



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlords applied on February 14, 2021 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on February 14, 2021 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Parties confirm receipt of the other Parties’ applications for dispute resolution. The Landlord confirms that it did not serve the Tenants with any of their evidence. The Landlord states that they only uploaded their evidence to the RTB and expected the Tenants to access the evidence from the RTB site.

Rule 3.1 of the RTB Rules of Procedure provides that an applicant must serve the respondent with any evidence submitted to the RTB. Based on the Landlord's evidence that the Tenants were not served with the Landlords' evidence I find that I may not consider this evidence. The Landlords were given opportunity to provide oral evidence.

The Landlords set out particulars on their application that were not included in their monetary order worksheet. The Landlord confirms that they are only claiming the costs for damages to the unit as detailed on the monetary order worksheet.

The Tenant confirms that its application is in relation to return of the security deposit.

#### Issue(s) to be Decided

Are the Landlords entitled to the monetary amounts claimed?

Are the Tenants entitled to return of the security deposit and recovery of the filing fee?

#### Background and Evidence

The following are agreed or undisputed facts: In October 2019 Tenant TC initially rented a room from a tenant that rented the unit from the Landlords. The tenancy ended with the tenant and the Landlord then entered into a tenancy agreement with the Tenants. Their tenancy started January 1, 2020 and the Tenants moved out with the keys returned to the Landlord on December 31, 2020. At the outset of the tenancy the Landlords collected \$1,450.00 as a security deposit. The Landlord received the Tenants' forwarding address on January 3, 2021 on the move-out inspection report. The Parties mutually conducted a move-in inspection with a completed report signed by the Tenants however the Landlord did not provide a copy of that report to the Tenants. The Parties mutually conducted a move-out inspection with a completed report signed by the Tenants. The Landlord did not provide a copy of that report to the Tenants beyond the copy submitted with their evidence, that is noted to have been excluded from consideration.

The Landlord states that on March 23, 2020 a leak was discovered that had caused damage to the unit below. The Landlord states that the Tenants failed to report a broken faucet or the leak. The Landlord confirms that the Tenants were not told at any time during the tenancy that they were responsible for the costs of the repairs. The Landlord claims \$808.50 for the faucet replacement costs and repair costs. The Tenant states that it did not cause the leak or any damage to the faucet.

The Landlord states that the Tenants failed to remove furniture, clothing and garbage from the unit at the end of the tenancy. The Landlord claims \$53.88 for garbage removal costs. The Landlord states that the Tenants left the unit unclean and claim cleaning supply costs totalling \$94.36. The Tenant states that the unit was fully furnished at the outset of the tenancy and agrees that this furniture was left in the unit. The Tenant states that no garbage was left.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. Given the lack of supporting evidence such as a plumber's report on the cause of the leak, the lack of supporting evidence of the costs claimed and considering the Tenant's evidence that they caused no damage I find on a balance of probabilities that the Landlord has not substantiated the claim for the repairs. I dismiss the claim for \$808.50.

Given the lack of any supporting evidence of the state of the unit at either move-in or move-out, the lack of receipts or invoices, and considering the Tenant's undisputed evidence that the furniture was supplied with the tenancy, I find on a balance of

probabilities that the Landlords have not substantiated the costs claimed for garbage removal and cleaning supplies. I dismiss these claims.

As none of the Landlords' claims have been successful, I find that the Landlords are not entitled to recovery of the filing fee and I dismiss this claim. In effect the Landlords' application is dismissed in its entirety.

Section 23(5) of the Act provides that at the start of the tenancy the landlord must give the tenant a copy of the completed move-in report in accordance with the regulations. Section 24(2)(c) of the Act provides that 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 does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Section 18(1)(a) of the Regulations provides that the landlord must give the tenant a copy of the signed move-in condition inspection report promptly and in any event within 7 days after the condition inspection is completed. Based on the Landlord's evidence that the Tenants were not given a copy of the move-in inspection report I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. Given the undisputed evidence that the Landlord received the Tenants' forwarding address, as Landlord's right to claim against the security deposit was extinguished at move-in, as the Landlord's application to claim against the security deposit is for damages to the unit

and as the Landlord did not return the security deposit, I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$2,900.00**. As the Tenants have been successful with their claim for return of the security deposit, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,000.00**.

Conclusion

The Landlords' application is dismissed.

I grant the Tenants an order under Section 67 of the Act for **\$3,000.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 21, 2021

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Residential Tenancy Branch