



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes** MNDC, MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of the security deposit, or double the amount of the security deposit; and to recover the filing fee from the landlord for the cost of this application.

One of the tenants attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing however, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on September 20, 2010, the landlord company was not represented by an agent at the hearing.

All information and testimony provided has been reviewed and is considered in this Decision.

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

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

Are the tenants entitled to a monetary order for return of the security deposit, or double the amount of the security deposit?

### **Background and Evidence**

This fixed-term tenancy began on March 16, 2010 and ended on August 28, 2010 prior to the expiry of the fixed term of September 30, 2010. Rent in the amount of \$965.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$482.50.

The tenant testified that she and her husband have two small children, ages 2 years, and 10 months old. She stated that she told the landlord that they wanted to move a month before the expiry of the fixed term because of disturbances from the neighbours in the suite below. The tenants gave written notice to the landlord on July 31, 2010 of their intention to vacate the unit at the end of August. The landlord told the tenants that if he could rent the unit for the month of September, 2010, he would not charge the tenants for the rent for that month.

The tenant further testified that the landlord's agent contacted the tenants on August 28, 2010 and asked them to return to conduct the move-out condition inspection report, but the tenants asked that they return the following day instead. The landlord's agent replied that unless they did it on the 28<sup>th</sup> of August, they wouldn't be able to do it at all because he had new tenants moving into the unit on the 29<sup>th</sup>. No move-out condition inspection report was completed.

The tenant also testified that they secured a new place to live prior to the end of August, and provided the landlord's agent with their forwarding address in writing on August 15, 2010. They gave another note to the landlord's agent containing their forwarding address when they returned the keys on August 28, 2010. The landlord returned \$75.50 of that security deposit to the tenants by mail, which was received by the tenants on September 15, 2010. The tenants have not been served with an application for dispute resolution by the landlord and have not agreed that the landlord retain any portion of the security deposit. The tenants claim double the amount of the portion of the security deposit that was not returned to them, being a claim for \$814.00.

The tenant also testified that the reason for moving was due to the disturbances from the neighbours in the lower level and constant marihuana smoking in that unit which travelled up into their unit during the months of June, July and August, 2010. She was concerned for the health of her small children because the smell of the smoke was strong. Requests of the landlord to deal with it always resulted in a promise to do something about it, but nothing was done and the problems persisted. The tenant provided copies of numerous emails to the landlord requesting action for the marihuana smoke, noise and fear of retaliation from the other unit due to complaints made to the police. Copies of police reports were also provided. The landlord's agent did not reply to those emails, but the tenant testified that an agent spoke to her and her husband indicating that he would do something about the complaints, but no action was taken. The tenants claim one half of a month's rent for each of the months of June, July and August, 2010 for loss of quiet enjoyment. She also testified that they moved from the rental unit prior to the end of the fixed term because of their loss of quiet enjoyment and

the inactions of the landlord or its agents to rectify the problems and the health concerns of their young children.

### **Analysis**

In the circumstances, and in the absence of any evidence to the contrary, I find that the tenants' right to quiet enjoyment has been breached and the landlord has failed to take any corrective action. I have reviewed the emails sent to the landlord, and note that those emails were sent during the months that the tenants have claimed a rent reduction. I have also reviewed the police reports and find that the complaints to the police also occurred during that time period.

The *Residential Tenancy Act* states that:

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In the absence of any evidence to the contrary, I also find that the landlord refused to reply to the tenants' concerns in writing, and the landlord has neglected the lawful rights of the tenants by failing to take any action which has devalued the tenancy to such a degree that the tenants felt they had no alternative but to move out prior to the end of the fixed term. The tenants have claimed ½ of the rent paid for the months of June, July and August, for a total rent reimbursement of \$1,447.50, and I find that the tenants have attempted to mitigate by emailing the landlord on numerous occasions requesting that an agent for the landlord company correct the situation.

With respect to the security deposit, the *Residential Tenancy Act* states that if the landlord fails to return the security deposit or apply for dispute resolution to keep the deposit within 15 days of the date the tenancy ends or the tenant provides a forwarding address in writing, the landlord must be ordered to return double the amount of such security deposit or pet damage deposit. In this case, I find that the tenancy ended on August 28, 2010 and the landlord had a forwarding address in writing on August 15, 2010 and again on August 28, 2010. The landlord has returned \$75.50 but has not

applied for dispute resolution. Therefore, I find that the tenants' application is just in the circumstances.

### **Conclusion**

For the reasons set out above, I hereby grant the tenants a monetary order for double the return of the security deposit that was not returned to the tenants, for a total of \$814.00.

With respect to the tenants' application for a reduction in rent for their loss of quiet enjoyment, I hereby order that the landlord reimburse the tenants the sum of  $\frac{1}{2}$  of a month's rent for each of the months of June, July and August, 2010, for a total of \$1,447.50.

The tenants are also entitled to recovery of the \$50.00 filing fee, for a total monetary order in the amount of \$2,311.50.

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: January 25, 2011.

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Residential Tenancy Branch