



# 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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 23, 2020. The landlord confirmed that no documentary evidence was submitted. Neither party raised any service issues.

I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation, return of the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

During the hearing both parties confirmed in their direct testimony that the tenancy ended on November 22, 2020. Both parties confirmed that the tenants paid a \$800.00 security deposit and a \$800.00 pet damage deposit at the start of the tenancy.

The tenants seek a monetary claim of \$3,810.11 which consists of:

\$1,600.00	Return of One Months Rent, November 2020
\$2,110.11	Return of Double Original Security/Pet Deposits

The tenants seek compensation of \$1,600.00 for the last months' (November 2020) rent for a material breach of the tenancy agreement. The tenants stated that on November 22, 2020 the tenants discovered the landlord in the rental unit. The tenants stated that the tenancy was originally to end on November 30, 2020 and the landlord was found in the rental unit without any notice given by the landlord. The landlord disputed this claim stating that written notice was posted to the rental unit door on November 19, 2020. The tenants argued that no such notice was found posted to the rental unit door. The landlord was unable to provide any proof of service of this notice. The landlord stated that a lack of communication had occurred between the two parties. The tenants also stated that they believed that the landlord had been entering the rental unit without their knowledge.

The tenants also seek \$2,110.11 for return of double the \$800.00 security and the \$800.00 pet damage deposits. The tenants clarified that the tenants provided their forwarding address via text message on November 24, 2020 after the tenancy ended on November 22, 2020, for return of their security and pet damage deposits. The tenants stated that their main form of communication with the landlord was via text message. The tenants stated that the landlord returned only \$1,089.89 and withheld \$510.11. The landlord confirmed that text messages and emails were the primary form of communications between the two parties. The landlord stated the tenants failed to adequately clean and remove various personal items left in the rental unit. The landlord stated that he thought his calculations to withhold the \$510.11 was fair.

The landlord was asked if he had the consent of the tenants to withhold the \$510.11. The landlord stated “no”. The landlord was asked if he had filed an application for dispute of returning the \$510.11 withheld amount. The landlord stated “no”.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case the tenants seek compensation of \$1,600.00 equal to one months rent for the last month of the tenancy for November 2020. The tenants stated that the landlord had breached a material term of the tenancy by entering the rental unit without proper notice to the tenants.

The original notice to end the tenancy by the tenants was given to the landlord on September 30, 2020 to end the tenancy on November 30, 2020. Prior to the end of tenancy, the tenants discovered that the landlord had entered the rental unit on November 22, 2020 without notice. Despite the landlord claiming that notice of entry was posted to the rental unit door on November 19, 2020, the tenant disputed such notice and the landlord was unable to provide any supporting evidence of service.

Section 29 of the *Act* states in part that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission; at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: the purpose for entering, which must be reasonable; and the date and time of the entry, which must be between 8am and 9pm unless the tenant otherwise agrees.

I find in this case that the landlord is found to have entered to rental unit without proper notice and that there was a loss of privacy to the tenants. However, the tenants' compensation claim of \$1,600.00 equal to one months rent has not been established. Despite the landlord having failed to provide proper written notice as per section 29 of

the Act, the tenants failed to provide sufficient evidence to satisfy me of the monetary compensation sought. The only evidence before me was that the landlord had entered the rental unit on November 22, 2020 despite the tenants claim that the landlord had likely entered previously without notice. No such evidence was submitted. I find that the tenants did suffer a momentary discomfort, but the tenants have failed to establish a claim for the compensation sought of \$1,600.00 equal to one months rent. As such, this portion of the tenants' claim is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case both parties confirmed that the tenancy ended on November 22, 2020 and that the tenants provided their forwarding address in writing via text message on November 24, 2020 as shown by the submitted copy of the typed letter. Both parties confirmed that text messages and emails were their primary form of communication. As such, despite text message being not considered "in writing", I find that the landlord was served with notice of the tenants' forwarding address "in writing" in the accepted format of communications between the two parties. Both parties confirmed that the landlord returned \$1,089.89 of the \$1,600.00 combined security and pet damage deposits and withheld \$510.11. The landlord stated that he had withheld this amount due to cleaning and items left behind by the tenants, which the landlord was forced to deal with. During the hearing the landlord confirmed in his direct testimony that he did not have the tenants' consent to retain the \$510.11 nor did the landlord file an application for a claim to dispute its return. On this basis, I find that the landlord failed to comply with section 38(1) of the Act and the landlord is ordered to return the \$510.11 to the tenants.

I also find that the landlord having failed to comply with section 38(1) is subject to 38(6) and is liable for an amount equal to the \$800.00 security deposit and the \$800.00 pet damage deposits.

The tenants are entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenants are granted a monetary order for \$2,210.11 which consists of:

\$510.11	Return of Security Deposit held
\$800.00	Compensation, Security Deposit, Sec. 38(6) Fail to Comply
\$800.00	Compensation, Pet Damage Deposit, Sec. 38(6) Fail to Comply
\$100.00	Filing Fee
\$2,210.11	

This order must be served upon the landlord. 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: April 27, 2021

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Residential Tenancy Branch