



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD

### Introduction

This hearing dealt with applications by both parties. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants are seeking the return of their security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

### Background and Evidence

Both parties agree to the following: The tenancy began on or about December 1, 2011 and ended on February 29, 2012. The term of the tenancy was to be for one year. Rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$475.00 and a pet deposit of \$475.00. A move in and move out condition inspection of the unit was conducted and both parties agree the report fairly depicts the unit at the beginning and end of tenancy. The tenant provided their forwarding address in writing during the move out inspection on February 29, 2012.

The landlord's agent gave the following testimony; was not employed with the company at the time when these tenants moved in and is filling in for the purposes of today's hearing, the property manager that dealt with this tenancy is off on maternity leave, today's agent was not the person that put this file together, has instructions from the

owners of the property to seek the equivalent of one months' rent for loss revenue as agreed upon in their tenancy agreement, re-rented the unit for April 1, posted ads on their company website along with other websites.

The tenants gave the following testimony; the property manager promised that certain repairs would be done prior to the tenancy to make the unit more comfortable as well to remove garbage and rubbish that was left on the balcony and around the property, the repairs were not completed at the start of the tenancy but the tenants agreed to have repairs done while living there as long as it was done in a quick and timely fashion, the tenant's became frustrated as the months past and none of the repairs were being done, a water leak that was not addressed created a mould problem, the tenant's made at least a half a dozen phone calls to the property manager and at least 15 calls to the tradesman that was to conduct the repairs, the tenant's informed the property manager if the repairs were not done soon they would move prior to the anniversary of the tenancy, the repairs were not done and the tenant's gave written notice to the property manager in late January that they would be moving out at the end of February 2012, the tenants are seeking the return of their security deposit and pet deposit as they feel the landlord has breached their tenancy agreement by not meeting the terms as agreed upon.

### Analysis

The landlord's agent testified that attempts were made to rent the unit for March 1, 2012 but no postings or copies of advertisements were submitted for this hearing. In addition the condition inspection report submitted by the landlord clearly states that the landlord was to conduct repairs and remove some garbage around the property at the start of the tenancy but was never completed. That same report shows no change in the condition of the unit from the time the tenants took possession till the time that they moved out and that the tenants left the unit clean and damage free. The landlords agent confirmed by checking his file that the tenant's had made multiple attempts at trying to resolve this matter and were proactive in trying to get the unit to the standard that the landlord had promised at the beginning of the tenancy. The agent also confirmed that

virtually no repairs or cleaning had been done during the tenancy by the landlord. The landlords agent testified that attempts were made to rent the unit for March 1, 2012 but with all the repairs still required I am not satisfied that the unit was in a reasonable condition to be rented.

Based on the condition inspection report supplied by the landlord that clearly shows the landlord did not meet the terms by completing the repairs or cleaning as well as the unlikelihood of being able to re-rent a unit that was not in suitable condition, the landlord has not satisfied me that they are entitled to the equivalent of one month's rent; accordingly I dismiss the landlords application in its entirety.

The tenants provided photos that depict the rental unit and many of the deficiencies that were never repaired or corrected. The landlord's agent did not dispute any of these deficiencies. The tenants referred to the condition inspection report during the hearing and as I have previously mentioned it clearly outlines the terms that both parties agreed to. The move out condition inspection report shows that the tenants left the unit clean, undamaged and there was no need for any deductions.

Section 45(3) of the Act clearly outlines that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation in a reasonable time frame after receiving notice from the tenant, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. In this case both parties agreed the condition inspection report was part of the tenancy agreement which the landlord failed to comply with.

I am satisfied the tenants have provided enough evidence to support their claim. The tenant is entitled to the return of the security deposit and the pet deposit.

The tenant's have been successful in their application.

As for the monetary order, I find that the tenant has established a claim for \$950.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$1000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is entitled to a monetary order of \$1000.00.

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: May 09, 2012.

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Residential Tenancy Branch