



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL; MNSD

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of the tenants' security deposit, pursuant to section 38.

The "male landlord" and "tenant RS" did not attend this hearing, which lasted approximately 38 minutes. The "female landlord," the landlords' agent, the "female tenant," and the tenants' two agents, "tenants' agent KA" and tenants' agent MRS ("tenants' agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords' agent confirmed that he had permission to represent the two landlords named in these applications. The tenants' agent and tenants' agent KA both confirmed that they had permission to represent the two tenants named in these applications.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

During the hearing, I explained the hearing and settlement process to both parties. Both parties confirmed that they were ready to proceed with the hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the female landlords' surname and the female tenants' full name. Both parties consented to these amendments during the hearing.

### Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain the tenants' security deposit?

Are the tenants entitled to a return of their security deposit?

Are the landlords entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 15, 2018 and ended on September 30, 2020. Monthly rent in the amount of \$2,250.00 was payable on the 15<sup>th</sup> day of each month. A security deposit of \$1,100.00 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address on September 13, 2020, by way of a letter handed to the landlords in person. The landlords did not have written permission to retain any amount from the tenants' security deposit. The landlords' application to retain the tenants' security deposit was filed on October 15, 2020.

The landlords seek a monetary order of \$1,700.00 plus the \$100.00 filing fee. The tenants dispute the landlords' application. The tenants seek the return of their security deposit of \$1,100.00. The landlords dispute the tenants' application.

The landlords' agent testified regarding the following facts. The tenants caused damages. The tenants caused marks on the refrigerator door that could not be fixed, the tenant tried to clean it and damaged it more, as shown in the videos. The tenants

made marks on the bedroom walls from a mattress and marks on the ceiling, when the tenants were painting, as shown in the videos.

The tenants' agent testified regarding the following facts. The tenants agree to pay for \$200.00 in painting damages to the bedroom walls because the tenants rubbed the painting brush on the wall, as they did not get to finish, and they are not professional painters. The tenants dispute the remaining claims for \$300.00 to paint the ceiling and \$1,200.00 to replace the refrigerator door. The tenants only caused minor scratches to the refrigerator door, the tenants did not intend to cause it, the tenants were cleaning the tape off the door, and the door did not need to be replaced by the landlords. The tenants' agent called the landlords' agent three times in order to check and fix the damages claimed by the landlords, but the landlords' agent did not respond. The tenants' agent got a call from police, telling him not to call the landlords' agent and to go through legal routes. The tenants did not have a chance to look at or fix the damages.

### Analysis

#### Landlords' Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

#### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

During the hearing, the landlords' agent failed to go through any specific claims or the amounts for each claim, as noted on the landlords' monetary order worksheet. I informed both parties that the applicants in each application had the burden of proof to present their claims. I find that the landlords' agent did not properly present the landlords' evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 38 minutes so the landlords' agent had ample opportunity to present the landlords' application. However, the landlords' agent failed to go through the landlord's numerous documents that were submitted for this hearing, including invoices, estimates, receipts, and other documents. The landlords' agent referenced videos during the hearing but did not point me to any specific videos or any specific portions of the videos. The landlords' agent focussed more on arguing with the tenants' agent about telephone calls made by the tenants' agent to the landlords' agent, which resulted in the police being called, after the tenancy ended.

I award the landlords \$200.00 for painting the bedroom walls, as the tenants' agent agreed to pay this amount during the hearing.

I dismiss the landlord's claims for painting the living room ceiling of \$300.00 and for a refrigerator door replacement of \$1,200.00, without leave to reapply. These claims and amounts have been taken from the landlords' monetary order worksheet, which was not reviewed at all by the landlords' agent during the hearing. The landlords' agent did not indicate the above amounts during the hearing. The landlords' agent did not go through any invoices, estimates, or receipts during the hearing. The landlords did not complete move-in or move-out condition inspection reports with the tenants to show the condition

of the rental unit when the tenants moved in or out, in order to prove the above damages. The landlords did not indicate whether costs were paid and if so, how and when they were paid.

I find that the landlords did not provide sufficient documentary evidence to support their monetary claims. I reviewed the landlords' documents relating to the refrigerator door and painting, even though the landlords' agent did not point me to any documents or review these documents during the hearing.

The landlords' refrigerator door cost of \$1,200.00 was supported by an online shopping cart printout, indicating a cost of \$951.48. There is a balance due, there is no rental unit address for delivery, and the landlords' names do not appear on this document to show that they purchased this item. The \$1,200.00 amount claimed by the landlords is \$248.52 higher than the online item price of \$951.48 provided by them. The landlords indicated in their application that they did not know the cost of taxes or shipping for this item. There is no receipt or proof of payment to show that the landlords actually purchased this item.

The landlords' painting cost of \$300.00 was supported by a Word document indicating only: "Estimate for painting living room ceiling: 300sq living room ceiling x \$1/sq = \$300." This document is not dated or signed by anyone, there is no company or individual name, and there is no rental unit address. The landlords provided an online advertisement for interior painting for \$1.00 per square foot. However, the landlords did not indicate that they purchased the services of this company or individual to paint the rental unit. There is only a website address referenced in this advertisement. There is no receipt or proof of payment to show that the landlords actually paid for this cost of painting.

As the landlords were unsuccessful in their application, except for what the tenants agreed to pay during the hearing, I find that the landlords are not entitled to recover the \$100.00 filing fee from the tenants.

### Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit.

However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the evidence of both parties. The tenancy ended on September 30, 2020. The tenants provided their written forwarding address to the landlords on September 13, 2020, by way of a letter handed to the landlords in person. The landlords did not have written permission to retain any amount from the tenants' security deposit. The landlords applied to retain the deposit on October 15, 2020, which is within 15 days of the later date of September 30, 2020.

However, I find that the tenants are entitled to double the value of their security deposit. I find that the landlords' right to claim against the security deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. In their application, the landlords applied for damages to the refrigerator, walls and ceiling, against the tenants.

The landlords continue to hold the tenants' security deposit of \$1,100.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to the return of double the amount of their security deposit, totalling \$2,200.00.

Although the tenants did not apply for the return of double the value of their security deposit, I am required to consider it, since the tenants did not waive their right to it, as per Residential Tenancy Policy Guideline 17.

I issue a monetary order to the tenants for \$2,000.00, as the tenants agreed to pay \$200.00 to the landlords during the hearing. Therefore, the \$200.00 has been deducted from the tenants' monetary entitlement of \$2,200.00.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,000.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The landlords' application to recover the \$100.00 filing fee and for \$1,500.00 in refrigerator and painting damages, is dismissed without leave to reapply.

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 11, 2021

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Residential Tenancy Branch