



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the tenants: MNSD, RPP, FF  
For the landlords: MNR, MNSD, FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution under the Residential Tenancy Act (the “Act”).

The tenants applied for a monetary order for a return of their security and pet damage deposits, an order requiring the landlords to return the tenants’ personal property and to recover the filing fee.

The landlords applied for a monetary order for unpaid rent, authority to retain the tenants’ payment of rent and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, to make submissions to me and to respond each to the other.

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

1. Have the tenants established an entitlement to an order for a return of their security deposit and return of their personal property and to recover the filing fee?
2. Have the tenants breached the Act or tenancy agreement, entitling the landlords to authority to retain the security deposit, for a monetary order for unpaid rent and to recover the filing fee?

### **Background and Evidence**

The tenancy agreement entered into evidence shows that this month to month tenancy was to begin June 15, 2011, and monthly rent was to be \$725.00.

**Tenants' Application:**

The tenants have applied for a monetary order in the amount of \$412.50, which includes a return of their security deposit in the amount of \$362.50 and their pet damage deposit, in the amount of \$50.00.

In support of their application, the tenants submitted that on May 28, 2011, they paid \$362.50 as half a month's rent to use as a deposit to secure the rental unit for June 15, 2011, and \$50.00 as a pet damage deposit.

The tenants submitted that they were given permission to start moving their belongings into the rental unit on June 14, 2011. Upon arrival at the rental unit, according to the tenants, they paid the half month's rent, in the amount of \$362.50; however they later found the rental unit unliveable.

The tenants submitted that the home was to be fully renovated, but that on that day, the home smelled strongly of sewage, the carpets had not been removed and there were large numbers of dead flies coming from the vents. The tenants submit that the landlords had misled them into thinking the rental unit would be in good condition and that all the work would be completed.

The tenants stated that upon the viewing that day, they realized they could not live in such conditions and requested the return of the half month's rent.

According to the tenants, the landlord's agent agreed they could terminate the tenancy and returned the half month's rent payment.

The tenants submitted that they were unsuccessful in their attempts to have their security and pet damage deposits returned, despite numerous requests of the landlord.

In support of their application, included in the tenants' relevant evidence, were two receipts signed by the landlord's agent, one dated May 28, 2011, in the amount \$50.00 for a pet damage deposit, and the other for \$362.50, which indicated "1/2 month rent for June 2011." Despite this evidence, the tenants submitted that the payment of \$362.50 was for the security deposit, not rent, and that they are entitled to recovery of their security and pet damage deposits.

**Landlords' application:**

The landlords have applied for a monetary order in the amount of \$725.00, which includes rent for July 2011, in the amount of \$725.00. The landlords are also asking to retain the ½ month's rent paid.

The landlord submitted that on May 28, 2011, the tenants paid one half month's rent to secure the rental unit for June 15, 2011, and as evidence, also submitted a copy of the receipt.

The landlord stated that on June 14, 2011, the tenants paid \$362.50 as security deposit, but after attending the rental unit, abruptly changed their minds about moving in. As evidence, the landlords submitted a copy of the receipt, dated June 14, in the amount of \$362.50, which notated this payment was for the "damage deposit."

The landlord submitted that there was a small amount of work to be done before the official start of the tenancy on June 15<sup>th</sup>, but that the rental unit was ready for occupancy.

The landlord, after receiving the tenants' verbal notice that they did not want to move in, refunded the tenants' security deposit on June 15, 2011, according to the landlord.

The landlord testified that he agreed with the tenants that he would refund the security deposit and they would forfeit their one half month's rent for not moving in.

The landlords claim unpaid rent for July 2011; however upon query, the landlord testified that the rental unit had been rented out for July 2011, and that they had received rent from a new tenant for July. The landlord submitted that they were entitled to receive this amount whether or not the rental unit had been re-rented due to the tenants' insufficient notice to end the tenancy.

The landlords agree they have not returned the tenants' pet damage deposit.

**Analysis**

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

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.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

### **Tenants' application-**

Section 45 (1) of the Residential Tenancy Act requires a tenant to give notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

I find the landlords and the tenants entered into a valid, enforceable tenancy agreement and that the tenants were responsible for paying monthly rent, beginning June 15, 2011, according to the terms of the written agreement, whether they moved in or not. Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

I find the evidence of the receipts supports the landlord's testimony, which leads me to conclude that the payment of \$362.50 on May 28, 2011, was for ½ month's rent and not for a security deposit.

I further find that the receipt evidence supports that the payment of \$362.50 on June 14, 2011, was for the security deposit and that the landlords returned this amount to the tenants on June 15, 2011.

As I have found that the tenants were responsible for paying rent, beginning on June 15, 2011, and that the landlords have returned their security deposit, I dismiss their claim for \$362.50.

As to the pet damage deposit, the evidence and testimony supports that the tenants provided the landlord with their written forwarding address on June 18, 2011. I accept this evidence.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the pet damage deposit, to the tenant with interest or make application for dispute resolution claiming against the pet damage deposit.  
[Emphasis added]

The failure to comply with this section entitles the tenants to receive double their pet damage deposit.

The landlords did apply for dispute resolution to keep all or part of the security deposit, but the filing on September 13, 2011, was well past the allowed 15 days from June 18, 2011. The landlords do not have the tenants' written consent to retain the security deposit.

I therefore find that the tenants have established a **monetary claim** in the amount of **\$100.00**, which is the amount of their pet damage deposit, doubled.

As the tenants were partially successful with their application, I allow them recovery of part of their filing fee, in the amount of \$25.00.

I find the tenants have established a total monetary claim in the amount of \$125.00, comprised of their pet damage deposit, doubled, and a partial filing fee of \$25.00.

I am enclosing a monetary order for \$125.00 with the tenants' Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

I find the tenants submitted insufficient and inconclusive evidence regarding their claim for a return of their personal property, and I therefore **dismiss** that portion of their application.

#### **Landlords' application-**

As I have found that the tenants were obligated to pay rent, beginning June 15, 2011, I **allow** the landlords to retain the amount of \$362.50, representing rent for one half month.

I **dismiss** the landlords' claim for \$725.00 for rent for July 2011, as the landlords suffered no loss of rent for July.

I have not allowed the landlords recovery of the filing fee.

Conclusion

The tenants are granted a monetary order in the amount of \$125.00.

The landlords are entitled to retain \$362.50, representing one half month's rent.

The landlords' claim for further monetary compensation is dismissed.

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 06, 2011.

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Residential Tenancy Branch