



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

Landlord: MND, MNSD, FF  
Tenants: MNSD, MNDC, FF

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for double the return of the security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

One tenant appeared as agent for both tenants, and an agent for the landlord attended. The parties each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence and information has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to return of the security deposit or double the base amount of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

This tenancy began on May 1, 2009 as a fixed term tenancy which expired on April 30, 2010, and was then to continue on a month-to-month basis. Rent in the amount of \$1,150.00 was payable in advance on the 1<sup>st</sup> day of each month and there are currently no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$575.00. A move-in condition inspection report was completed at the beginning of the tenancy.

The landlord's agent testified that on March 31, 2010 he received notice from the tenants that they would be moving into a new residence on April 15, 2010. No rent had been paid for the month of April, 2010, and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served upon the tenants by registered mail on April 12, 2010.

The landlord's agent further testified that on April 16, 2010 he sent an email to the tenants asking what their status was, and that the owner would be entering the unit on April 19, 2010 at 1:00 p.m. He received no reply from the tenants, and the owner attended the unit on April 19, 2010. The owner was concerned about the state of the unit and expressed to the agent that it needed to be cleaned and re-rented immediately. He had the unit cleaned and items that had been left in the unit were taken to the local landfill. Photographs of the unit and receipts for cleaning and "rubbish" removal were provided in advance of the hearing. The landlord did not complete a move-out condition inspection report, nor attempt to contact the tenants again after April 16 to schedule the inspection.

The tenants paid half of the outstanding rent on April 30, 2010, and the balance on May 7, 2010. They also provided the landlord with their forwarding address in writing on April 30, 2010.

The landlord is claiming \$150.00 for "Rubbish Removal" from an invoice dated April 20, 2010; \$175.00 for "Rubbish Removal + worker" from an invoice dated April 26, 2010; \$588.00 for "Emergency Clean" from an invoice dated April 21, 2010; \$25.00 for

cleaning the fridge from an invoice dated April 28, 2010; cleaning supplies in the amount of \$54.78 for which a receipt is provided; and \$51.51 for a remote control for which a receipt is provided. The landlord's agent also testified that the dates of the invoices do not necessarily reflect the date that the work was completed.

The tenant testified that he and his roommate had given their notice to vacate the unit and had not paid the rent due for the month of April, 2010. The notice given said they would be moving into their new unit on April 15, 2010, not that they expected to be totally moved out of this unit by that date, and acknowledged that they were responsible for rent for the entire month of April.

He further testified that they did not receive the email from the landlord's agent on April 16, 2010, as they had gone camping. They had received the Notice to End Tenancy and it stated they had until April 22, 2010 to be out of the residence. Upon returning, they replied to the landlord's email on April 21, 2010. The tenants are claiming \$350.00 for the furniture that the landlord disposed of.

The parties agree that the tenants provided the landlord with their forwarding address in writing on April 30, 2010, however have not received any portion of the security deposit from the landlord. The landlord's application to retain the security deposit was filed on May 21, 2010, beyond the 15 days permitted under the *Act*, and therefore the tenants are claiming double the base amount of the security deposit.

### **Analysis**

It's clear in the evidence that the parties were confused with respect to dates. That confusion started with the tenants' notice which stated, "We are moving into a new apartment on April 15<sup>th</sup>." That statement caused the landlord's agent to believe that the tenants would be out of the unit by that date and therefore took steps to mitigate his loss by attempting to ready the unit for new renters. Under the *Act*, the tenants had an obligation to pay the rent for the month of April, and did so, albeit late, and were also entitled to occupation of the unit until April 30, 2010. That entitlement changed when

the landlord's agent served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The notice was served on April 12, 2010 by registered mail, which is deemed to be received by the tenants 5 days after mailing, being April 17, 2010. The tenants would then be entitled to pay the rent in full or dispute the notice within 5 days, which would be April 22, 2010, or vacate the premises within 10 days, or by April 27, 2010. The landlord did not wait until that date, and even if the landlord's calculation of the dates did not include the 5 days for deemed service, the landlord took action prior to any date of entitlement. The tenants also calculated the same date of the landlord's entitlement to be April 22, 2010 because that's what the notice stated, however the landlord took action on April 19, 2010.

The landlord also failed to provide the tenants with any opportunity to conduct a move-out condition inspection, thereby contravening section 23 of the *Act*. The consequence for the landlord if the report requirement is not met under section 23 is an extinguishment of the landlord's right to claim against the security deposit. Therefore, the landlord's application to retain the security deposit in partial satisfaction of the claim for damages must be dismissed.

Both parties have applied for a monetary order. I find that since the landlord cleaned out the unit prior to having the legal right to do so, his right to claim for damages must be dismissed. The move-out condition inspection is intended to provide the tenant with an opportunity to correct any situation that may result in the landlord applying to retain any portion of the security deposit for damages.

With respect to the tenants' application for a monetary order, I find that the tenants had every reason to believe that they had until April 22, 2010 and are entitled to recovery of the items disposed of by the landlord. The tenants have not provided receipts to confirm the amount of damages they may be entitled to, however, I have the photographs provided by the landlord that show items belonging to the tenants, including 2 small desks, a steno chair, a plastic end table and 2 lawn chairs. The tenant testified that none of the items were "high end" or expensive, however I find that the tenants' claim for \$350.00 is reasonable in the circumstances.

With respect to the security deposit, I find that the landlord received the tenants' forwarding address in writing on April 30, 2010 and did not make an application for dispute resolution until May 21, 2010, nor did the landlord return the security deposit to the tenants within the 15 days required by the *Act*, and therefore the tenants are entitled to double the return of the base amount of the security deposit.

### **Conclusion**

I find that the tenants have established a claim for the security deposit of \$575.00, no accrued interest, and double the base amount of the security deposit for a total of \$1,150.00.

I further find that the tenants have established a claim for \$350.00 in damages.

The tenants are also entitled to recover the \$50.00 filing fee for this application.

I grant the tenants an order under section 67 for the balance due of \$1,550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is hereby dismissed in its entirety 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: October 14, 2010.

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Dispute Resolution Officer