



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, MND, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlords filed their claim requesting monetary orders for damage to the rental unit, for unpaid rent, for money owed or compensation under the Act or tenancy agreement, to keep all or part of the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenants requested monetary orders for return of double the security deposit and for compensation under the Act or tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Are the Landlords entitled to the monetary compensation sought?

Are the Tenants entitled to the monetary compensation sought?

### Background and Evidence

These parties had one prior hearing, in which the Tenants were successful in having a Notice to End Tenancy issued by the Landlords set aside by the Dispute Resolution Officer. The hearing also involved some monetary claims by the Tenants, most of which were dismissed with leave to reapply.

This tenancy began in August of 2009, with the parties agreeing on a reduced rate of rent of \$925.00 for the rental unit. (The parties had agreed that the rent should be discounted due to the condition of the rental unit and in the earlier Decision between the parties, the Dispute Resolution Officer made a finding that the reduced rate of rent was, "designed to compensate the Tenants for having a deficient bathroom during the tenancy.") The Tenants had paid the Landlords a security deposit of \$375.00 in October of 2006, at the first rental unit the parties were involved in. When the Tenants moved to the subject rental unit with the same Landlords, the security deposit was transferred to this property and the Tenants paid an additional \$87.50, for a total security deposit of \$462.50.

At the outset of this tenancy the parties agreed that the rental unit needed alterations. The parties agreed the Tenants would supply the labour and the Landlords would pay for the materials for this work, since both parties agreed this was to be a long term tenancy arrangement, of at least two to five years.

The Tenants testimony was that they supplied the labour for this work without charge to the Landlord, as they wanted a tenancy of two to five years. The Landlords testified that they too had thought the tenancy would endure for two to five years, but the Tenants had done the labour for nothing.

The parties did not put these arrangements in writing and there was no written tenancy agreement. I note there were also no condition inspection reports performed either.

According to the evidence of the Tenants they performed work at the rental unit including building a fence and putting in flooring at the rental unit, during July of 2009 and the Tenants took possession of the rental unit on or about August 1, 2009.

The relationship between the parties appears to have begun to deteriorate following events which occurred during October of 2009, following an agreement regarding insulating the attic at the rental unit. The Tenants had the help of a relative, who had been a professional insulator according to their evidence, and sent the Landlords an invoice for \$636.88 which included labour for the Tenants of approximately \$300.00. The Tenants allege the Landlords became angry at this invoice because the Tenants were charging for labour and then began talking about evicting the Tenants. I note the prior Decision made a determination on this issue and therefore, this event is simply provided to illustrate the changing circumstances involved here, as I have no authority to change the prior Decision.

The Tenants allege that following this disagreement, the Landlords began to harass them and make them feel uncomfortable in the rental unit. For example, the Tenants allege that the Landlords began to attend at the rental unit without giving the Tenants the Notice required under the Act. Following this, there were two instances at the rental unit between the Landlords and the Tenants which required police attendances.

Despite these problems, the Tenants still approached the Landlords in July of 2010, requesting a fixed term lease for two years. The Tenants allege that the Landlords refused this, and simply wanted to know when the Tenants were leaving the rental unit. The Tenants allege that this is when they asked the Landlords to accept an oral, short notice to end the tenancy, and they informed the Landlords they would vacate the rental unit on August 1, 2010. According to the evidence of the Tenants the Landlords refused to accept this short notice and then informed the Tenants that their July rent cheque had been returned due to insufficient funds.

The Tenants went to their bank and learned there had been an error by the bank, and withdrew the cash. (The Tenants have provided in evidence a letter from their bank confirming this was a banking error.) The Landlords then refused to take the cash unless the Tenants paid an additional \$50.00 for NSF fees.

According to their testimony and submissions, over the latter part of July 2010, the Tenants moved out and cleaned the rental unit. According to the Tenants the Landlords took possession of the rental unit on or about July 26, 2010.

On July 30, 2010, they returned to the rental unit and provided the Landlords their forwarding address in writing. According to the Tenants the Landlords refused to take the forwarding address in writing, and the Tenants left this paper at the door in front of the Landlords.

The Landlords have claimed that the Tenants failed to pay rent for July and because they did not provide the required notice, the Landlords have also requested an award for loss of rent for August of 2010. The testimony of the Landlords was that the Tenants did not let them know when they were leaving the rental unit.

In evidence the Landlords provided a letter from a third party witness, apparently the pastor from their church, regarding the condition of the rental unit on July 30, 2010. The pastor writes the rental unit was, "... relatively clean, one bedroom door was damaged and the drywall around the electrical panel needed repair." The third party also writes that the outside of the property had portions overrun with weeds, there was garbage under some trees, and the lawn was not mowed.

The Landlords also testified that they performed no incoming condition inspection report because they were not available and the rental unit was in an ongoing mess at the start of the tenancy.

The Landlords testified that the agreement between the parties for work at the unit was that the Landlord would pay for the supplies and the Tenants would do the labour for nothing.

The Landlords also testified that on July 13, 2010, the Landlords found out the Tenants had a cat and that they had hid this from the Landlords for the past three years, when the Tenants were in the first rental unit owned by the Landlords. This, as well as other issues, prohibited the parties from agreeing on the terms of the tenancy agreement.

The Landlords are also claiming \$40.00 for damage to a door, \$44.80 for missing electrical breakers, finishing and fixing front and rear doors \$200.00, \$15.00 to re-key the garage door, \$20.00 for a smoke detector, \$320.00 for cleaning and painting the rental unit, \$160.00 for yard cleanup, and \$72.00 for advertising.

The Tenants acknowledged the damage to the bedroom door and state they did the last yard work at the beginning of July. However, the Tenants testified the breakers were theirs and were installed for the use of a welder at the unit and that they supplied their own smoke detector, and removed these when they vacated the rental unit.

The Tenants are claiming for labour they performed at the rental unit, on the basis they did not get the two to five year term tenancy they sought, when they agreed to do the labour at the rental unit. They claim, based on a rate of \$20.00 per hour, \$800.00 for the fence, \$400.00 for the back door, \$400.00 for laminate floor and \$80 for sizing the door and installing a threshold.

The Tenants further claim for moving expenses of \$1,000.00, an award of \$900.00 to offset the increased rent they now are paying at their new suite and for \$500.00 for other rent they paid in July, \$925.00 for double their security deposit, \$100.00 for items left at the rental unit, and \$2,000.00 for intentional infliction of mental suffering.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the following:

I find both parties here paid little attention to the Act and there have been numerous breaches of the Act by both parties. For example, I find the Landlords breached section 13 of the Act by failing to have a written tenancy agreement and sections 23 and 35 by failing to perform condition inspection reports. I find the Tenants breached section 45 of the Act by failing to give the Landlords the required Notice to End Tenancy and section 32 by failing to clean or do maintenance to the yard prior to vacating the rental unit.

In regard to the monetary claims of the Landlords, I find they have established a claim for \$1,850.00 for July and August of 2010, due to the unpaid rent for July and loss of August rent due to the lack of proper Notice for leaving the rental unit. I also find that the Tenants did not perform the yard work and damaged the bedroom door, and award the Landlords \$200.00 for these. I find the Landlords had insufficient evidence to prove the other claims made against the Tenants and dismiss these without leave to reapply. I also find the Landlords filed their claim within the required 15 days of the end of the tenancy and therefore the Tenants are not entitled to the return of double the security deposit. Pursuant to section 72, I allow the Landlords to retain the security deposit and interest of \$474.33 in partial satisfaction of the claim. Therefore, subject to the offset described below, I find the Landlords have established a total monetary claim of **\$1,575.67**, comprised of the \$2,050.00 awarded above, less the \$474.33 security deposit and interest.

In regard to the Tenants' monetary claims, I find the parties had an agreement that the Tenants would do labour in exchange for a term tenancy of two to five years. As the tenancy did not endure for this length of time, I find the Tenants have suffered a loss and the Landlords must compensate the Tenants for these losses. I award the Tenants \$800.00 for labour for the fence, \$400.00 for labour to repair the door, and \$400.00 for the laminate floor. I find the Tenants are not entitled to an offset in rent for their new accommodations, as they have been compensated for their labour above. I dismiss, without leave, the other claims of the Tenants as they had insufficient evidence to establish they suffered mental anguish, or the other amounts claimed. Therefore, I find the Tenants have established a total monetary claim of **\$1,600.00**.

Pursuant to section 72 of the Act, I offset the amounts awarded to each party (\$1,600.00 - \$1,575.67 = \$24.33) and order **the Landlords to pay the Tenants the sum of \$24.33.**

As both parties were in breach of the Act, I decline to award filing fees for the Applications.

The Tenants are granted a monetary order in the amount of \$24.33. This order may be enforced in the Provincial Court (Small Claims division).

As both parties seem to have little understanding of the rights and obligations they have under the Act, I am providing both parties with a guide book to the Act for their information and use.

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 19, 2010.

---

Dispute Resolution Officer