



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD (tenants); MNDCL, FFL (landlord)

### Introduction

This hearing dealt with an application by the tenants for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38.

This hearing also dealt with an application by the landlord under the *Act* for the following:

- A monetary order for damages as compensation under section 67;
- Reimbursement of the filing fee under section 72.

Both tenants attended. The landlord attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenants. No issues of service were raised. I find the landlord was served pursuant to section 89.

### *Preliminary Issue # 1*

The landlord stated she sent the tenants the Notice of Hearing and Application for Dispute Resolution by registered mail; the landlord provided the Canada Post tracking

number in support of service referenced on the first page of the Decision. The tenants acknowledged receipt of the registered mail on January 8, 2019.

The tenants claimed that the landlord did not include certain RTB forms in the package. I reviewed the landlord's filed evidence with the tenants. I find the tenants received all the evidence filed by the landlord. I find the landlord sufficiently served the tenants in accordance with section 71(2)(b) of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to:

- A return of the security deposit under section 38;

Is the landlord entitled to:

- A monetary order for damages as compensation under section 67;
- Reimbursement of the filing fee under section 72.

### Background and Evidence

The parties agreed on the following. They entered into a residential tenancy agreement starting October 23, 2017 and ending when the tenants vacated on July 31, 2018. The parties submitted a copy of the agreement. The agreement stated the rent included the payment of electricity. The tenants paid rent of \$1,200.00 monthly on the first of the month and no rent is outstanding.

The parties agreed the tenants provided a security deposit of \$1,200.00 at the beginning of the tenancy which the landlord holds. The tenants have not provided the landlord authorization to retain the deposit.

The parties did not conduct a condition inspection on moving in or moving out.

The tenants provided the landlord with their forwarding address on August 1, 2018. The landlord acknowledged receipt of the address by mail and by text on that day.

The tenants filed an application for dispute resolution on November 5, 2018 seeking a return of their security deposit. The landlord filed an application for dispute resolution on January 4, 2019 seeking compensation for damages.

On August 5, 2018, the landlord attempted to return to the tenants by e-transfer a portion of the security deposit in the amount of \$910.00. The tenants refused to accept a portion of the security deposit.

The landlord stated she did not repay the security deposit to the tenants as she wanted to hold back money for damages and compensation for expenses. The landlord claimed she and her son cleaned the unit after the tenants vacated for 20 hours for which she sought compensation at the rate of \$20.00 an hour for a total of \$400.00. The landlord submitted many photographs of the unit which showed the stove, fridge and bathroom in need of cleaning. The landlord also claimed the sum of \$40.28 for replacement of the parts for the stove top as they were so dirty she was unable to clean them; the landlord submitted a copy of the receipt.

The tenants disagreed that they owed the landlord any cleaning expenses. They stated that they cleaned most of the unit adequately before they left. They acknowledged that some parts of the unit required cleaning and that the photographs were accurate. However, the tenants expressed skepticism that the landlord spent the amount of time she claimed. They submitted a copy of a text from the landlord shortly after they vacated in which she stated she wanted "\$250 cleaning fee plus \$40 for the trays under the burners" for a total of \$290.00. The landlord made no other claim for compensation in the text.

The landlord claimed the tenants' electricity account during the tenancy, paid by her under the agreement, was several times higher than her own for a comparable unit. The landlord claimed the tenants extravagantly consumed electricity; she requested \$500.00 for compensation for overpayment of what should have been a reasonable consumption during the tenancy. The landlord submitted some receipts to indicate the cost of the tenants' electricity consumption versus her own. The landlord acknowledged she did not make any demand of the tenants to compensate her for the utility expense prior to the application.

The tenants deny they are responsible for any overuse of electricity as claimed by the landlord.

The landlord clarified her claim at the hearing as follows:

ITEM	AMOUNT
Reimbursement cleaning (20 hours at \$20.00 an hour)	\$400.00

Reimbursement cost of replacement parts for stove top	\$40.28
Reimbursement for utility use (electricity)	\$500.00
Reimbursement of filing fee	\$100.00
<b>MONETARY ORDER REQUESTED BY LANDLORD</b>	<b>\$1,040.28</b>

### Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

### *Tenants' Claims*

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenants' 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 and receipt of the tenants' forwarding address in writing.

Section 38 states as follows:

*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.*

If that does not occur, the landlords must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable*

However, this provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the tenants provided their forwarding address in writing pursuant to section 38(1)(b) on August 1, 2018 and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit within 15 days pursuant to section 38(1)(d) of the *Act*.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I grant an award to the tenants summarized as follows:

ITEM	AMOUNT
Security Deposit	\$1,200.00
Double the Security Deposit	\$1,200.00
<b>Monetary Award Tenant</b>	<b>\$2,400.00</b>

### *Landlord's Claim*

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is, as much as possible, to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*. In consideration of the evidence of the landlord, the evidence submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established the tenants did not leave the unit reasonably clean. I accept the landlord's evidence which is supported by photographs that the unit needed cleaning when the tenants left. I accept the amount of \$290.00 being the amount requested by the landlord shortly after the tenants vacated, as reasonable compensation for the cleaning expenses incurred by the landlord. I therefore find the landlord is entitled to a monetary award against the tenants in the amount of \$290.00 for cleaning and the stove parts.

I find the landlord failed to demand payment for excessive electricity use during the tenancy. Considering the testimony and evidence presented by the parties and the burden of proof, I find on a balance of probabilities that the landlord has not established this aspect of her claim. I find the landlord's claim for reimbursement of electricity expenses fails and I dismiss this aspect of her claim without leave to reapply.

I therefore award the landlord a monetary order in the amount of **\$290.00** as specified above. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain of the tenants' security deposit in the amount of \$290.00 in partial satisfaction of the monetary award issued in the landlord's favour.

In the circumstances, I do not award the landlord reimbursement of the cost of the filing fee pursuant to section 72.

In summary, I grant the landlord a monetary order of **\$290.00**.

### **Award**

I grant a monetary order to the tenants in the amount of **\$2,110.00** calculated as follows:

<b>ITEM</b>	<b>AMOUNT</b>
Monetary Award Tenant	\$2,400.00
Less (Monetary Award Landlord)	(\$290.00)
<b>Monetary Order Tenants</b>	<b>\$2,110.00</b>

### Conclusion

The tenants are granted a monetary order in the amount of **\$2,110.00**. The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, the 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: February 26, 2019

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Residential Tenancy Branch