



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, PSF, RR, RP, LAT, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on January 25, 2022. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenants both attended the hearing. All parties provided affirmed testimony.

The Landlord acknowledged receipt of the Tenants' application and evidence package. The Landlord did not provide any documentary evidence for this proceeding, and only referred to evidence he provided in support of his other, separate proceeding against the Tenants. As stated in the hearing, that hearing is a separate application, and evidence from another proceeding is not admissible in this proceeding unless it has been served and submitted in accordance with the Act and the Rules for this file number. The Landlord failed to serve the Tenants with any documentary evidence as part of this proceeding and relied on oral testimony only.

I have reviewed all oral and written evidence 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

The Tenants stated that they have moved out of the rental unit. Given this, I find all of the grounds on the Tenant's application are now moot and are dismissed without leave with the exception of the following grounds they selected:

- I want compensation for my monetary loss or other money owed

- I want to reduce rent for repairs, services or facilities agreed upon but not provided

#### Issue(s) to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
- Are the Tenants entitled to a past rent reduction for services not provided?

#### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started around April 27, 2021, and monthly rent was set at \$1,680.00, due on the first of the month. The Tenants paid a security deposit in the amount of \$840.00 and the Landlord still holds this amount.

The Tenants became unhappy with several aspects of their tenancy, and the parties suffered a breakdown in the relationship shortly after moving in. The Tenants provided written notice to end tenancy to the Landlord, on September 25, 2021, and subsequently moved out on October 1, 2021.

On the Tenants' application, they stated they are seeking the following monetary items:

- 1) \$840.00 – return of their security deposit

The Tenants stated they provided their forwarding address in writing to the Landlord on October 1, 2021, the same day they returned the keys and moved out. The Tenants stated that they put their forwarding address on a sticky note, and wrote "for return of damage deposit" on the top. The Landlord acknowledged getting the note in their mailbox, with the Tenant's forwarding address on it on October 1, 2021.

- 2) \$60.00 – Internet expense
- 3) \$50.00 – Internet expense

The Tenants provided a copy of the tenancy agreement into evidence (signed on March 25, 2021), and although internet was not included as a utility, they stated that the Landlord told them via text message a couple of weeks after signing the agreement that “Wifi” was included. The Tenants stated that they were given the wifi password for a couple of months, and the Landlord suddenly changed the password around August 19, 2021. The Tenants stated that they were forced to try and obtain their own internet connection, which they tried to do. The Tenants assert that the Landlord prevented them from connecting their service with the internet utility company, and as a result, the Tenants ended up incurring a cost of \$60.00 for a service they couldn’t use. The Tenants are also seeking \$50.00 because the Landlord should have given them at least 30 days notice to turn off their internet.

The Landlord stated that the internet/wifi was not included in the tenancy agreement, and he only gave the Tenants the password to his wifi temporarily because he was trying to help them out while they got set up. The Landlord denies that he prevented the Tenants from getting their own connection, and feels that the Tenants were the ones who were harassing him and being aggressive.

#### 4) \$180.00 – Broken stove/dishwasher

The Tenants assert that one element on their stove was broken when they moved in and the Landlord failed to fix it in a timely manner. The Tenants also assert that after the Landlord came to fix the stove element, two other elements stopped working, leaving them with only one element. The Tenants were unclear about when the stove stopped, when some of the attempted repairs were done by the Landlord and how the issue with the stove impacted their tenancy and their use of the space.

The Tenants also assert their dishwasher stopped working and feel they should be compensated \$60.00 for this issue. The Tenants were not clear about when the dishwasher stopped working, or how this issue impacted their tenancy. The Tenants provided a couple of text messages showing some of the issues with the appliances, but in the hearing they did not explain or speak to these text messages and only provided a generalized and vague explanation as to what occurred and what the impacts were.

The Landlord stated that the appliances were fully functional at the start of the tenancy, and stated that the Tenants broke the stove elements from misuse and neglect. The landlord stated that he repaired any issue that was reported to him, promptly, and opines that the Tenants ought to be responsible for any breakdown in appliances. The

Landlord acknowledged an issue with the stove, but stated he fixed it right away, but denied that there was any issue with the dishwasher, as the Tenants have asserted.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

First, I turn to the Tenant's request for the return of the security deposit. I note that Policy Guideline #17 states the following:

#### *C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION*

2)Where the tenant applies for return of the security deposit and the landlord later applies for dispute resolution for claims arising out of the tenancy and the hearings are not scheduled at the same time, the arbitrator will order the return of the security deposit to the tenant and the landlord's claims will be heard whenever scheduled after that, unless the parties and the arbitrator agree to having the landlord's claim heard at the same time.

*3) 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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *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<sup>16</sup>;*
- *if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*
- *if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Section 38(1) of the Act requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the security deposit.

In this case, the parties agree that the Tenants moved out on October 1, 2021. The Landlord acknowledged receiving the Tenants' forwarding address that same day.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (until October 16, 2021) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord provided the file number for his application which indicates he did not file the application against the deposit until January 3, 2022. I find the Landlord breached section 38(1) of the Act by failing to act within the allowable 15-day window.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$840.00 x 2). I award the Tenants \$1,680.00.

Next, I turn to the issue with the internet (item #2 and #3 above). I note the Tenants feel they were misled by the Landlord as he had suggested that internet and wifi was

included in rent. However, I note the Tenants signed a written tenancy agreement specifying otherwise. Internet is specifically not selected on the list of included utilities on the tenancy agreement. I note there was a text message exchange after the Tenants signed the tenancy agreement regarding wifi. However, I do not find this text message exchange is sufficiently clear as to formally modify the tenancy agreement, which shows internet is not included. I note the following part of the *Regulations*:

*(2)Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.*

The parties never put the internet inclusion term in writing, and did not initial it. I find the internet was not included in the initial tenancy agreement, and was not sufficiently added to the agreement, in writing. Further, I find the Landlord chose to offer internet for a period of time to help out, but I do not find he was required to do so. I decline to award any amount for the issues with the internet. I dismiss items #2 and #3 in full.

With respect to item #4, I note the Tenants are seeking around \$180.00 in compensation for loss of use of the stove and the dishwasher. More specifically, the Tenants are seeking \$120.00 for issues they were having with the stove and \$60.00 for their broken dishwasher. With respect to the issue with the stove, I note the Landlord does not dispute that there was an issue with one of the stove elements. However, I found the Tenants presentation of the material facts lacked clarity and detail. The Tenants were unclear how the issue with the stove impacted them, when it started, and what was fixed by the Landlord along the way, and when. The Tenants also did not directly refute the Landlord's assertions that they broke the appliances by neglecting and misusing them.

Further, with respect to the dishwasher, I find there is a lack of evidence showing what, if anything, was broken. The Landlord denies that anything was wrong with the dishwasher. The Tenants also failed to articulate how the loss of use of the dishwasher impacted their tenancy. Ultimately, I find the alleged issues with the appliances were poorly explained and substantiated, and I find the Tenants have not met the onus placed on them to prove their claim on this matter. I dismiss this item, in full.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I

also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenants a monetary order for \$1,780.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, plus the filing fee.

### Conclusion

I grant the Tenants a monetary order in the amount of **\$1,780.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: January 25, 2022

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Residential Tenancy Branch