



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: MNSD FF

Landlord: MNDC MNSD FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenants both attended the hearing and provided affirmed testimony. The Landlord acknowledged receipt of the Tenants’ application package. I find this was sufficiently served. However, the Tenants failed to serve their evidence to the Landlord. As such, I find the Tenant’s evidence is not admissible, as it has not been served. The Tenants acknowledged receipt of the Landlord’s application package and evidence, which I find was sufficiently served.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### **Issue(s) to be Decided**

#### ***Tenant***

- Are the Tenants entitled to the return of double the security deposit held by the Landlord?

*Landlord*

- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- The tenants moved in on or around February 1, 2023, and moved out May 1, 2024.
- The Landlord still holds a security deposit and pet deposit in the amount of \$2,650.00
- The Tenants provided, and the Landlord received, the Tenants' forwarding address in writing on April 29, 2024.

*Tenants' Application*

The Tenants have applied for the return of their security and pet deposit, which total \$2,650.00 because the Landlord failed to return the deposits. The Landlord applied against the deposits on May 12, 2024. A move-in and move-out condition inspection was done. A move in condition inspection report was filled out, but only listed "see photos". Some photos were attached, and the parties signed the report. A move out inspection was done but neither party signed the report. Some photos were provided but none of them are dated, supporting the condition towards the end of the tenancy. The Tenants stated that some of the photos provided by the landlord for the end of tenancy were actually taken before the tenancy ended and were old photos not reflective of the state of repair at the end.

*Landlord's Application*

The Landlord provided a monetary worksheet which shows he is seeking the following items:

- 1) \$305.36 – Damaged door lock

The Landlord stated that the lock was working fine at the start of the tenancy, but at the end, it was seized and required a locksmith to replace it at the above noted cost.

The Tenants assert that the lock wasn't functioning correctly at the start of the tenancy, but since there were two locks on the door, they only ever used the second one. The Tenants deny doing any damage to the lock.

The move in condition inspection report does not detail any particulars about the lock in question.

2) \$75.00 – Key fob missing

The Landlord stated that at the start of the tenancy there were two fobs given to the Tenants, as noted in the photos at move-in, but at move-out only one was returned, and the second was clearly broken and missing from the keyring.

The Tenants stated that the fob was taped up and broken at the start of the tenancy.

3) \$235.20 – Cleaning costs

The Landlord stated that this is based off an estimate they received from a cleaning company. The Landlords stated that they did all the cleaning themselves. They assert that the unit was unclean as noted in the photos. The kitchen cabinets were filthy, and there was dog hair all over the place.

The Tenants deny leaving and mess, and assert they cleaned the unit sufficiently before leaving.

4) \$2,149.02 – Paint Quote

The Landlord contacted a painting company and got the above noted quote to repaint the apartment. However, the Landlord stated that they never hired the painters, and they did not paint it themselves. They left it as is. The Landlord took issue with the fact that the Tenants painted about half of the unit themselves, and did a poor job. The Landlord did not state how old the paint was on the interior walls.

The Tenants stated that they did some painting as a courtesy, but they do not feel they should be responsible for repainting the unit.

5) Flood cleanup - \$263.74 (materials), plus \$1,800.00 labour

The Landlords stated that the Tenants called them about a leak under the kitchen sink on Boxing Day 2023. They immediately repaired the issue, but the Landlord stated that since the Tenants failed to notice the leak and report it in a timely manner, it caused damage to the base of the wall, under the sink, and also the flooring. The Landlord spend the above noted amount on materials to replace a small section of flooring, remediate the mould, and clean up. They also want to be reimbursed for the labour. However, they did not explain how many hours it took to perform the repairs. The Landlord pointed to the photos they took at both the start and at the time of the flood to show the damage. The Landlord provided a copy of the plumbers invoice to repair this issue, and it states that:

*"1)leaking under sink from 1 1/2" trap adopter and from faucet which need to get replaced as soon as possible and Frenco was not tight enough either"*

The Tenants stated that when they moved in, there was a bowl under the sink to catch drips, so they state it must have been an old leak that was never properly addressed.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant bears the burden of proof 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 other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

### *Tenants' Application*

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 Landlord applied against the deposits on May 12, 2024, which was within 15 days of the end of the tenancy. I find the Tenants are not entitled to double the deposits. However, I note the Landlord still holds the deposits, which will be further addressed below. The deposits total \$2,650.00, plus interest is owed on the deposits. This brings the total amount held, including interest, to \$2,685.00.

### *Landlord's Application*

Next, I turn to the Landlord's claim for monetary compensation.

#### 1) \$305.36 – Damaged door lock

I have reviewed the testimony and evidence on this matter. I do not find the move-in inspection is particularly helpful on this item because it does not explain the condition of the lock, and photos do not help with internal mechanical issues. The Landlord ought to have filled out the condition inspection report with words and explanations and without further evidence, I am not satisfied the lock was working properly at the start of the tenancy. The Tenants assert it was not, and the Landlord has no proof it was working properly when the tenancy started. I note there were two locks so the Tenants did not report it as an issue because they had the other one to use. I dismiss this item, in full.

#### 2) \$75.00 – Key fob missing

I find the Tenants are liable for this item, since the photos at the start of the tenancy clearly show two fobs, then at the end, one of them was missing and incomplete. I award this item, in full.

#### 3) \$235.20 – Cleaning costs

The Landlord stated that this is based off an estimate they received from a cleaning company. The Landlords stated that they did all the cleaning themselves but they provide no breakdown as to how long it took them. I note the Tenants feel the unit was sufficiently clean. However, I find the photos show a different story, and there were multiple areas that had stains and debris (stains in cabinets, pet hair). I do not find the Tenants sufficiently cleaned up. However, I find the Landlord has done a poor job explaining the value of their loss and how many hours it took.

I note that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find the Landlord’s failure to sufficiently detail the amount of hours spent cleaning, warrants a nominal award. I award a nominal award of \$100.00 for this item.

4) \$2,149.02 – Paint Quote

I note the Landlord is seeking this amount to pay for someone to come and paint the unit. The Landlord is not happy with the painting that was done by the Tenants, as it did not use the correct paint (used wall paint on trim), and it was only half painted, poorly.

I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, to assist with determining what residual value remains, and what is reasonable for compensation amounts. The useful life of interior painted walls is 4 years. The Landlord provided no evidence or testimony to explain when the unit was last repainted properly. Without evidence of this, I am not satisfied there was any residual value left on the interior painted walls. Generally, it is expected that the Landlord repaints a unit about every 4 years, and this is not a cost typically paid by the Tenants. However, in this case, I accept the Landlord’s testimony that the Tenants painted some of the interior walls in incorrect paint, and this was not disputed by the Tenants. I find this would have contributed the need for a repaint, so the Tenants should be liable for a portions.

Again, I find a nominal award is appropriate, given the lack of evidence of the age of the interior painted walls as well as the poor paint job performed by the Tenants. I award a nominal award of \$500.00.

5) Flood cleanup - \$263.74 (materials), plus \$1,800.00 labour

I have reviewed the testimony and evidence on this matter, and I turn to the excerpt from the plumber’s invoice. I note it speaks to a part under the sink that was leaking and refers to a part that was not sufficiently tight. I find it more likely than not that this part, that was not sufficiently tight, could very well have contributed to the leak, in general. This would not likely have been caused by the Tenants, and was likely a poor installation. The Tenants stated they reported the leak as soon as they saw it, and the Landlord feels the Tenants

ought to have caught it sooner. However, I note this leak was in the back side of a dark cabinet, and the affected floor area that was abutting this was also partially behind some of the Tenant's furniture. I do not find it unreasonable for the Tenants to not have seen this leak until it had been going on for some time. I find the leak was relatively visually subtle, unless the cabinet was emptied out, which is not likely to happen in day to day living. I do not find the Tenants are liable for this item, given the above reasons. I dismiss this item, in full.

The Tenants are not awarded the filing fee because they were not successful in their application for double the deposits. The Landlord is granted \$100.00 to pay for the filing fee, since they were partly successful.

The Landlord is award \$775.00, for the items above, and the filing fee. The Landlord may retain this amount from the deposits held, and must return the balance of the deposits to the Tenants as noted in the monetary order below.

### Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$1,910.00**. This order must be served on the Landlords. If the Landlords fail 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: August 02, 2024

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Residential Tenancy Branch