



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, MNSD, MNETC, FFT  
MNDL-S, FFL

### Introduction

This hearing dealt with applications filed by both the tenants and the landlords pursuant to the Residential Tenancy Act (the “Act”):

The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a Monetary Order for compensation for the landlords failing to accomplish the stated purpose on a notice to end tenancy pursuant to section 51 or 51.4;
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38; and,
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords applied for:

- A Monetary Order for damage to the rental unit or common areas pursuant to sections 32 and 67; and,
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

JA and FA, the landlords appeared at the hearing. MW and JW, the tenants appeared at the hearing.

As both parties were in attendance, I confirmed that the parties served their Notice of Dispute Resolution Proceeding packages and evidence regarding each application on

each other. The parties confirmed that there were no issues with respect to the exchange of their application materials. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The tenants' initial application was filed on September 7, 2022. On April 30<sup>th</sup>, 2023, the tenants made an application to amend their application and added a claim for a Monetary Order for compensation for the landlords failing to accomplish the stated purpose on a notice to end tenancy pursuant to section 51 or 51.4. As the parties were informed during the hearing, I find it would not be procedurally fair to proceed with this application. As a result, the tenant's application pursuant to section 51 or 51.4 is dismissed with leave to reapply.

At the outset of the hearing, FA corrected the spelling of their name. Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application to reflect the correct spelling of FA's name.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?

Are the tenant's entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38;

Are the tenant's entitled to recover the filing fee for this application from the landlord?

Are the landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and evidence are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that they entered into a written tenancy agreement starting on July 16, 2017. Monthly rent was \$1,360.00 payable on the first of each month. The tenants paid the landlords a security deposit of \$650.00, which the landlords continue to hold. The parties agreed that the tenancy ended based on a Two-Month Notice with an effective date of August 31, 2022; however, the tenant's notified the landlords on July 28<sup>th</sup>, via text message that they would be ending the tenancy early on August 9<sup>th</sup>, 2022. The parties agree that the tenants vacated the rental unit on August 9, 2022.

### *Security Deposit*

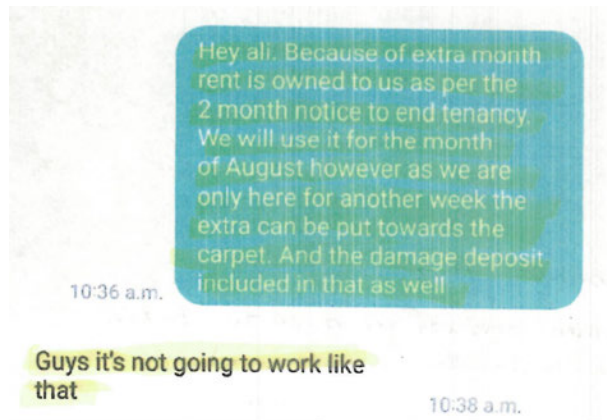
The landlords and tenants made applications with regard to the security deposit. The tenants are seeking the return of double their security deposit of \$650.00 in the amount of \$1,300.00. The landlords are seeking an order to retain the security deposit in the amount of \$650.00 to pay for damages to the rental property.

The parties agreed that no move-in condition inspection report or move-out condition inspection report was completed. The tenants testified that they participated in an informal walkthrough at the end of the tenancy. The tenants testified that while the landlords indicated that they would do a formal move-out condition inspection the weekend following the end of the tenancy, the landlords never followed up with the tenants regarding the same.

The tenants testified that they provided the landlords with their forwarding address in person on August 9<sup>th</sup>, 2022, and that they did so using RTB Form 47 which is submitted into evidence. The tenants indicated that they also sent a copy of their forwarding address to the landlords by registered mail. The tenants testified that when they requested the return of their security deposit, the landlords indicated that they would be keeping the deposit because of damages to the rental unit.

The landlords confirmed receipt of the tenant's forwarding address, indicating that they received it on August 10, 2022, and testified that the deposit was not returned because of damage to the rental unit.

There was some discussion regarding whether the tenants had agreed to allow the landlords to retain their security deposit. The tenants drew my attention to a text message which is submitted into both their evidence and the landlords' evidence. The text message reads as follows:



### *Tenants' Application*

The tenants testified that based on the Two-Month Notice they were entitled to one month's rent compensation. The landlords applied this compensation to their rent for the final month of their tenancy. However, because the tenancy ended on August 9<sup>th</sup>, 2022, and not August 31<sup>st</sup>, 2022, which was the stated effective date of the Two-Month Notice, the tenants are seeking compensation for 21 days rent in the amount of \$921.29.

The tenants went on to note that they are seeking compensation of \$288.00 for their loss of wages resulting from the necessity of attending the hearing.

### *Landlords' Application*

The landlords are seeking a monetary order for damages to the rental property and request to retain the tenant's security deposit. The landlords testified that they are seeking compensation because the tenants' cats damaged the carpet such that it required replacement. The landlords testified that the carpet was brand new, but they do not have the date the carpet was installed. The landlords testified that the cats peed on the carpets which left an odour and stains. The landlords submitted an estimate for replacement carpets into evidence in the amount of \$2,825.76. The landlords testified that they do not have a receipt for the carpets, and they did not replace the carpets with carpet, but rather they upgraded to laminate flooring.

In response to the landlords' testimony regarding the carpet, the tenants' testified that they lived in the rental unit for approximately six years and therefore, the carpet was at least six years old.

The tenants submitted that they have concerns surrounding the authenticity of the estimate document. Finally, the tenants testified that the video submitted into evidence by the landlords was taken on August 8, 2022, without their consent while the cleaners were cleaning the rental unit. They dispute that the video is an accurate depiction of the carpets as they were left at the end of the tenancy because the cleaners had not finished cleaning them at the time.

The landlords are seeking \$200.00 for repairs to damage drywall. The landlords testified that drywall in a utility room was damaged during the tenancy when a drainage pipe was knocked out. The landlords testified that water went under the drywall. The landlords testified that the tenant called them, and they made some repairs at that time. Following the tenancy, further repairs were required. The landlords testified that the drywall was replaced, but they do not have a receipt for the drywall. The landlords testified that the \$200.00 is for their labour to replace the drywall.

The tenants testified that at the time of the incident with the drywall, they offered to pay for the drywall, but the landlords declined. The tenants testified that they called the landlords as soon as they were aware that there was a problem with the pipe. The incident occurred almost three years prior to the end of the tenancy. The tenants testified that the pipe was in a cupboard that was not used regularly and that the pipe was not secured into the ground. The tenants argued that they are not responsible for this repair.

The landlords are seeking \$50.00 for repairs to a door hinge. The landlords testified that the door was replaced by the tenants; however, it was not the same design. The landlords submitted that the tenants did not change the hinges and instead installed the door using the old hinges. The landlords testified that they had to cut the hinges so the door could close. The landlords testified that they did not provide any documentary evidence to support their claim for repairs to the door hinges.

The tenants testified that they purchased a new door for the rental property and installed it using the old hinges. The tenants did not have any issues closing the doors and indicated that the cleaners did not mention they had difficulty with the door either.

## Analysis

### *Security Deposits*

Section 38(1) of the Act requires a landlord to repay security and/or pet deposits with interest or make an application for dispute resolution claiming against the security deposit and/or pet deposit. Section 38(6) of the Act states that if the landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet deposit and must pay the tenant double the amount of the security deposit, pet deposit, or both, as applicable.

However, section 24 and 36 of the Act set out that landlords and tenants can extinguish their rights to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations").

The parties agreed that neither a move-in or move-out condition inspection report was completed nor was a copy of either provided to the tenants.

Section 24(2)(c) and section 36(2)(c) of the Act establish that if a landlord does not complete and provide a copy of the move-in and move-out inspection to a tenant, they extinguish their right to claim against the security deposit. As a result, I find that the landlord extinguished their right to claim against the security deposit pursuant to section 24 and 36 of the Act.

Pursuant to section 38(1) of the Act, the landlords had 15 days from the date the tenancy ended or the date the tenants provided the landlord with a copy of their forwarding address, whichever is later, to repay the security and pet damage deposits or file a claim against them.

The parties agree that the landlords have not returned any portion of the \$650.00 security deposit. The parties agreed that the tenants provided the landlords with their forwarding address to the landlords in person and by registered mail on August 9, 2022. The landlords acknowledged receipt of the tenants' forwarding address on August 10, 2022. As a result, the landlords had 15 days from August 10, 2022, to repay the tenants pet and security deposits or make a claim against the deposits.

The landlords filed an Application for Dispute Resolution claiming against the security deposit on September 26, 2022, and therefore did not meet the 15-day deadline as required by the Act.

Section 38(4)(a) states that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant **agrees** in writing the landlord may retain the amount to pay a liability or obligation of the tenant. I have considered the text message included in the parties' evidence and I do not accept that the tenants agreed in writing to allow the landlord to retain the security deposit based on their statements in the text message. In my view, the text message supports that the tenants made a proposal to the landlord with respect to the security deposit; however, no agreement was reached.

Based on the foregoing, I find that the tenants are entitled to double the amount of the deposit held pursuant to section 38(6)(b) of the Act plus interest.

Policy Guideline 17 sets out that where a landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

Based on the foregoing, I order the landlords to return to the tenants double the security and pet deposits plus interest. To give effect to this order, the tenants are granted a monetary order in the amount of \$1,305.49 as set out below.

#### *Tenant's Application*

The tenants testified that based on the Two-Month Notice they were entitled to one month's rent compensation. The landlord applied this compensation to their rent for the final month of their tenancy. However, because the tenancy ended on August 9<sup>th</sup>, 2022, and not August 31<sup>st</sup>, 2022, the effective date of the Two-Month Notice, the tenants are seeking compensation for 21 days rent in the amount of \$921.29.

Section 51(1)(a) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. In this case, the amount that is equivalent to one month's rent was applied to the final month of the tenancy, August 2022. However, section 50(1)(a) of the Act states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 of the Act, as is the case here, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

The parties confirm that the tenants provided the landlords with 10-days written notice that they would be vacating the rental property via text message on July 28, 2022, in accordance with section 50(1)(a) of the Act.

On that basis, I find that the tenants are entitled to \$921.09, which is the equivalent of rent for 21 days they did not occupy the rental unit during the month of August 2022.

The tenants sought compensation of \$288.00 for their loss of wages resulting from the necessity of attending the hearing. However, I find that the tenants are not entitled to their claim for lost wages to attend dispute resolution hearings, as normally the only recoverable cost associated with the dispute resolution process is the filing fee. In this case, the tenants themselves filed an application and submitted extensive evidence, thus choosing to engage in the dispute resolution process. I therefore dismiss this portion of the tenants' application.

#### *Landlord's Application*

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 onus is on the landlords to prove their entitlement to their monetary claim.

The landlords are seeking \$200.00 for labour associated with replacing damaged drywall. However, I find that the need for further repairs resulting from an incident that occurred during the tenancy of which the landlord was informed and previously repaired, was not the result of a violation of the agreement or a contravention of the Act on the part of the tenants. On that basis, I dismiss the landlords' claim for \$200.00 for labour to repair the damaged dry wall without leave to reapply.

The landlords are seeking \$50.00 for replacing a door hinge. However, I find that the landlords have not provided any evidence that can verify the actual monetary amount of



the loss even if I were to determine that a loss occurred. On that basis, I dismiss this claim without leave to reapply.

The landlords are claiming \$2,825.76 for replacement carpet. As previously stated, the landlords bear this onus to prove the existence of the damage/loss. I have considered the parties documentary evidence and testimony and reviewed the videos submitted by the landlord. However, I find the video does not provide a clear depiction of the condition of the carpets at the end of the tenancy. When I consider this, coupled with the lack of move-out inspection report, I find that the landlords have not met the onus which is upon them to prove the existence of the damage/loss.

Based on the foregoing, I am not satisfied that the carpets required replacing and, on that basis, the landlords' claim for replacement flooring is dismissed without leave to reapply.

As the landlords were unsuccessful in their application, they are not entitled to recover the filing fee paid for this application from the tenants.

As the tenants were partially successfully in their application, they are entitled to recover the filing fee paid for this application from the landlord.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,326.78 as follows:

Item	Amount
Security Deposit (\$650.00 x 2)	\$1,300.00
Interest on \$650.00	\$5.49
Returned Rent (21 days)	\$921.29
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$2,326.78</b>

The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in 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: June 8, 2023

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Residential Tenancy Branch