



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The hearing did not conclude on the 1<sup>st</sup> day, and was adjourned for a continuation of testimony and to ensure that the parties had exchanged copies of evidence that they intended to rely on.

The landlords and the tenant all attended the conference call hearing on February 28, 2012 and gave affirmed testimony. The parties also provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other, and were each given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent or utilities?  
Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The parties agree that this fixed term tenancy began on November 1, 2010 and expired on October 31, 2011 at which time the tenant moved out of the rental unit. A copy of the tenancy agreement was provided for this hearing which confirms the fixed term tenancy and states that rent in the amount of \$1,375.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$687.50 as well as a pet damage deposit in the amount of \$687.50, all of which is still held in trust by the landlords.

Both landlords testified, and the first testified that the tenant was sent \$75.00 of the deposits back to the tenant by way of email transfer, which was refused by the tenant

and returned to the landlords' bank account; it became stale dated because it was not electronically accepted by the tenant.

The landlord further testified that a property management company had been retained to look after the rental unit because the landlords were out of the country attending school. The property manager collected post-dated cheques in the amount of \$1,375.00 each for the entire fixed term of the tenancy. The landlords ended the contract with the property management company and the landlord assumes that the property manager shredded or voided the remaining cheques. The landlords had requested that the property manager advise the tenant that rental payments should be made by way of email transfer each month. The first email transfer was in December, 2010 in the amount of \$1,275.00. The landlords did not notice that the payment was \$100.00 short and the tenant continued to pay \$1,275.00 for the remainder of the tenancy. The landlords didn't notice that the payments were \$100.00 short every month from December, 2010 to October, 2011 until after the tenant moved out. The landlords did not authorize the property manager to reduce the rent, and the landlords claim \$100.00 per month for 11 months of the tenancy.

During the tenancy the strata corporation levied a fine against the condominium which is the subject rental unit of this dispute. The fine was levied for the tenant's barking dog, and the landlords provided a copy of the strata fine in the amount of \$200.00. The landlords claim that amount from the tenant and stated that the fine has not yet been paid by the tenant or by the landlords.

The landlord sent an email to the tenant and the tenant responded, but copies of those emails were not provided for this hearing.

The other landlord testified that the tenant's email states that rent was always \$1,275.00, but the tenant actually gave the property manager 13 cheques in the amount of \$1,375.00 for rent and for the deposits although the landlords did not see any of the cheques.

The landlords claim \$1,100.00 for 11 months of a \$100.00 per month shortage in rental payments, \$200.00 for the strata fine and recovery of the \$50.00 filing fee for the cost of this application.

The tenant testified that when the property manager was dismissed, the property manager told the tenant to pay \$1,275.00 per month to the landlords directly by way of email transfer, and the tenant did so. No mention was ever made to the tenant about a shortage until November 15, 2011, when the landlords were supposed to return the security deposit and pet damage deposit to the tenant.

With respect to the strata fine, the tenant testified that when the parties conducted the move-out condition inspection report, the landlord had advised that the landlords were going to contest the fine because the complaint and the fine were both levied on the

same day, and the tenant heard no more about it until receipt of the landlords' application.

The tenant states that because the landlords did not pursue the \$100.00 per month, the landlords ought not to be able to claim that amount from the tenant now after the tenancy has ended. The tenant also stated that a new contract ought to have been prepared once the property manager was dismissed.

### Analysis

The *Residential Tenancy Act* states that a security deposit and a pet damage deposit are 2 very separate deposits. The *Act* also states that a landlord must return all of a security deposit and pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives a forwarding address of the tenant in writing, or the landlord must apply for dispute resolution claiming against those deposits within that 15 day period. If the landlord fails to do so, the landlord must pay the tenant double the amount of the pet damage deposit or security deposit, or both. I find that the tenancy ended on October 31, 2011 and the landlords received the tenant's forwarding address in writing on November 6, 2011. The landlords applied for dispute resolution on November 15, 2011, which I find is within the 15 days provided in the *Act*.

With respect to the landlords' claim for unpaid rent, I agree with the landlords that the tenancy agreement is clear with respect to the amount of rent, being \$1,375.00. However, I find that factors that should be considered include the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlords, and whether there had been any prejudice to the tenant as a result of the passage of time. I also find that the fact that the landlords did not pursue the unpaid rent until after the tenancy ended is a factor that ought to be weighed in determining an outcome. The landlords' application was filed on November 15, 2011, 15 days after the end of the tenancy. A move-out condition inspection report was completed by the parties on October 31, 2011, and the tenant provided a forwarding address in writing on November 6, 2011, being 6 days after the tenancy had ended. The tenancy lasted a year, and the tenant paid rent in the amount of \$1,275.00 from the second month of the tenancy until the end of the tenancy, without any request made by the landlords to pay the higher amount. Therefore, I find that the passage of time has prejudiced the tenant.

The *Residential Tenancy Act* also states that a party who makes a claim must do whatever is reasonable to minimize the loss or damage suffered. I accept the testimony of the landlords that they did not notice the shortage of rent paid, but the landlords are in the business of being landlords and have a duty to notify a tenant during the tenancy if rent is short. I find that waiting until after the tenancy has ended to notify the tenant of the shortage and then advise the tenant that the security deposit won't be returned does not constitute mitigation.

I further find that the property manager was in the position of authority, being the landlord of the tenant for the rental unit, and I accept the testimony of the tenant that the

property manager told the tenant to start paying \$1,275.00 per month by way of electronic transfer. Therefore, I find that the tenant did what the tenant was told to do by the property manager, and if the landlords did not authorize a rent reduction, the landlords may have a claim against the property manager.

With respect to the fine, the tenant testified that the landlords advised that they were going to contest the fine imposed by the strata corporation. It is not clear in the evidence whether or not the landlords did contest the fine, and if so, what the result was. In the circumstances, if I were to award the fine amount to the landlords and the landlords were not required to pay it, the landlords would be in a better financial position than they would be if the fine had not been imposed. Therefore, I dismiss the landlords' application for the strata fine, with leave to reapply.

I order the landlords to return the security deposit and pet damage deposit to the tenant.

Since the landlords have not been successful with the claim, the landlords are not entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, the landlords' application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

The landlords' application for a monetary order for the strata fine is hereby dismissed with leave to reapply.

The landlords' application to keep the security deposit and pet damage deposit is hereby dismissed 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: March 1, 2012.

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Residential Tenancy Branch