fee.

Both the Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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

- Are the Landlords entitled to a monetary order for damages or losses due to the tenancy?
- Are the Landlords entitled to retain the security deposit?
- Are the Landlords entitled to the return for their filing fee for this application?

- Are the Tenants entitled to the return of his security deposit?
- Are the Tenants entitled to a monetary order for compensation under the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The parties agreed that the tenancy began on July 1, 2017, as a one-year fixed term tenancy. Rent in the amount of \$1,200.00 was to be paid by the first day of each month and the Landlords had been given a \$600.00 security deposit. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Landlords and the Tenants agreed that the Tenants moved out of the rental unit on July 1, 2018, and that the Tenants provided the Landlords with their written forwarding address on July 2, 2018. Both parties also agreed that the move-in/the move-out condition inspection report had not been completed for this tenancy.

The Tenants testified that at the end of May, they had verbally informed the Landlords that they would not be continuing their tenancy on a month to month basis and would be leaving at the end of the initial fixed term. The Tenants testified that the Landlords had told them that was "fine." The Tenants confirmed that they had not provided written notice to the Landlords of their intent to end the tenancy. The Tenants testified that the Landlords knew they were moving out and had listed the rental unit for rent online after they provided their verbal notice to end the tenancy.

The Landlords testified that the Tenants moved out of the rental unit without providing them with written notice to end the tenancy. The Landlords testified that they were advised on June 15, 2018, that the Tenants would be moving out at the end of the month. The Landlords testified that they started advertising for a new renter right away. However, as they were out of town, they were unable to show the rental unit to new renters until July 5, 2018, the first day that they were back in town.

The Landlord testified that they were not in town the day the Tenants move out, so they advised the Tenants to hand over the keys to the rental unit to their neighbours.

The Tenants agreed that the Landlords had told them to give the keys to the rental unit to their neighbours and confirmed that they surrendered possession of the rental unit to the neighbours as the Landlords had requested, on July 1, 2018.

The Landlords wrote in their statement and testified during the hearing that they attended the rental unit on July 5, 2018 and conducted a walkthrough of the rental property by themselves. The Landlords wrote in their statement that during this walkthrough they noted that the property was not cleaned to their standards and that the blinds and the toilet set had been damaged, they calculated this damage to be worth approximately \$50.00. In the Landlords written statement, they noted that they did not wish to request the approximately \$50.00 worth of repairs from the Tenants and had decided to return the Tenants security deposit in full.

The Tenants testified that the Landlords had advised them that they would be receiving their full security deposit back and that they could pick up the check in the mailbox at the rental unit. The Tenants testified that they did pick up the deposit from the mailbox and deposited the cheque in their bank. The Tenants testified that they had missed that the check had been post-dated to the middle of July. The Tenants testified that when the check was returned due to the post-date, they contact the Landlords to secure a new cheque. The Tenants testified that the Landlords refused to provide a replacement cheque, stating that they were now seeking to retain the deposit due to damages to the rental unit.

In the Landlords written statement and during the hearing, the Landlords testified that they attended the rental unit again on July 7, 2018, and conducted a more thorough inspection, noting several damages not previously discovered.

The Landlords testified that the Tenant returned the rental unit to them uncleaned and damaged. The Landlords submitted 39 pictures of the rental property, two audio recordings, and a three-page written statement of events into documentary evidence.

**The Landlords are claiming for:**

- Exterior door replacement \$343.84
- Cleaning supplies \$15.69
- Cleaning costs \$368.40
- Replace; blinds, \$66.59  
toilet seat, hose valve
- Replace Window \$466.65 or \$334.64
- Lost rental income \$1,200.00

The Tenants testified that the rental unit had been returned to the Landlords cleaned and that no additional cleaning was required to the rental unit, the yard or the garage. The Tenants also testified that they agreed that the toilet seat and the hose valve were

damaged during their tenancy but that they disagree with the remainder of the Landlords' claims. The Tenants submitted 31 pictures, date stamped July 1, 2018, of the rental unit and a four-page written statement of events into documentary evidence.

The Landlords testified that the front door of the rental unit had a small and a large dent in it at the end of tenancy and that the large dent prevented the door from closing properly. The Landlords testified that the door was about three years old when the tenancy began. The Landlords testified that due to the damage caused by the Tenants the door could not be repaired and need to be replaced. The Landlords confirmed that as of the date of this hearing the door had not been replaced. When asked the Landlords testified that a new renter is living in the rental unit with the same damaged front door. The Landlords provided an online listing for the cost of purchasing a new front door into documentary evidence. The Landlords are requesting \$343.84 to replace the front door of the rental unit.

The Tenants testified that they agree they did put a small dent in the door of the rental unit, but that the dent was easily repairable, and that the door did not need to be replaced.

The Landlords testified that the rental unit and the yards required additional cleaning at the end of tenancy. The Landlords also testified that the oven and stove elements had been cleaned, that the window tracks required additional cleaning, and that the garden had not been weeded at the end of tenancy. The Landlords provided a copy of a receipt for cleaning supplies into documentary evidence. The Landlords are requesting to recover \$15.69 to purchase cleaning supplies and \$368.40 in labour costs for cleaning the rental property at the end of tenancy.

The tenants testified that the rental unit did not require additional cleaning at the end of tenancy. The Tenants also testified that the yard was returned to the Landlords clean and mowed. The Tenants testified that they had been advised by the Landlords at the beginning of the tenancy that the garden, in the back of the property, was on loan to a neighbour and was not included in their tenancy, so they are not responsible for weeding that garden.

The Landlords are requesting to recover \$66.59 to purchase new blinds, toilet seat and hose valve. The Landlord submitted a copy of a receipt for the purchase of the blinds, toilet seat and hose valve into documentary evidence.

The Landlords testified that the toilet seat and a hose valve were broken at the end of tenancy.

The Tenants agreed that the toilet seat and the hose valve were damaged during their tenancy and agreed that they were responsible for the costs to have them replaced.

The Landlords testified that there were large stains on the blinds in the living room at the end of the tenancy. The Landlords testified that the Tenants had put a bookshelf up against the windows in the living room to block the heat from the sun coming through the windows, and that caused a lack of air flow and the heat to become trapped between the window and the bookshelf. The Landlords testified that due to the confined space between the window and the bookshelf, and the lack of air circulation, it became extremely hot and the blinds became warped and discoloured.

The Tenants disagreed that they had damaged the blinds during the tenancy. The Tenants testified that the blinds in the rental unit were very old and that the discolouration and warping the Landlords are claiming for was caused by the sun heating the blinds and the window tint. The Tenants agreed that the blinds in question are on a south-facing window and that so much heat came in through that window that it was difficult to be in that room. The Tenants testified that they had placed bookshelves in front of the window to block some of the heat from coming in, but that they had left a gap to allow for air flow and so they could access opening and closing the window, at least a two-inch gap. The Tenants testified that the window in question had a window tint installed and that they believe the heat melted the window tint leaching colour to the blinds, and that was what caused the blinds to discolour.

The Landlords confirmed that the window with the discoloured blinds does have a window tint installed.

The Landlords testified that the window in the living room had been cracked during the tenancy. The Landlords confirmed that as of the date of this hearing the cracked window had not been repaired or replaced. The Landlords testified that they believe that the actions of putting a bookshelf in front of the window, caused the window to unnaturally heat up and to crack. The Landlords provided two estimates for the cost of the window replacement into documentary evidence. The Landlords are requesting either \$466.65 or \$334.64 to replace the window in the rental unit. When asked the Landlords testified that the cracked window was original to the rental unit and that the rental unit had been built in 1972.

The Tenants testified that they did not cause the crack in the window, that the window was old and that over time, and extreme environmental conditions, the window cracked.

The Landlords testified that they are seeking one month's rent for July 2018, in the amount of \$1,200.00, due to the Tenants not providing written notice to end their tenancy. The Landlords testified that they started looking for a new renter for the unit as soon as they knew that the Tenants were moving out and that they had posted three online advertisements for the rental unit.

The Tenants testified that the Landlords were given verbal notice that they would be moving out at the end of May 2018, and that they had tried to end the tenancy sooner but that the Landlords wouldn't let them, due to the fixed term.

The Tenants testified that their claim is to recover the security deposit and the \$600.00 overdraft to their bank account caused by the Landlords' post-dated cheque. When questioned about their claim for the recovery of the overdraft the Tenants explained that they had miss understood and were claiming for the return of their security deposit.

The Landlords testified that they are claiming to retain the security deposit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;

- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlords have claimed to recover \$1,200.00 in lost rental income. Section 45(2) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

**Tenant's notice**

**45 (1)** *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice, and*  
*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

The date in which the Tenants provided their notice to the Landlords was in dispute throughout this hearing. I accept the agreed upon testimony of both parties that the Tenants never provided written notice to the Landlords. I also accept the testimony of the Landlords, that they had received notice from the Tenants and understood that the Tenants were ending their tenancy as of June 15, 2018. Based on when the Landlords received the Tenants' notice, I find that this tenancy could have ended, in accordance with the *Act*, before July 31, 2018, and that the Tenants were in breach of the *Act*, when they ended their tenancy on July 1, 2018.

However, I find that the Landlords have not proven, to me, that they suffered a loss due to the Tenants breach. During the hearing, the Landlords described their entitlement to a month's rent as compensation for the Tenant's not providing written notice to end the tenancy. However, there is no provision in the *Act* which provides automatic compensation for the failure to provide a written document.

In order to be awarded the requested amount, the Landlords must show that they suffered a loss. However, I find that the Landlords provided no testimony or evidence to show that the Tenants breach of the *Act* resulted in a loss of rental income to the Landlords. In the absence of a loss, I must dismiss this portion of the Landlords' claim in its entirety.

As for the Landlord's claims for compensation due to damages to the rental unit. I accept the agreed upon testimony of the parties, that the Tenants damaged the toilet seat and the hose valve during their tenancy. Therefore, I award the Landlords the replacement cost of those Items. I award the Landlords **\$34.20**, consisting of \$22.95 for the toilet seat and \$11.25 for the hose valve, including applicable taxes.

I also accept the agreed upon testimony of these parties that no move-in/move-out inspection report was completed for this tenancy. That report would have provided an official document that represented the condition of the rental unit at the beginning and the end of a tenancy, and as it is required that this document is completed in the presence of both parties, it may have removed some of the disputed facts in this case. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of the tenancy in order to determine if the Landlords are entitled compensation under the *Act*.

However, I find that the parties, to this dispute, offered conflicting verbal testimony regarding the remainder of the Landlord's claims. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Landlords.

The Landlords have claimed for \$343.84 to replace the front door of the rental unit. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean and undamaged at the end of the tenancy.

***Leaving the rental unit at the end of a tenancy***

***37 (2) When a tenant vacates a rental unit, the tenant must***

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property*

During the hearing the Tenants testified that the front door required some repairs due to small dents. The Landlords testified that the damage to the front door had been so severe that the door would no longer close properly and that the door had to be replaced as it could not be repaired. However, the Landlords also testified that they have a new renter living in the rental unit and that as of the date of this hearing they



have not replaced the front door. I find the Landlords' testimony regarding the need for the front door to be replaced and not repaired to be inconsistent, as I do not accept that a new renter would live in a rental unit with a front door that would not close properly.

I have also reviewed the documentary evidence submitted by the Landlords, and I find that the Landlords have not provided evidence to prove the condition of the door at the beginning of this tenancy. In the absence of evidence to show the condition of the door at the beginning of the tenancy, I am unable to determine if there has been a change in the condition of the door during the tenancy.

Additionally, I note that the Landlords had the Tenants surrender the possession of this rental unit to a third party for five days before the Landlords conducted their move out inspection. I accept the testimony of the Landlords that the third party was a trusted friend. However, I find that the Landlords were not able to account for what happened to or on the rental property for the five days between the time the Tenants surrendered possession and the Landlords took possession.

As the burden is on the Landlords to establish their claim, I find that am not satisfied by the evidence before me that the Landlords have proven on a balance of probabilities that the Tenants had damaged the front door of the rental unit during their tenancy. Consequently, I dismiss the Landlords' claim for the cost of purchasing a new front door.

The Landlords have claimed to recover \$15.69 to purchase cleaning supplies and \$368.40 in labour for cleaning. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy. The Landlords and the Tenants offered conflicting verbal testimony regarding the need for additional cleaning of the rental unit and the yards at the end of the tenancy.

I have reviewed the pictures of the rental unit in evidence, and I note that the pictures, submitted by the Landlords, were taken on July 7, 2018, six days after the Tenants had moved out. As I have already determined that the Landlords were not able to account for what happened to or on the rental property for the five days between the time the Tenants surrendered possession and the Landlords took possession; I find the Landlords picture evidence to be unreliable.

I have also reviewed the photographic evidence submitted by the Tenants, and I find these pictures represent a reliable representation of the condition of the rental unit at the end of tenancy. As these pictures are date stamped July 1, 2018, the agreed upon

date that the Tenants surrendered possession of the rental unit to the third party, as requested by the Landlords. I find that the Tenants returned the rental unit in a reasonably clean condition. Consequently, I dismiss the Landlords' claim for the cost of purchasing cleaning supplies and the recovery of the cost for additional cleaning labour.

The Landlords have claimed to recover \$32.47 for the purchase of new binds and the recovery of an estimated cost to have a broken window in the rental unit replaced, of either \$466.65 or \$334.64. I have reviewed the testimony of both parties, and I find that they both agree that the window was cracked, and the blind were discoloured at the end of the tenancy. However, they both offered conflicting verbal testimony regarding the cause of the damage, but equally plausible accounts of how the damage may have happened. As I had previously stated, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that is the Landlords.

I have reviewed the evidence submitted by the Landlords to establish their claim that the Tenants had damaged the window and the blinds, and I find that there is insufficient evidence before me to show that the Tenants, through either action or neglect had damaged the window or the blinds the rental unit during their tenancy. Therefore, I dismiss the Landlords' claim for the cost of purchasing a replacement window and blinds.

The Tenants have requested the return of their security deposit, pursuant to section 38 of the *Act*. I accept the testimony of both parties that the Tenants paid the Landlord a \$600.00 security deposit and that the Landlords are currently holding that deposit pending the outcome of this hearing.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

***Return of security deposit and pet damage deposit***

**38 (1)** *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

*(a) the date the tenancy ends, and*

*(b) the date the landlord receives the tenant's forwarding address in writing,*

*the landlord must do one of the following:*

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

I find that this tenancy ended on July 1, 2018, the date the tenant moved out and that the Tenants provided the Landlords with their written forwarding address on July 2, 2018. Accordingly, the Landlords had until July 17, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlords' application, and I find that the Landlords submitted their Application for Dispute resolution to claim against the deposit on July 15, 2018, within the legislated timeline.

However, I also accept the agreed upon testimony of these parties that the move-in/move-out inspection report had not been completed, in accordance with the *Act*, for this tenancy. Section 35 of the *Act* states the following:

***Condition inspection: end of tenancy***

***35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit***

*(a) on or after the day the tenant ceases to occupy the rental unit,  
or*

*(b) on another mutually agreed day.*

*(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

*(3) The landlord must complete a condition inspection report in accordance with the regulations.*

*(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

It is the responsibility of the Landlord to ensure that the move-in and move-out inspections are completed and that a written report of these inspections is completed. I find that the Landlords are in breach of section 35 of the *Act* by not completing the

required inspection report. Sections 36 of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

***Consequences for tenant and landlord if report requirements not met***

**36 (2)** *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Consequently, pursuant to section 36(2) of the *Act*, I find that by not completing the inspection report the Landlords had extinguished their right to make a claim against the security deposit for the damages to the rental unit. However, I do note that the Landlords claim also included a request for a months rent. As the extinguishment provision in the *Act* does not prevent a landlord from claiming against the security deposit for rent, I find that the Landlords were within their rights to retain the security deposit pending the outcome of this hearing.

I order the Landlords to return the security deposit, they are holding for this tenancy, less the awarded amount above.

I grant the Tenants a Monetary Order in the amount of **\$565.80**; consisting of \$600.00 for the return of the security deposit, less the \$34.20 awarded to the Landlords for the replacement cost of the toilet seat and the hose valve

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were only partially successful in their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for their application.

As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the **\$100.00** filing fee paid for their application.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$665.80**. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: January 30, 2019

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Residential Tenancy Branch