



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order: for damage to the unit, site or property; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the Tenants for the cost of the Application.

The Landlord and the Co-landlord (not named on the Application) appeared for the hearing. The Landlord testified that she served each Tenant with the Notice of Hearing documents by registered mail on December 30, 2013 and provided the Canada Post tracking numbers as evidence for this method of service. Section 90 of the Act states that a document served by mail is deemed to have been received 5 days after it is mailed. Based on this, I find both Tenants were deemed served the hearing documents on January 4, 2014.

There was no appearance for the Tenants or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the Act. The Landlord’s undisputed testimony and documentary evidence was carefully considered in this decision.

### Issue(s) to be Decided

- Is the Landlord entitled to use the Tenant’s security deposit in full satisfaction of the Landlord’s claim for damage to the rental suite?

### Background and Evidence

The Landlord testified that the tenancy started on September 1, 2011 for a fixed term of one year after which point the written tenancy agreement was extended for another

fixed term of one year to end on August 31, 2013, after which point the Tenants vacated the rental suite.

At the start of the tenancy, the Tenants paid a \$1,750.00 security deposit and rent was established at \$3,500.00 and was increased when the tenancy was renewed as above to \$3,650.00. The rent was payable on the first day of each month.

The Landlord testified that a move in condition inspection report, provided as evidence was completed at the start of the tenancy. The Tenant and Landlord had arranged on August 20, 2013 to meet at the rental suite on August 31, 2013 to complete the move out condition inspection report at 5:00 pm. The Landlord testified that she received a text message from the Tenant the day before that he could not make 5:00 pm; however the Tenant did not specify a time he would be present or suggest one. The Landlord attended the rental suite before 4:00 pm and testified that she remained at the suite well after 5:00 pm waiting for the Tenants to appear for the move out inspection report, which they did not. The Landlord provided a copy of the e-mail exchange to support this testimony.

The Landlord testified that they received a forwarding address in writing from the Tenant in the form of a letter which was personally served to her on December 24, 2013. As a result, the Landlord made the Application on December 30, 2013.

The Landlord testified to the following amounts being claimed from the Tenants' security deposit as follows:

- \$320.00 for garden clean up as required by an addendum in the tenancy agreement, supplied as evidence, which required the Tenants to do garden maintenance, which they did not do.
- \$38.90 for the cost of replacing the dining room drapes.
- \$99.75 for cleaning of the windows which were left dirty at the end of the tenancy by the Tenants.
- \$173.25 for the replacement of damaged heat registers and bug screens in the rental suite.
- \$262.50 for painting costs for marks and damage repairs to the walls and interior wood work.
- \$273.00 for the replacement of venetian blinds. The Landlord testified that she got 3 quotes for the cost of the blinds and chose the cheapest ones to mitigate her loss.

- \$262.50 for cleaning costs of the house. The Landlord testified that while the Tenants had shampooed the carpets and cleaned the upstairs, the remainder the rental suite had not been cleaned, namely the kitchen cupboards and stove and the bathrooms.

The total amount being claimed by the Landlord is \$1,429.90. The Landlord provided a multitude of photographic evidence and invoices in support of the above damages.

### Analysis

The Tenants failed to appear for the hearing and did not provide any evidence in advance of this hearing. As a result, I have completed the following analysis of the Landlord's claim based on the undisputed evidence of the Landlord and on the balance of probabilities.

Firstly, I find that the Landlord made the Application to keep the Tenants' security deposit within the time lines stipulated by Section 38 of the Act.

The provisions relating to a condition inspection report are detailed by Section 35 of the Act and Part 3 of the Residential Tenancy Regulation. The regulation requires the Landlord and Tenant to consider any reasonable time limitations of the other party that are known and that affect the part's availability to attend the inspection. It also requires the Tenant to propose an alternative time to the Landlord if the time proposed by the Landlord is not workable for the Tenant.

Based on the undisputed evidence of the Landlord and the e-mail evidence, I find on the balance of probabilities that the Landlord worked with the Tenant in agreeing on a time that the move out condition inspection report was going to take place and agreed with the Tenant that it would be at 5:00 pm; even though Section 37(1) of the Act requires the Tenant to vacate a 1:00 pm on the last day of the tenancy. However, I find that the Tenant failed to appear for the agreed time or at any time during the last day of the tenancy to take part in the move out inspection report. As a result, I find that the Tenants have extinguished their right to the return of the security deposit. However, the Landlord indicated that they only wanted to claim for the damages and wanted to return the outstanding amount to the Tenants.

As a result, I also find that the Landlord has provided sufficient evidence, as detailed above, that the Tenants had caused damage to the rental suite and I find that the Tenants should be held responsible for this damage.

Therefore, I award the Landlord's claim in full in the amount of \$1,429.90. As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the \$50.00 filing fee for the cost of this Application pursuant to Section 72(2) (b) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$1,479.90.

### Conclusion

As the Landlord already holds \$1,750.00 of the Tenants' deposits, I order the Landlord to retain \$1,479.90 of the Tenants' security deposit in full satisfaction of the Landlord's Application, pursuant to Section 38(4) (b) of the Act.

As a result, the Landlord will return the balance of the Tenants' security deposit after making the above deduction, in the amount of \$270.10.

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 11, 2014

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Residential Tenancy Branch

