



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Tenant MNSD, MNDC, FF
	Landlord MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for loss or damage under the Act, regulations or tenancy agreement, for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on July 29, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on May 16, 2013, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is Landlord entitled to compensation for damages and if so how much?
3. Is there loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to retain the balance of the Tenants' deposits?

Tenant:

1. Are the Tenants entitled to recover double the security deposit?
2. Is there a loss or damage to the Tenants and if so are the Tenants entitled to compensation and how much?

### Background and Evidence

This tenancy started on August 15, 2011 as a fixed term tenancy with an expiry date of February 15, 2012 and then continued with a new tenancy agreement on a month to month basis. Rent was \$1,100.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$550 in July, 2011.

The Tenant said they moved out of the rental unit on February 23, 2013 as a result of a 1 Month Notice to End Tenancy dated January 23, 2013. The Tenants said they had applied for dispute resolution to cancel the Notice, but decided to move out instead and they canceled the previous dispute resolution application and hearing.

The Tenants continued to say because of a dispute with the Landlord during the move out condition inspection the report was not completed. The Tenant said that they emailed the Landlord the next day and indicated an agent of theirs would be available to complete the inspection and report if the Landlord scheduled an appointment. The Tenant said the Landlord declined their offer and the move out report was not completed. The Tenant continued to say they gave the Landlord their forwarding address in writing on March 1, 2013. The Tenant said they did receive a cheque from the Landlord for \$325.26, which represented their security deposit less utilities they owed and cleaning supplies the Landlord purchased. The Tenant said they did not authorize any deduction from their security deposit. As a result the Tenants said they are requesting double their security deposit in the amount of \$1,100.00 as the Landlord did not comply with the Act in returning their full security deposit in the time required.

In addition the Tenants said they are requesting \$550.00 from the Landlord as they had to pay rent on their new rental unit and the Landlord's unit for ½ a month after they moved out.

The Landlord agreed no move out condition inspection report was completed with the Tenants, because there was an argument and the Landlord did not feel safe talking with the Tenants after the meeting on March 2, 2013. The Landlord said the Tenants thought they met on March 1, 2013, but he remembers the date to be March 2, 2013 when they met and he received the Tenants forwarding address in writing.

The Landlord said he is applying for unpaid utilities in the amount of \$52.41 for electricity and \$9.38 for gas as well as cleaning supplies of \$87.64. In addition the Landlord said he is requesting a total of \$3,000.00 for damages that the Tenants caused to his property. The Landlord said this amount is only an estimate and he did

not submit any supporting evidence beyond photographs to show the damage. The Tenant indicated that some of the damage the Landlord is claiming is damage that is noted on the move in condition inspection report.

The Landlord did not itemize his claim of \$3,000.00 but he said he had the paid receipts at home, but he did not send them in with his application.

The Tenants said the Landlord's claims are not valid because he did not do a move out condition inspection report the end of the tenancy.

### Analysis

Section 36 of the Act say if a landlord does not complete a move out condition inspection report the landlord's right to claim against the tenant's security or pet deposit for damages is extinguished. I find the Landlord did not complete a move out condition inspection report therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the balance of the Tenants' security deposit.

In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has shown by photographic evidence there was damage to the unit the Landlord has not established that the unit was in poorer condition on move out than it was on move in. As well the Landlord has not verified his claims with paid receipts or evidence that corroborates his claims. Consequently I dismiss the Landlord's claim for damage or loss based on lack of evidence to establish a loss or damage existed at the end of the tenancy. I dismiss the Landlord's application for damages in the unit, site or property and for loss or damages under the Act, regulations or tenancy agreement without leave to reapply.

Further as both parties agree the unpaid utilities of \$52.41 and \$9.38 are the Tenants responsibility I award the Landlord the unpaid utilities in the amount of \$61.79.

With respect to the Tenants' application for double their security deposit in the amount of \$1,100.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on March 1 or March 2, 2013. The Landlord did not repay the full security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenants, nor did the Landlord apply for dispute resolution to retain the security deposit by March 17, 2013. Consequently I find for the Tenants and grant an order for double the security deposit of \$550.00 in the amount of \$1,100.00 (2 X \$550.00).

With regard to the Tenants request for ½ a month's rent as compensation for moving out of the rental unit early, I find the Tenants made this choice themselves and therefore the Landlord is not responsible for compensation of \$550.00 or ½ a month's rent

because the Tenants moved out early. I dismiss this part of the Tenants' claim without leave to reapply.

As the Tenants have been successful in this matter, they are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding.

As the Landlord has been unsuccessful in this matter I order the Landlord to bear the \$50.00 cost of this application which he has already paid.

A monetary order has been issues to the Tenants for the following:

	Double Security deposit	\$ 1,100.00
	Filing fee	\$ 50.00
	Subtotal	\$ 1,150.00
Less	Security deposit paid	\$325.26
	Unpaid utilities	\$ 61.79
	Subtotal	\$ 387.05
	Balance owing	\$ 762.95

### Conclusion

The Landlord's application for damages and to retain the balance of the Tenants' security deposit is dismissed without leave to reapply.

A monetary order has been issued to the Tenants' for \$762.95.

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 13, 2013

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Residential Tenancy Branch

