



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with cross applications. The tenants applied for return of double the security deposit. The landlord applied for compensation for damage to the rental unit; as well as, damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Are the tenants entitled to doubling of the security deposit?
2. Is the landlord entitled to compensation from the tenants for damage to the rental unit and/or damage or loss under the Act, regulations or tenancy agreement?

### Background and Evidence

The tenancy commenced in December 2010 and the tenants paid a security deposit of \$800.00. The parties had agreed upon a monthly rent was \$1,500.00 payable on the 1<sup>st</sup> day of the month. There was no move-in inspection report prepared by the landlord. The tenant brought a condition inspection report to the move-out inspection held on December 15, 2012 and included their new forwarding address on the report. The tenants did not authorize any deductions from the deposit in writing. At the conclusion of the move-out inspection the tenants went to Staples, made a copy of the report for themselves, and gave the original to the landlord who was still at the rental unit.

### **Tenants' Application**

The tenants submitted that they did not receive a refund of their security deposit. The landlord submitted that he sent a refund cheque to the forwarding address provided in the tenant's notice to end tenancy by way of registered mail sent December 20, 2012.

Neither party provided a copy of the tenant's notice to end tenancy; however, the tenants acknowledged that their notice to end tenancy included a forwarding address. The tenants explained that the address they included in the notice to end tenancy was the address they planned to move to but circumstances changed and they rented elsewhere. The tenants submitted that during the move-out inspection they did tell the landlord that they were not moving into the unit they had originally indicated in their notice to end tenancy but that the landlord was upset about the flooring.

The landlord was of the position that during the move-out inspection the tenants did not point out to him that they would not be moving into the address they gave in their notice to end tenancy. The landlord acknowledged that his primary focus during the inspection was damage to the rental unit. The landlord submitted that he felt tricked by the tenants' tactics. The landlord also made allegations that the tenant's tricked him into accepting \$1,500.00 for rent when he advertised the unit for \$1,600.00.

Although the landlord did not provide documentary evidence to me to support his position that he sent the tenants registered mail on December 20, 2012, the tenants acknowledged that they were provided a copy of a registered mail receipt and tracking number by the landlord in support of his position. It is undisputed that the registered mail sent to the tenants was returned to the landlord.

The tenants submitted that the content of the registered mail envelope is unknown and they doubted the landlord sent them a refund cheque considering he wrote on the bottom of the move-out inspection report that he would not be repaying the "damage deposit".

The landlord acknowledged writing the above statement on the move-out inspection report but that after he contacted the Residential Tenancy Branch he realized he had to refund the deposit to them under the Act. The landlord requested that I call a "middle aged lady at the post office" as a witness who would confirm that the landlord had placed a cheque in the envelope sent via registered mail on December 20, 2012. I declined to place a call to the post office and ask to speak to a person as described by the landlord.

The landlord requested the opportunity to send me the cheque he wrote to the tenants December 20, 2012 after the hearing. I declined to permit the landlord to submit evidence that could have been provided prior to the hearing in accordance with the Rules of Procedure.

### **Landlord's Application**

The landlord applied for compensation of \$800.00 for damage to the garburator and damage to the hardwood floors. The landlord stated he paid \$195.00 for a new garburator but he did not provide a copy of the receipt. The landlord acknowledged he does not yet know the cost to make repairs but suspects it will be in the range of \$500.00 - \$1,000.00. The landlord suggested that he be permitted to keep the security deposit until such time the repair costs are known.

The tenants acknowledged on the move-out inspection report that the hardwood flooring had opened up between some of the planks but were of the position it was not due to something they had done. The move-out inspection report also indicates the tenants did not agree with the landlord's claims that the garburator was damaged from the outside as described by the landlord.

The tenants had provided evidence that they had notified the landlord of the gap in the hardwood flooring via an email sent in May 2012. The tenants also provided a statement from an occupant in another unit in the same building that indicated his flooring had also opened up and the developer had repaired the defect.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each of the Applications.

### **Tenants' application**

By failing to prepare a move-in inspection report, the landlord extinguished the right to make any deductions from the security deposit for damage to the rental unit. Nor did the landlord file an Application for Dispute Resolution seeking authorization to retain the security deposit within 15 days of the tenancy ending. Accordingly, under section 38(1) of the Act the landlord was required to return the security deposit to the tenants within 15 days of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever date is later. In this case, the tenancy ended and the tenants provided a forwarding address in writing on December 15, 2012.

The landlord asserts that he sent a refund cheque to the tenants within 15 days of December 15, 2012, albeit to an old address, which was subsequently returned to the landlord.

Although the tenants gave the landlord a different address in their notice to end tenancy, I find that the tenants effectively changed their forwarding address for purposes of receiving the security deposit by way of the move-out inspection report given to the landlord on December 15, 2012. I accept the undisputed evidence that the landlord not only received the move-out inspection report but that he also reviewed it as his signature and comments are evident in several areas on the report. Further, I find the move-out inspection report prepared December 15, 2012 is a more timely and relevant document than the notice to end tenancy dated October 31, 2012 for purposes of receiving a refund of the security deposit as the move-out inspection report provides space for dealing with the security deposit.

While it was not proven during the hearing, if the landlord did send a refund cheque to the tenants at the address appearing on their notice to end tenancy, I find that using an out-dated address in lieu of the forwarding address provided on the timelier and more relevant move-out inspection report was an error on part of the landlord.

In light of the above, I find the landlord failed to comply with the requirements of section 38(1). Where a landlord violates section 38(1) of the Act, the landlord must pay the tenants double the security deposit under section 38(6) of the Act. The requirement to pay double is not discretionary and the landlord's failure to use the changed forwarding address is not a basis to exempt the landlord from the requirements of section 38(6). Therefore, I award the tenants double the security deposit or \$1,600.00. I also award the tenant the \$50.00 filing fee they paid for their application.

### **Landlord's application**

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 section 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. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

While it was undisputed that a gap appeared in the hardwood flooring, I find the landlord failed to establish that the gap was caused by the actions or neglect of the tenants; whereas, the tenants provided a reasonable explanation that the gap was a building defect. I am also unsatisfied by the disputed evidence that the tenants are responsible for damaging the garburator.

In neither of the landlord's claims did he provide any evidence as to the value of his loss.

As the landlord bears the burden to prove his claims against the tenants, including the value of the amounts claimed, I find the landlord failed to meet any of the criteria for receiving monetary compensation from the tenants and I dismiss the landlord's claims entirely.

### **Monetary Order**

The tenants are provided a Monetary Order in the sum of \$1,650.00 to serve upon the landlord and file in Provincial Court (Small Claims) if necessary.

### **Conclusion**

The tenants are provided a Monetary Order in the amount of \$1,650.00 to serve and enforce as necessary. The landlord's application has been dismissed entirely.

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: April 19, 2013

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Residential Tenancy Branch

