



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: MNSD, FF  
Landlord: MND, MNSD

### **Introduction**

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

The Landlords filed seeking a monetary order for compensation for damage to the unit, site or property and to retain the Tenants' security deposit.

The Tenants filed for the return of the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on August 20, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery by and agent of the Tenants on September 22, 2013, in accordance with section 89 of the Act.

The Landlords 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 the Landlord entitled to compensation for damages and if so how much?
3. Is the Landlord entitled to retain the Tenant's deposit?

Tenant:

1. Is the Tenant entitled to recover the security deposit?

### Background and Evidence

This tenancy started on May 1, 2011 as a month to month tenancy. Rent was \$830.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$415.00 in advance of the tenancy. The Tenant said there was no move in or move out condition inspection reports completed and signed by both parties. The Landlord said there was information on the back of the tenancy agreement that showed any damage to the unit at the start of the tenancy. The Landlord said they did not use a condition inspection form as they were told making notes as to the condition of the unit on the tenancy agreement was good enough.

The Landlords said the unit was left in a poor condition and they had to spend \$110.00 on items damaged in the unit that the Landlords considered beyond normal wear and tear. In addition the Landlords said they spent \$580.15 to repair or replace damaged items in the rental unit that they believe the Tenants caused. The Landlords also said they are claiming for 10 hours of their labour to clean and repair the damage at \$20.00 per hour for a total of \$200.00. The Landlord said they did not submit the tenancy agreement with the noted condition of the unit at move in and they have not submitted any receipts to proof that the repairs were done and the amount it cost to do the repairs. The Landlords said they sent in a list of their claims. The Landlords said they are claiming \$890.15 for damages and they are requesting to retain the Tenants' security deposit of \$415.00 as partial payment of their claim.

The Tenant said the tenancy ended on July 31, 2013 and they gave the Landlord their forwarding address in writing at the move out walk through of the rental unit on August 1, 2013. The Tenant said she cleaned the unit and there was no damage to the unit that was not there when they moved into the rental unit. The Tenant said they have requested the Landlords to return their security deposit, but have not received any money as of yet. The Tenant said they have applied for the Landlords to return their security deposit of \$415.00 and the Tenant said they have applied for the recovery of the filing fee of \$50.00.

The Landlord said the Tenant was not telling the truth as the unit was left in poor condition. The Landlord continued to say they did not provide any evidence that would prove the condition of the unit at the start or end of the tenancy and they did not submit any receipts to verify their losses. The Landlords said they could have provided this information for the hearing, but they did not know they had to do so.

### Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or 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 Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the landlord cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has testified there was damage to the rental unit that the Landlords believe was caused by the Tenants, but the Landlords have not provided any prove of the damage. 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 Landlords have testified there was damage during the tenancy the Landlord has not proven that the unit was in poorer condition on move out than it was on move in. As well the Landlords have not provided any verification of the amounts to rectify the loss or damage they have applied for; therefore the Landlords have not established grounds to prove his claim. Consequently I dismiss the Landlord's claim for damages as the Landlord did not provide any evidence to prove a loss and the Landlords have not verify the amount of that loss or damage. I dismiss the Landlords' application for damages to the unit, site or property without leave to reapply.

With respect to the Tenants' application for the return of their security deposit in the amount of \$415.00.

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 Landlords a forwarding address in writing on August 1, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, but the Landlord did apply for dispute resolution to retain the Tenants' security deposit by August, 15, 2013. As the Landlords have not been successful in their application to retain the Tenants security deposit; I find for the Tenants and grant an order for the return of the security deposit in the amount of \$415.00.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlords did not apply

to recover the filing fee of \$50.00 the Landlords will bear that cost that they have already paid.

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

Security deposit	\$ 415.00	
Filing fee	\$ 50.00	
Total		\$ 465.00

### Conclusion

A monetary order has been issued to the Tenants' for \$465.00.

The Landlords' application is dismissed without leave to reapply.

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: November 12, 2013

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Residential Tenancy Branch

