



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlords were represented at the hearing by an agent, the landlords' son. Both tenants attended the hearing and were accompanied by 2 Legal Advocates, one of whom did not take part in the hearing. The landlords' agent and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

During the course of the hearing one of the Legal Advocates of the tenants indicated that some of the landlords' evidentiary material had not been received. It appeared that the Legal Advocate located that evidence, and the landlords' agent testified that all evidence had been provided to the tenants. I accept that testimony, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlords be permitted to keep the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlords' agent** testified that this month-to-month tenancy began on April 1, 2020 and ended on May 31, 2021 by mutual agreement. Rent in the amount of \$1,250.00 was payable on the 1<sup>st</sup> day of each month, however the tenants didn't pay rent for the month of May, 2021. On March 8, 2020 the landlords collected a security deposit from the tenants in the amount of \$625.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and the landlords resided in the upper unit during this tenancy. A copy of the tenancy agreement has been provided for this hearing.

No move-in or move-out condition inspection reports were completed, however after the tenancy ended a contractor completed an inspection. The rental unit basement suite is currently occupied by the landlords' agent, who is the child of the landlords, and the upper level is for rent.

On June 3, 2021 the landlords received the tenants' forwarding address in writing; a note had been posted to the landlords' door.

The landlords' agent further testified that the landlords have moved out of the Province and gave the tenants about 3 months' notice verbally, in or around March, 2021 that the tenants would have to vacate the rental unit by May 31, 2021. On May 3, 2021 the landlords returned to the tenants the rental payment for May, 2021 because the tenants threatened that they wouldn't move out and said that the tenants were entitled to a month of rent because the landlords didn't give the tenants enough notice, which is insane.

On May 6, 2021 the parties signed a Mutual Agreement to End a Tenancy and a copy has been provided by the tenants for this hearing. It is dated May 6, 2021 and contains an effective date of vacancy of May 31, 2021 and is signed by a landlord and by 2 tenants. It was all done in good faith.

After the tenants moved out they wanted the security deposit back. However, the tenants left the rental unit with damages. A written estimate has been provided but not all of it is part of the landlords' claim. The landlords looked at the damages, and a dishwasher was not permitted in the tenancy agreement. The tenancy agreement clearly shows that a dishwasher is not included, but was not prohibited by the tenancy agreement. The portable dishwasher belonging to the tenants was used without permission by the landlords which caused damages and a lot of stress on the landlords.

The carpet replacement cost is \$750.00 which was about 3 or 4 years old and was left ripped by the tenants. Water damage from the dishwasher is more than \$2,000.00 and repair to the kitchen sink is about \$300.00. The landlords only seek to keep the \$625.00 security deposit. Photographs have also been provided for this hearing, and the landlords' agent believes they were taken on June 2, 2021.

The tenants have not served the landlords with an application claiming the security deposit.

**The tenant** testified that the carpet was already ripped with a few strings out, and vacuuming ripped it further. The tenants did nothing to damage it at all.

The portable dishwasher was connected to the faucet and it drained into the sink. The photographs provided by the landlord show the underneath part of the plumbing for the sink, but the dishwasher was not connected to that part. The plastic wrapping around the pipes as shown in the landlords' photographs was there when the tenants moved in. There was no flooding that occurred and no spray; it drained into the sink.

#### SUBMISSIONS OF THE LANDLORDS' AGENT:

Inspections were not completed, but the landlords' agent doesn't see where the security deposit should be returned to the tenants or what the reasoning for returning it would be, or who will repair the damage.

#### SUBMISSIONS OF THE TENANTS' ADVOCATE:

The rental unit was well maintained by the tenants and the landlords have not provided enough evidence for the claim. The Advocate is not sure what the landlords are claiming, or how the landlords think that the dishwasher damaged anything.

The carpet tear was obviously caused by a previous flaw and made worse by the tenants maintaining it. It's normal wear and tear.

#### Analysis

The *Residential Tenancy Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and places the onus on the landlord to ensure the reports are completed in accordance with the regulations. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. In this

case, the landlords did not ensure either of the reports were completed, and I find that their right to claim against the security deposit for damages is extinguished.

However, the landlords' right to make a claim for damages is not extinguished. In order to be successful, the landlords must establish the 4-part test:

1. that the damage or loss exists;
2. that the damage exists as a result of the tenants' failure to comply with the Act or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlords made to mitigate any damage or loss suffered.

Since the landlords have not ensured that the move-in and move-out condition inspection reports were completed, I am not satisfied that the landlords have mitigated any damage or loss.

The landlords' agent testified that the landlords only seek to keep the \$625.00 security deposit, but that's not how it works. The landlords must be able to satisfy me that damages exist as a result of the tenants' failure to maintain the rental unit during the tenancy. The tenant testified that the carpet was already damaged at move-in, with a few strings that got caught in the vacuum. I am not satisfied that the landlords have established that that isn't true, which is wear and tear. The tenant also testified that the plastic wrapping around the pipes for the kitchen sink were there prior to the start of the tenancy, and I accept that undisputed testimony. The tenant also testified that the portable dishwasher only drained directly into the sink, and I accept that. Therefore, any damage to the cabinet or the sink may very well have been damaged by other means, such as due to a faulty water or drain pipe. Since the landlords have not been able to establish any other means by which damage occurred or that it occurred at the fault of the tenants, I dismiss the landlords' application for a monetary order for damages.

The *Act* also states that a landlord must return a security deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant. However, where the landlord's right to claim against the security deposit for damages is extinguished, the landlord must to return the security deposit to the tenant in full, unless the landlord claims unpaid rent or utilities. In this case, the landlords made no claim for unpaid rent or utilities, and therefore ought to have returned the security deposit to the tenants.

I also refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set Off which states, in part:

“The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord’s application to retain all or part of the security deposit; or
- a tenant’s application for the return of the deposit

unless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.”

“Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- 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;
- whether or not the landlord may have a valid monetary claim.”

I find that the landlords received the tenants’ forwarding address in a note posted to the landlords’ door on June 3, 2021, which is deemed to have been served 3 days later, or June 6, 2021. The landlords did not return the security deposit to the tenants and therefore must reimburse the tenants double the amount, or \$1,250.00.

Since the landlords have not been successful with the application, the landlords are not entitled to recovery of the filing fee from the tenants, and I dismiss that portion of the application.

### Conclusion

For the reasons set out above, the landlords’ application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,250.00.

This order is final and binding and may be enforced.

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 31, 2021

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Residential Tenancy Branch