



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S  
                              MNSDBD-DR, FFT

### Introduction

This hearing dealt with 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 June 23, 2020. The Landlords applied for a monetary order for losses due to the tenancy, a monetary order due to damages caused by the tenant, their pets or guests to the unit, site or property, and for permission to retain the security and pet damage deposits.

The Tenants’ Application for Dispute Resolution was made on July 26, 2020. The Tenants applied for the return of their security deposit and to recover her filing fee.

Both the Landlords and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlords 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.

### Preliminary Matters – Issue Withdrawal

At the outset of the hearing, the Landlords withdrew their claims for damage caused by the tenant, their pets or guests to the unit, site or property. The Landlords stated that they would be continuing in their remaining claim item for \$945.00 in cleaning costs.

### Issues to be Decided

- Are the Landlords entitled to monetary order for compensation for monetary loss or other money owed?
- Are the Landlords entitled to retain the security deposit for this tenancy?
- Has there been a breach of Section 38 of the *Act* by the Landlords?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on August 1, 2019, as a six-month fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. The parties agreed that rent in the amount of \$1,800.00 was to be paid by the first day of each month and that the Landlords are holding a \$900.00 security deposit and a \$200.00 pet damage deposit for this tenancy. The Landlords submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that this tenancy ended on May 31, 2020, the date the Tenants vacated the rental unit and that a move-in or move-out inspection had not been completed for this tenancy.

The Tenants testified that they provided their forwarding address to the Landlords on June 23, 2020, by email. A copy of the email was submitted into documentary evidence.

The Landlords testified that the rental unit had been returned uncleaned and that it had cost them \$945.00 to have the rental unit cleaned at the end of this tenancy. The Landlords submitted three videos taken of the rental unit on June 1, 2020, and a copy of the invoice for cleaning into documentary evidence.

The Tenants testified that their move had been rushed and that they had not been able to clean the entire rental unit before they left, but that \$945.00 was a high cost for cleaning a fridge and a dirty floor.

The Landlords also testified that the cleaning invoice also included the rental of an Ozone Generator that was used to get the smell of cigarette smoke out of the rental unit.

The Tenants testified that at no time had they ever smoked in the rental unit and that they should not be responsible for the rental costs of an Ozone Generator rental.

### Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I will first address the absence of the move-in/out inspection report for this tenancy. I accept the agreed-upon testimony of these parties that the move-in/move-out inspection report (the “inspection report”) was not completed for this tenancy.

An Arbitrator normally looks to the inspection report as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and signed by both parties, it is seen as a reliable account of the condition of the rental unit. Sections 23 and 35 of the *Act* set out the requirement for this document, stating the following:

#### ***Condition inspection: start of tenancy or new pet***

**23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
- (b) a previous inspection was not completed under subsection (1).*

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

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

*(5) 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.*

*(6) The landlord must make the inspection and complete and sign the report without the tenant if*

- (a) the landlord has complied with subsection (3), and*
- (b) the tenant does not participate on either occasion.*

**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.*

*(5) The landlord may make the inspection and complete and sign the report without the tenant if*

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
- (b) the tenant has abandoned the rental unit.*

It is the legal responsibility of a landlord to ensure that they or their assigned agent conduct a professional and accurate move-in and move-out inspection for every tenancy. In this case, I find that the landlords breached section 23 and 35 of the *Act* when they failed to complete the required inspection report for this tenancy.

Section 24(2) and 36(2) of the *Act* outline the consequence for a landlord when the inspection requirements are not met, stating the following;

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

***24 (2) The right of a 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 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

***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.*

Due to the Landlords' breach of sections 23 and 35 of the *Act*, I find that the Landlords had extinguished their right to make a claim against the security deposit and pet damage deposit (the "deposits") for this tenancy.

Consequently, I find that the Landlords were not entitled to make their claim against the deposits in these proceedings and ought to have returned both the deposits, in full, to the Tenants, in accordance with section 38 of the *Act*.

Section 38(1) of the Act gives a 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 deposits or repay the security deposit and pet damage 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.*

*(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*

*(3) A landlord may retain from a security deposit or a pet damage deposit an amount that*

- (a) the director has previously ordered the tenant to pay to the landlord, and*
- (b) at the end of the tenancy remains unpaid.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy*

*condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*

I accept the agreed-upon testimony of these parties that this tenancy ended on May 31, 2020, the date the Tenant moved out of the rental unit. I also accept the testimony of the Tenants that they had provided their forward address to the Landlords, on June 23, 2020, by email, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "Emergency Order"). I find that the Landlords were deemed to have received the Tenants forwarding address three days after it was sent, on June 26, 2020.

Accordingly, the Landlord had until July 12, 2020, to comply with section 38(1) of the *Act* by returning both the deposits to the Tenants. However, in this case, the Landlords have continued to retain both the security and pet damage deposits, in the amount of \$1,100.00, for this tenancy, as of the date of these proceedings. I find that the Landlords are in breach of section 38 (1) of the *Act* by not returning the deposits to the Tenants' as required by the *Act*.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposits within the 15 days, the landlord must pay the tenant double the deposit.

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

***38 (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.*

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven that they are entitled to the return of double their security and pet damage deposits. Accordingly, I find that the deposits for this tenancy have doubled in value to \$2,200.00, consisting of a \$1,800.00 security deposit and a \$400.00 pet damage deposit.

As of the Landlords claim for the recovery of their cleaning costs, in the amount of \$945.00. I accept the testimony of the Landlords supported by the video evidence that the Tenants left garbage in the rental unit and left the rental unit in an unclean state at

the end of the tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean 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.*

I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned and left behind garbage at the end of this tenancy.

However, I find that the Landlords have not provided clear documentary evidence to support the value of their claim amount of \$945.00 in cleaning costs. After reviewing the receipt provided into evidence by the Landlords, I noted that the receipt includes cleaning costs as well as costs for repairs, exterior pressure washing and the rental of an Ozone Generator.

I acknowledge the Landlord's claim that they required the Ozone Generator to get the smell of cigarettes out of the rental unit, but I find that there is no evidence before me to prove that the Tenants had smoked inside the rental unit. Additionally, I find that there is no requirement under the *Act* for a tenant to pressure wash the exterior of a rental unit at the end of a tenancy, nor have the Landlords provided insufficient evidence to explain why pressure washing was required.

As this receipt include costs for items other than cleaning the rental unit, and the receipt does not provide a detail break down of the charges it includes, I find that the Landlords have not provided sufficient evidence to prove the value of their loss due to the required cleaning of the rental unit at the end of this tenancy. Therefore, I dismiss the Landlords' claim to recover \$945.00 in cleaning costs.

Nevertheless, as I had previously found that these Tenants did breach the *Act* when they returned the rental unit to the Landlords in an unclean state, I find it reasonable to conclude that the Landlords would have suffered a loss due to that breach. Therefore, I find it appropriate to award the Landlords a nominal award in the amount of \$500.00 due to the Tenant's breach. I grant permission to the Landlords' to retain \$500.00 from



the security deposit they are holding for this tenancy in full satisfaction of this award and order that the remainder of the deposits, \$1,700.00, be returned to the Tenants.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. Although the Tenants have been successful in their application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for their application as they did breach section 37 of the *Act* during this tenancy, forcing the Landlords to file a claim due to that breach.

Overall, I find that the Tenants have established an entitlement to a monetary order in the amount of \$1,700.00, consisting of \$2,200.00 in the recovery of the doubled value for their security and pet damage deposits for this tenancy, less \$500.00 awarded to the Landlords in this decision.

### Conclusion

I find for the Tenants under sections 38 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$1,700.00**. 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: October 20, 2020

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Residential Tenancy Branch