



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

The landlords' state that only the female tenant (PH) has been served in person with the hearing documents; the male tenant (MD) has not been served as no forwarding address has been given to the landlords.

### Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent and utilities?

- Are the landlords permitted to keep all or part of the security and pet deposits?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both parties agree that this tenancy started on September 01, 2010. This was a fixed term tenancy which was due to expire on August 31, 2011. Rent for this unit was \$900.00 per month plus half of the Hydro costs. Rent was due on the first day of each month in advance. The tenants paid a security deposit of \$450.00 on July 23, 2010 and a pet deposit of \$200.00 on January 26, 2011.

The landlord testifies that the tenants gave notice to end their tenancy on February 28, 2011 which had an effective date of March 31, 2011. The landlord testifies that the tenants failed to pay the outstanding utilities of \$684.77 which the landlords sought after the landlords had complied with an Order at a previous hearing to provide the tenants with copies of the utility bills containing BC Hydro's insignia. Due to the outstanding utilities the landlords testify that they served the tenants with a 10 Day Notice to End Tenancy on March 11, 2011. This Notice had an effective date of March 25, 2011 and the tenants vacated the rental unit on March 12, 2011.

The landlords testify that as this was a fixed term tenancy the tenants' remain responsible for the rent until the unit is either re-rented or to the end of the fixed term. The landlords' testify that both they and the tenants advertised the unit for rent and there was much interest in the unit. The landlords testify that in total there were 28 bookings to view the unit, some of these cancelled in advance, some did not show up at the appointed time and some viewings did take place. From these potential tenants only one submitted an application to rent the unit and after reference checks were completed the unit was rented to this new tenant on August 15, 2011 at a reduced rent of \$765.00.

The landlords testify that they did all they could to re-rent the unit and to mitigate the loss.

The landlords seek to recover a loss of rental income from April to August 15, 2011 to the sum of \$4,050.00. The landlords state they do not seek to pursue the loss of income for the difference in rent for 15 days in August, 2011.

The tenants dispute the landlords claim for a loss of rental income from April to August 15, 2011. The tenants testify that they had to move from the rental unit as the landlords were harassing them about the utility bills. The tenants' testify that they gave the landlord a letter on March 12, 2011 giving the landlords permission to keep the security and pet deposit to pay these outstanding utility bills. The tenants' testify that they also gave the landlord permission to keep the \$50.00 the tenants were awarded at the previous hearing against the landlord. At that hearing they were ordered to deduct this filing fee from their next rent payment but testify as they were ending the tenancy no further rent was paid to the landlord. A copy of this letter has been provided in evidence.

The landlord argues that they did not harass the tenants. The landlords testify that they did however continue to give the tenants copies of the utility bills as ordered at the previous hearing and followed through with trying to collect the outstanding utility payment from the tenants. The landlords testify that they had a contract in place with the tenants and the tenants failed to meet their obligations under this contract.

The landlords' testify that they should be entitled to keep the security deposit on top of rent and utilities as the tenants have extinguished there right to make a claim against it as the tenants did not attend the move out condition inspection despite having been given two opportunities to attend.

The landlords' testify that during the inspection they found the tenants had not cleaned the rental unit and had not filled and sanded any anchor holes left in the walls. The

landlords' testify that they had to purchase supplies to clean the unit and fill and sand these holes and seek to recover the sum of \$240.00 for their time in completing this work. The landlords' testify the work took 16 hours at \$15.00 per hour.

The tenants dispute the landlords claim. The tenants' testify that they had already agreed in writing that the landlords could keep the security and pet deposits. The tenants' testify that they did try to clean the unit but the landlords came down to the unit and started to yell at the tenants saying they wanted possession of the unit. The tenants' testify that the landlords would not let them finish the cleaning and they had to leave.

The tenants call their witness who was at the unit to help the tenants clean. The witness testifies that the tenants had planned to clean the unit and had organised a carpet cleaner to come and clean the carpets on the last day of their tenancy. The witness testifies that while the carpet cleaner was there he and the tenants went to the store to purchase cleaning supplies. When they all got back to the unit the landlords came down and started banging on the door. The witness testifies that the tenants told the landlords they would finish the cleaning and then come back to do the inspection. The witness testifies that the landlords were very confrontational so to avoid further altercations the tenants handed back the keys and left the unit.

The landlord argues that the tenants witness is not portraying the events that occurred accurately. The landlords' testify that they tried to give the female tenant the utility bill but she refused to accept it and when the landlord leaned in the door to try to give the bill to the male tenant the female tenant closed the door in the landlords face. The landlord argues that it was the female tenant who said they were giving up possession of the unit that day and the landlord who informed the tenants that an inspection was required. The landlord testifies she told the female tenant there was no point in doing the inspection at that time because the cleaning had not been done and the landlord states the female tenant then said she would not clean the unit. The landlords testify that they were not aggressive or confrontational.

The landlord testifies that the male tenant said they would clean but when the landlord tried to set up another time for the inspection the tenants handed back the keys and left.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the landlords claim for a loss of rental income from April 01, 2011 to August 15, 2011; The Residential Tenancy Policy Guidelines #3 deals with claims for rent or damages for loss of rent. As a general rule a landlord is entitled to recover from a tenant a loss of rent for any of the unexpired term of a fixed term tenancy. The tenants have argued that they had to give the landlord notice to end the tenancy because the landlord was harassing the tenants over unpaid utilities. The landlord argues that this was not the case but rather the landlords were attempting to provide the tenants with the utility bills as ordered at a previous hearing and attempting to collect the unpaid utilities from the tenants.

I have considered these arguments and find the landlords are entitled to attempt to collect unpaid utilities. If the tenants are avoiding payment of these unpaid sums the landlords are entitled to approach the tenants to recover these amounts. The tenants have provided insufficient evidence to show that the landlords acted in a manner that would constitute harassment and consequently I find the tenants were not entitled to end the tenancy before the end of the fixed term. As the tenants did not pay the outstanding utilities the landlords were entitled to serve the tenants with a 10 Day Notice to End Tenancy and the landlords are entitled to recover a loss of rent for the remainder of the fixed term until the unit was re-rented. I am also satisfied that the parties did advertise the unit, however, as these advertisements were not successfully in re-renting until August 15, 2011 the landlord have established a claim to the sum of \$4,050.00 for a loss of rent. Therefore the landlords will receive a Monetary Order for this sum pursuant to s. 67 of the *Act*.

With regards to the landlords claim to recover unpaid utilities; I find the tenancy agreement between the parties indicates that the tenants will pay half the utility bills. The landlord has provided sufficient evidence to show that the tenants share of these utility bills are \$684.77, consequently I find in favor of the landlords claim and find the landlords are entitled to recover this sum from the tenants. However, the tenants have already given the landlords written permission pursuant to s. 38(4)(a) of the *Act* to keep the security and pet deposit of \$650.00 and have also agreed in writing that the landlord may keep the \$50.00 previously ordered in favor of the tenants. Consequently, no further Monetary Orders will be made in respect of the outstanding utilities as these are deemed to have been settled on March 12, 2011.

With regard to the landlords claim for \$240.00 to clean and repair the rental unit; The tenants argue that the landlords refused to allow them to finish cleaning and the tenants witness testifies that the landlords were confrontational on the day the tenants were attempting to clean the unit. The landlords dispute this and argue that they were simply attempting to give the tenants copies of the utility bills and trying to arrange an inspection of the unit.

S. 32 of the *Act* states that a tenant must leave a rental unit in a reasonably clean condition and any damages must be repaired in the unit at the end of the tenancy. The tenants have agreed they did not clean the unit and did not repair the holes in the walls but have given the landlord a sum towards these costs as documented in the letter from the tenants dated March 12, 2011 concerning g their security deposit. I am unable to determine from the testimony presented today if the landlords were confrontational or if the tenants construed the landlords' attempts to give the utility bills as being confrontational. Consequently, I rely on s. 32 of the *Act* and find the tenants failed to leave the rental unit in a reasonably clean condition and failed to repair damage to the walls. Consequently I find the landlords are entitled to recover the sum of \$240.00 for their time in cleaning and repairing the unit and the landlords will receive a Monetary Order for this amount less the amount already paid by the tenants.

With regard to the landlords claim to be permitted to keep the security and pet deposit over and above the rent and utilities owed because the tenants extinguished their right to have the deposits returned; This section of the Act is not intended to provide the landlord with additional sums on top of the amounts owed to the landlord that remain unpaid at the end of the tenancy. Consequently, this section of the landlords claim is dismissed.

As the landlords have been largely successful with their monetary claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. The landlords will receive a Monetary Order for the following amount:

Loss of income from April 01 to August 15, 2011	\$4,050.00
Utilities	\$684.77
Cleaning and repairs	\$240.00
<b>Subtotal</b>	<b>\$4,974.77</b>
Less security and pet deposit agreed upon	(-\$650.00)
Less amount owed to the tenants	(-\$50.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$4,324.77</b>

### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,324.77**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

As only one party (PH) has been served with the landlords' application, Notice of hearing and evidence the other party (MD) has been removed from the Monetary Order

and only the party that has been served has been named as a respondent on the Monetary Order.

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 06, 2012.

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Residential Tenancy Branch