



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            MNSD, MND, MNDC, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order totalling \$2000.00 and a request to retain the full security deposit in partial satisfaction of this claim. The landlords are also requesting recovery of the \$50.00 filing fee, for the cost of this application, from the tenants.

The tenant's application is a request for monetary order for \$11,807.35, and also requesting recovery of the \$100.00 filing fee, for the cost of this application, from the landlords.

### Background and Evidence

#### Landlords application

The landlords testified that:

Residential Tenancy Branch  
Ministry of Housing and Social Development

- The tenant only paid \$225.00 of the security deposit.
- When the tenants vacated they left the rental unit in need of extensive cleaning and repairs.
- The rental unit was new when the tenants moved in and therefore all the damages had to have been caused by the tenants.
- The tenants also frequently paid their rent late and because of the tenant's failure to pay rent on time the landlord had to borrow money to pay their mortgage and had to pay \$250.00 interest on the personal loan.

The landlord is therefore requesting an order as follows:

cleaning costs	\$475.00
Interest on personal loan	\$250.00
Filing fee	\$50.00
Total	\$1975.00

The landlord requests an order allowing the landlord to retain the full \$225.00 security deposit towards this claim, and is requesting that a monetary order be issued against the tenants in the amount of \$1750.00.

The tenants testified that:

- They paid the full security deposit of \$725.00 as listed in the tenancy agreement.
- \$225.00 of the deposit was paid with the first month rent, and \$500.00 was paid in cash to the landlord, however the landlord did not issue a receipt for the \$500.00 cash.
- There was no move in or move out inspection done, however after vacating the landlord told them that the condition was okay and that it was fine.
- At the end of the tenancy there was no damage mentioned of any kind other than a window handle, repair of which was offered by a mutual friend for free.
- The landlords made no mention of need for cleaning or wall repairs.

- In May of 2009 at the request of the tenants the landlords had agreed that rent could be paid on the eighth of each month, as that was the date that the tenants were paid.

The tenants therefore believe that the landlord's full claim should be dismissed.

## Tenants application

The tenants testified that:

- The male tenant was introduced to the male landlord by a mutual friend at the male tenant's place of employment.
- At the meeting landlord agreed to rent the rental unit to them for \$1450.00 per month, with the security deposit of \$725.00.
- The male tenant had \$500.00 cash on him at that time and therefore he paid that \$500.00 as a portion of the security deposit to the landlord, however no receipt was issued.
- On April 29, 2009 they signed the lease agreement dated April 30, 2009, with the rental amount of \$1450.00 per month and the security deposit of \$725.00 per month.
- On April 30, 2009 when the tenants arrived at the rental unit with their belongings the landlords unilaterally change the rent to \$1550.00 per month and refuse to provide keys to the rental unit unless the tenants agreed to this change and therefore, under duress, they agreed to the increase.
- The landlords did not request an increase to the security deposit however and therefore the deposit is still listed on the tenancy agreement as \$725.00, which is half of the original amount agreed on of \$1450.00.
- As a Cheque had already been prepared in the amount of \$1675.00 to cover the rent of \$1450.00 and the \$225.00 balance of the security deposit, the tenants were now \$100.00 short and therefore on the back of the tenancy agreement the landlord wrote some calculations that indicated that this \$100.00 was still owed, if as the landlord claims, there was a further \$500.00 owing for the security deposit, why was that not indicated in these calculations.

- The extra \$100.00 was added onto the June rent and the cheque was issued in the amount of \$1650.00 for the month of June 2009.
- August 1, 2009 the landlord served them with the Notice to End Tenancy for landlord use of property which stated “all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or close family member intends in good faith to occupy the rental unit”. This was on the proper two months notice form, however the landlords had changed two months to three months.
- In July 2009 the landlords informed the tenants that they now wanted rent to be paid on the first of the month, and therefore on August 1, 2009 they paid their rent by cheque to the landlords, however when they receive the chequeback from the financial institution the 1 had been changed to an 11, and notation had been added on the check which stated “received cheque at 10 p.m. August 11, 2009, deposit 12 August 2009”.
- August 10, 2009 the landlords threatened to cut off the electricity and the water supply to the rental unit, and they did subsequently turn off the hot water but did not turn off the electricity. They also locked the front gates of the property and as a result the tenants had to access the rental unit through the unpaved laneway.
- They had no hot water, or access through the gate, for two days, and hot water and access were not reinstated until the tenants inform the landlords that the Residential Tenancy Office would intervene if they did not turn the hot water back on and unlock the gate.
- On September 19, 2009 they provided the landlords with a 10 day Notice to End Tenancy, noting a move out date of September 30, 2009.
- They vacated on September 30 and after moving out they requested that the landlords do a condition inspection. An Inspection was eventually arranged for October 3, 2009 and at that time the landlords told them that the condition was okay, that it was fine. No condition report was ever signed or received from the landlords

- Immediately after moving out they noticed that new tenants were moving into the rental suite, and they did not appear to be related to the landlords.

The tenants are therefore requesting an order as follows:

return of additional \$100.00 per month rent paid under duress	\$500.00
Expedited move costs	\$3238.91
Registered mail for a forwarding address	\$8.44
Bank fees for cheque copies	\$45.00
Return of last month's rent	\$1550.00
The equivalent of two months' rent for failing to comply with the reasons given for ending the tenancy	\$3100.00
Compensation for two days without hot water and safe property access	\$2000.00
Legal fees and disbursements	\$2000.00
Filing fee	\$100.00
(Actual Total)	(\$13992.35)
Total amount requested by the tenants	\$11,807.35

The landlords testified that:

- The female tenant and the female landlord originally met at their children's school grounds and it is there that the original tenancy agreement was entered into.
- The tenants agreed to pay rent of \$1550.00 per month not \$1450.00 per month, the agreement was that rent would be \$1450.00 per month if the tenants wanted two bedrooms or \$1550.00 per month if they wanted three bedrooms and in this case the tenants chose three bedrooms.
- They never received \$500.00 in cash from the male tenant towards the security deposit.

Residential Tenancy Branch  
Ministry of Housing and Social Development

- They only received a total of \$225.00 in security deposit, \$125.00 on the original cheque, and a further \$100.00 in June 2009.
- They never agreed to allow the tenants to pay rent on the eighth of the month and in fact the repeated late rent payments made it difficult for them to meet their financial obligations.
- They did originally give the tenants a two month Notice to End Tenancy, that was changed to three months, for landlord use, thinking this would give the tenants extra time to find a new place to rent however when they found out that it was an improper notice they served the tenants with a one month notice to end tenancy and subsequently, with a 10 day Notice to End Tenancy, when rent was late in August of 2009.
- The tenants did not pay their rent on August 1, 2009, it was paid on August 11, 2009 and although the landlords did write on the cheque that it was received on the 11th and deposit on the 12th they did not alter the date from August 1, 2009 to August 11, 2009
- The one month Notice to End Tenancy and the 10 day Notice to End Tenancy were both served on the tenants 14-year-old son.
- At no time did they ever turn off the hot water to the rental unit or lock the front gate. Had they turned off the water to the rental unit it would have turned off their hot water as well as they are all on the same hot water system. Had they locked the front gate it would have denied them access as well.
- They never received the 10 day Notice to End Tenancy that the tenants claim to have served.
- It was the tenants who refuse to do a proper move out inspection even when they were requested to do so and at no time did they tell the tenants that the condition was okay and that it was fine.
- New tenants did move into the rental unit however that is because this tenancy ended by the one month notice not the 2 month notice and therefore there was no

requirement to comply with the reasons given on the 2 month Notice to End Tenancy.

- Also since the tenancy was ended by the one month Notice to End Tenancy the landlords are not required to pay any compensation to the tenants.

The landlords therefore believe that the tenant's full claim should be dismissed.

## Analysis

I found the testimony and arguments made by both the landlords and the tenants for both these applications to be reasonable and plausible, and therefore my decision comes down to the burden of proof.

## Landlord's application

It is my decision that the landlords have not met the burden of proving that the rental unit was left in need of cleaning and repairs.

The Residential Tenancy Act requires that the landlord do both a move in inspection, and produce a report, and a move out inspection, and produce a report, and in this case the landlords failed to do either.

Further the landlord has supplied no evidence to show that they complied with the requirement of offering two opportunities to do the move out inspection, or that the required written, final opportunity to do move out inspection, was ever served on the tenants.

The reason for the requirement is to avoid situations such as this, because if the reports were properly done there would be a written record of the condition of the rental unit when the tenants moved in and the condition of the rental unit when the tenants moved out.

The landlord argued that the damages must of been done by the respondent's, because the rental unit was new when they moved in, however by failing to do a proper move out inspection there is not sufficient evidence to meet the burden of proving that the rental unit was in poor condition when the tenants vacated.

The landlords have provided unsworn letters from a person claiming to have cleaned the rental unit, and from a person who has given an estimate for repairs, however neither of these persons was available at the hearing to give direct testimony or to be cross examined and therefore I prefer the sworn testimony of the tenants in this matter.

I therefore will not allow the claims for cleaning costs, or wall repairs and painting.

I also dismissed the claim for interest on a personal loan, because even if the landlord was able to show that the tenants were late paying the rent, the Residential Tenancy Act only allows a penalty of \$25.00 for late rent payment and only if there is a clause in the tenancy agreement stating that there will be a late payment charge. In this case there is no such clause.

Since I have denied the full amount claimed by the landlords it is my decision that the full security deposit must be returned to the tenants and the landlords must bear the \$50.00 cost of the filing fee that they paid for their application for Dispute Resolution.

### Tenants application

First of all I want to state that I have no authority to award registered mail costs, bank fees for cheque copies, and legal fees and disbursements, as these are all costs of the dispute resolution process and I have no authority to award costs other than the filing fee which is dealt with below.



It is my decision that the tenants have not met the burden of proving that the original rent was \$1450.00, as the landlord's explanation for the reason why the rent was set at \$1550.00 is equally plausible. I therefore will not allow the claim for \$500 in rent overpayments.

Since I have denied the landlords full claim, the tenants do have the right to the return of their full security deposit however since the landlords did apply for dispute resolution to keep the security deposit within the time limits set out under the Residential Tenancy Act, the tenants do not have a right to double the security deposit.

It is my decision however that the tenants have met the burden of proving that they did pay a total security deposit of \$725.00. The sworn witness statement in which the witness claims to have seen the \$500.00 cash payment, combined with the notation on the back of the tenancy agreement which appears to be in the landlords handwriting, has convinced me that the tenant did make a \$500.00 cash payment to the landlords.

The landlords must therefore return \$725.00 to the tenants.

I deny the landlords claim for expedited move costs. The tenants were given a two month Notice to End Tenancy and moved pursuant to that notice however there is nothing in the Residential Tenancy Act that requires a landlord to pay for the tenants moving costs, or lost income, when they give a two month Notice to End Tenancy.

I will however allow the tenants claim for return of the last month's rent paid, as it is my finding that the tenants moved pursuant to the Notice to End Tenancy for landlord use, and section 51 of the Residential Tenancy Act states:

Residential Tenancy Branch  
Ministry of Housing and Social Development

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlords claim that the tenants vacated pursuant to a subsequent one month Notice to End Tenancy, however it is my finding that the landlords have not met the burden of proving that this notice was ever received by the tenants. By their own admission the landlords served the Notice to End Tenancy on a 14-year-old child and since the Residential Tenancy Act requires that the notice be served on an adult, and since the landlords denied ever receiving such a document from their child, it is my decision that proof of service has not been established.

I do not accept the argument put forward by Counsel for the landlords that a 14-year-old child can be considered an adult in this case.

The landlords must therefore return \$1550.00 to the tenants.

I will not however allow the claim for the equivalent of two months' rent for failing to comply with the reasons given for ending the tenancy on the section 49 Notice to End Tenancy, because I am convinced that the landlords legitimately thought that the tenancy was ending pursuant to the one month Notice to End Tenancy, which they believed had been received by the tenants.

I also deny the claim for two days without hot water and safe property access, as it is my decision that the tenants have not met the burden of proving this portion of their claim. It is basically just their word against that of the landlords and since the burden of proof lies with the person making the claim, they have failed to meet that burden of proof.

I will allow ½ of the claim for the \$100.00 filing fee that was paid by the tenants. I will not allow the full amount claimed, because the overall amount I have allowed is less than the \$5,000.00 amount at which the filing fee goes from \$50.00 to \$100.00.

## Conclusion



# Dispute Resolution Services

Page: 11

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Landlords Application

The landlord's application is dismissed in full without leave to reapply.

## Tenants Application

I have issued an order for the landlords to pay \$2325.00 to the tenants.

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: February 16, 2010.

---

Dispute Resolution Officer