



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenants applied for monetary compensation and for the return of their security deposit. The Landlords applied for monetary compensation, and for compensation for damages against the security deposit. Both parties also applied for the recovery of the filing fee paid for their Application for Dispute Resolution.

One of the Landlords was present for the teleconference hearing as were both Tenants. The parties confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the other party's application and a copy of the other party's evidence. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Issues to be Decided

Are the Tenants entitled to monetary compensation?

Are the Tenants entitled to the return of their security deposit?

Are the Landlords entitled to monetary compensation?

Are the Landlords entitled to compensation for damages against the security deposit?

Should either party be awarded the recovery of the filing fee paid for each Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began in June 2011 and ended on March 15, 2018. Rent in the amount of \$3,000.00 was due on the first day of each month. A security deposit of \$1,500.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The Tenants applied for compensation in the amount of \$4,500.00, which is \$1,500.00 for overpaid rent plus \$3,000.00 for the return of double the security deposit due to not receiving it back within 15 days.

The Tenants testified that they provided written notice to end the tenancy on January 28, 2018. In the letter they noted that the tenancy would end on February 28, 2018 but offered to stay an additional two weeks until March 15, 2018. The letter stated that they would pay \$1,500.00 for the period of March 1 to March 15, 2018. The letter was submitted as evidence.

The Tenants stated that although they did not receive a formal response to their request to pay \$1,500.00 for half of March rent, the Landlords took steps indicating that they accepted the plan, such as planning the move-out date for March 15, 2018. However, the Tenants stated that on March 1, 2018, the Landlords cashed their post-dated cheque for \$3,000.00. Despite requests for the return of the additional \$1,500.00 paid, the Tenants stated that they have not received any amount back.

The Landlord stated that they had agreed that the Tenants would stay for two weeks of March 2018 and pay \$1,500.00 of rent for this period. However, the Landlord stated that she cashed the March 2018 rent cheque for \$3,000.00 due to not receiving the \$1,500.00 payment. However, she agreed that the Tenants were to pay \$1,500.00 only but stated that the remaining \$1,500.00 was not returned due to damage caused by water leaking issues that had occurred in the rental unit. The Landlord testified that she did not have permission to retain the additional \$1,500.00.

The Tenants stated that they provided their forwarding address to the Landlord by email on March 22, 2018 and again in writing by mail on March 27, 2019. They stated that they did not provide permission for the Landlords to retain any amount from the security deposit and that they have not received any amount back.

The Tenants further stated that the Landlord did not complete a move-in or move-out inspection report with them. Although they participated in a walk-through of the rental unit at the end of the tenancy with an agent for the Landlord, they stated that nothing was put into writing.

The Landlord was in agreement that there was a walk-through conducted with their agent at the end of the tenancy but that nothing was put into writing and signed by both parties at move-in or move-out. She also agreed that the Tenants did not provide authorization to retain any amount from the security deposit and that she is still in possession of the full security deposit amount. The Landlord stated that she kept the security deposit due to damage that occurred in the rental unit.

The Landlord was unsure of the exact date that the Tenants' forwarding address was received but agreed that it was likely around March 27, 2018.

The Landlord applied for compensation in the amount of \$28,000.00 but clarified that she is requesting compensation of \$25,000.00 as well as to retain the \$3,000.00 that she has from March 2018 rent and the security deposit, for a total of \$28,000.00.

The Landlord provided testimony that the amount claimed is for the cost of repairs, painting and mould remediation. The Landlord further stated that the plastic drum of the washing machine had a crack that eventually led to a bigger crack which caused water to leak from the machine. She stated that the Tenants notified them on January 30, 2018 after they noticed some water on the floor. The Landlord stated that the Tenants were not sure where the water was coming from at that point. A plumber was called, and the plumber indicated that it may be an issue from the clothes dryer. However, as the washing machine was still being used, the water leaking issue continued.

The Landlord stated that the source of the leaking was finally located in the washing machine and was repaired. She stated that the issue with the washing machine was not the fault of the Tenants, however due to the length of time the water leaking was likely occurring, there was significant water damage in the rental unit that also led to the presence of mould. The Landlord stated that the leaking issue continued longer than they should have as the water was not noticeable to the Tenants due to the location.

She stated that mould can grow within 24-48 hours and submitted information regarding mould growth into evidence.

The Landlord stated that the repairs cost approximately \$7,700.00. An invoice from a flood and restoration company was submitted into evidence showing an amount of \$7,777.72. The Landlord stated that they received quotes for the remainder of the work required, but as the home was purchased and the new buyers intended to do renovations, the work was not completed. However, the Landlord stated that they received a reduced offer for the rental unit and submitted an email from a real estate agent noting that the amount offered for the purchase of the home was reflective of the repairs required in the rental unit. The Landlord stated that there was a difference of almost \$15,000.00 between the list price of the rental unit and the amount that it sold for.

The Tenants stated that the water leak was very difficult to notice, but as soon as they noticed they reported to the Landlord and the building manager who came to look at the issue right away. The Tenants stated that they reported the issue on January 30, 2018 after it was first noticed. The Tenants submitted into evidence email communication between themselves and the Landlord, including an email dated January 30, 2018 in which they notified the Landlord of the leak. This email also states that the Tenants informed the building manager who came to look at the leak and recommended that a plumber attend.

The Tenants testified that they contacted their insurance company to see what could be done, but since it was determined to be an issue with the washing machine, they were informed that the issue would fall under the Landlord's insurance coverage.

The Landlord testified that she does not believe the Tenants are at fault for the crack in the washing machine drum. She also stated that she believes that they notified her as soon as they became aware there was an issue. However, the Landlord also submitted that the leaking was likely occurring before it was noticed on January 30, 2018 and therefore caused significant water and mould damage which could have been avoided had the water leak been noticed sooner.

### Analysis

Regarding the Tenants' claim for the return of \$1,500.00 paid towards March 2018 rent, I find the following: Although the Tenants' letter dated January 28, 2018 proposes that they pay \$1,500.00 for the first 2 weeks of March 2018, I do not find written evidence of acceptance of this proposal from the Landlords. However, I accept the affirmed testimony of both parties that the offer was accepted and therefore find that the Tenants overpaid the amount agreed upon for March 2018 rent.

I also find the Landlord's testimony that she kept the additional \$1,500.00 due to damage in the rental unit to confirm that she agreed to only charge the Tenants \$1,500.00 for that period. As the Tenants did not agree to pay \$1,500.00 towards damages, I find that the Landlord must return the additional \$1,500.00 paid for March 2018 rent.

Regarding the Tenants' claim for the return of double their security deposit, I refer to Section 38(1) of the *Act* which states the following:

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 also note that Section 38(4) of the *Act* states that a landlord may retain an amount from the security deposit that the tenant has agreed to in writing. Both parties confirmed that the Tenants did not provide permission for any amount of the security deposit to be retained.

I accept the testimony of both parties that the tenancy ended on March 15, 2018 and that the Tenants' forwarding address was provided by mail on or around March 27, 2018. Therefore, I find that the Landlord had 15 days from receipt of the forwarding address to return the security deposit or file a claim against it. The Landlords have not returned any amount of the security deposit and filed an Application for Dispute

Resolution on March 29, 2019, which is approximately one year since receiving the Tenants' forwarding address.

Accordingly, I find that the Landlord was not in compliance with Section 38(1) of the *Act* and therefore find that Section 38(6) applies 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.

Pursuant to Section 38(6) of the *Act*, the Tenants are awarded the return of double their security deposit in the amount of \$3,000.00.

Regarding the Landlord's claim to retain \$3,000.00 from March 2018 rent and the security deposit, as stated above, the Landlord is not granted authorization to retain the security deposit or the overpayment of rent.

As for the \$25,000.00 claim for damages, I refer to Section 7(1) of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Both parties submitted a significant amount of evidence regarding the washing machine leak that occurred and the resulting damage to the rental unit. While the evidence was considered, I find that it confirms the testimony of both parties, who were not in disagreement as to what occurred.

The Landlord and Tenants were in agreement that the issue with the washing machine was not the fault of the Tenants. They were also in agreement that the Tenants notified the Landlord as soon as they became aware of the issue. While the Landlord stated that the damage was more significant than it would have been had it been noticed sooner, she also stated that it would have been difficult to notice the water leaking any sooner than it was noticed.

Both parties have responsibilities to repair and maintain the rental unit as stated under Section 32 of the *Act*. Based on the evidence before me and the testimony of both parties, I do not find that the Tenants breached the *Act* regarding the issue with the washing machine and resulting damage. I accept that the washing machine issue was not caused by the Tenants and find the Tenants acted reasonably in notifying the Landlord right away on January 30, 2018 as well as having the building manager assess the situation on the same day.

I am not satisfied that the Tenants breached the *Act* by not notifying the Landlord of the leak prior to this, particularly as both parties agreed that the leak was difficult to notice and was reported as soon as it was.

As such, while the water leaking issues may have caused damage to the rental unit, I do not find that the damage was due to the Tenants' breach of the *Act*, *Regulation* and/or tenancy agreement. Therefore, I find that the Tenants are not responsible for the cost of repairs or any reduced offer provided to the Landlord when selling the rental unit. I decline to award any compensation to the Landlords. The Landlords' application is dismissed, without leave to reapply.

As the Tenants were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenants are awarded a Monetary Order in the amount outlined below:

March 2018 rent overpayment	\$1,500.00
Return of security deposit	\$1,500.00
Amount to double security deposit	\$1,500.00
Recovery of filing fee	\$100.00
<b>Total owing to Tenants</b>	<b>\$4,600.00</b>

### Conclusion

The Landlords' application is dismissed in its entirety, without leave to reapply.

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$4,600.00** as outlined above. 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: May 2, 2019

---

Residential Tenancy Branch