



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$75.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement,
- an order for double the return of their \$450.00 security deposit, and
- to recover the \$100.00 cost of their Application filing fee.

The Tenants and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, at the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenants provided their email addresses at the outset of the hearing and confirmed

their understanding that the decision would be emailed to the Tenants and mailed to the Landlord, and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application Filing Fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2019, with a monthly rent of \$900.00, due on the last day of the prior month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$450.00, but no pet damage deposit.

The Parties agreed that they inspected the condition of the rental unit at the start and at the end of the tenancy. The Tenants said that the Landlord sent them a copy of the condition inspection report ("CIR").

The Parties agreed that the tenancy ended after the Tenants notified the Landlord of their plan to move out on March 31, 2019, based on a one-paragraph note to the Landlord dated March 4, 2019. In the note, the Tenants said they: "found this suite to be unsuitable for our needs and have found another available accommodation."

The Tenants said that they paid the full rent for March 2019, but that they vacated the rental unit on March 19, 2019. The Parties agreed that the Tenants gave the Landlord their forwarding address on March 19, 2019 by adding it to the outgoing CIR.

**Security Deposit**

The Tenants said they moved in on February 28, 2019, and that by the time of the incoming condition inspection on March 2, 2019, they had discovered items that were in disrepair, such as the baseboard heater and the toilet, as well as "a few other minor issues". The Tenants said they informed the Landlord of these things and that she repaired them in a timely manner.

The Tenants said that after that, the bathroom light and fan stopped working, the hot water tank leaked and a sink drain broke. They said that they told the manager about the drain when they were doing the move-out condition inspection on March 19, 2019.

The Tenants said that the Landlord was able to rent out the suite for the next month, so she did not lose any rental income, as a result of their departure. The Tenants said that the Landlord would not return their security deposit, because of the late notice to end the tenancy. They said they contacted the Landlord to discuss this, but that she did not return their calls.

In the hearing, the Landlord said that a brand new toilet apparatus was installed in the rental unit the previous month. She said:

We went down there and there was water all over the place. He had tried to fix the toilet, and water was leaking all over the place. They used a rug to collect the water. The problem with that is that if there's water sitting, it absorbs through the lino – gets into the sub floor. This was in total contradiction of their addendum. They never gave me the opportunity to repair that toilet before they took it apart. I went there the following morning after it was reported to me with a manager to look at it.

Addendum 4 in the tenancy agreement states: "If something is broken, plumbing, wiring etc., notify Land lady immediately." The Landlord said that the Tenants also adjusted the hot water tank, about which she said: "That's a no-no; you don't do that, It's contrary to addendum 4."

In terms of the light/fan switch in the bathroom, the Landlord said: "If you're not on the right switch when you turn it off, it won't come back on. He's complaining now that the fan didn't work, but it worked all along."

### **\$75.00 Water Fee**

The Tenants also said that they were claiming \$75.00 back from the Landlord, as an undocumented water fee. They said there was no documentation for the cost of the water, just a verbal request asking for \$75.00 for the water fee. In the hearing, they said:

She didn't want to give us the bill for that. It's undocumented - it seems like she could just make up an amount for anything. We just don't know where it came from – why it was charged, so that's why we're asking for it back. We just had her word on what it costs and it's not documented.

The Landlord said that she arranged the water billing this way, because there are four units in the residential property and they're not on metered water. She said:

It's not a small bill, so it's something that I considered an invasion of privacy for other tenants to provide my bill. They seemed satisfied to pay the \$75.00 a month, but now they are trying to get it back. There's a damage deposit, but they're not entitled to it, because they never gave me 30 days' notice.

They agreed when they signed the tenancy agreement to pay their utilities. The amount I had told them was acceptable to them without documentation at that point.

Clause three of the tenancy agreement has boxes checked beside what the rent includes. "Water" is not one of the items checked as being included in the \$900.00 per month rent. The Landlord submitted a copy of the Tenants' rent cheque dated February 28, 2019, which is for \$975.00 for March 2019 rent.

### Analysis

#### **Security Deposit**

The evidence before me is that March 19, 2019 was the day the tenancy ended and the day the Tenants provided their forwarding address to the Landlord. Section 38(1) of the Act 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.

The Landlord was required to return the \$450.00 security deposit to the Tenants within fifteen days after March 19, 2019, namely by April 3, 2019, or make an application for

dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Landlord has provided no evidence that she returned any amount of the security deposit or made an RTB application to claim against the deposit. Therefore, I find the Landlord failed to comply with her obligations under Section 38(1).

Section 38(6)(b) of the Act states that a landlord who fails to comply with the requirements of section 38(1), must pay the tenant double the return of the security deposit. As a result, I find that the Landlord must pay the Tenant double the \$450.00 security deposit for a total of **\$900.00**. There is no interest payable on the security deposit.

### **\$75.00 Water Fee**

I find on a balance of probabilities that the Parties agreed at the start of the tenancy that the Tenants would pay the Landlord \$75.00 per month for the cost of water at the rental unit. There is no evidence before me that this is documented in writing anywhere; however, it is not inconsistent with the tenancy agreement, which indicates that water is not included in the \$900.00 monthly rent payments.

I find that the Tenants did not provide sufficient evidence to persuade me that they did not agree to pay this fee to the Landlord. A lack of documentation of this agreement is not fatal to the Landlord's position, unless it is inconsistent with the written tenancy agreement. Accordingly, I dismiss this aspect of the Tenants' claim without leave to reapply.

As the Tenants are partially successful with their Application, I award them recovery of the \$100.00 Application filing fee, for a total monetary award of **\$1,000.00**.

### **Conclusion**

The Landlord violated section 38(1) of the Act by not returning the Tenants' security deposit or filing for dispute resolution within 15 days of (i) the end of the tenancy, and (ii) the time at which the Tenants provided their forwarding address.

As a result, and pursuant to section 36(6) of the Act, the Tenants' claim for recovery of double the security deposit is successful in the amount of \$900.00. The Tenants' claim for compensation of \$75.00 for other damage or loss against the Landlord is unsuccessful, as the evidence before me, overall, indicates that they agreed to pay this

amount. The Tenants are awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenants a monetary order under section 67 of the Act from the Landlord in the amount of **\$1,000.00**.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 29, 2019

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Residential Tenancy Branch