



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: MNR, MNSD, FF  
Tenants: MNDC, MNSD, FF

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. Both parties sought a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

The hearing was originally convened on May 29, 2012 but as a result of late service of the tenants' Application on the landlord I granted an adjournment for the landlord to prepare his response to the tenants' claim.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for an overpayment of rent; for all or part of the security deposit; for return of double the amount of the pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 42, 43 67, and 72 of the *Act*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by both parties on May 22, 2010 for a month to month tenancy beginning on June 1, 2010 with a monthly rent of \$1,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$600.00 and a pet damage deposit of \$600.00 paid.

The tenants submit that they had actually agreed upon \$1,000.00 per month but that the landlord refused to change the tenancy agreement. The landlord submits that the tenancy agreement remained at \$1,200.00 per month but that he had a verbal agreement with the tenants to do work around the property and invoice him and ee

would provide the tenants with up to \$200.00 compensation per month for work completed.

The landlord has also included a copy of an "Application to Rent" that includes some handwritten notes on the back of the last page reiterating that rent is \$1,200.00; a question on the tenant's commitment to do \$200.00 worth of work on yard/house each month; that the landlord will pay for materials on approved improvements; security and pet damage deposits will be based on \$1,200.00 rent; and invoices for labour indicating task(s) performed - \$200 worth.

The tenant submits that this information is not on the tenancy agreement and if it had been he would have provided the landlord with invoices on a monthly basis. The landlord submitted that these were notations he made while discussing these issues with the tenants.

The tenants submit the amount of rent agreed to was \$1,000.00 and that the male tenant would do repairs and maintenance in the yard, gardens, and exterior of the house. The tenants also submit the landlord refused to change the amount in the tenancy agreement from \$1,200.00 to \$1,000.00 and then unlawfully charged them the security and pet damage deposits based on the \$1,200.00 amount.

The tenants submit that in March of 2011 the landlord had delivered a letter of increase in rent from \$1,000.00 to \$1,025.00 with three months notice before it took effect. The tenants indicated they no longer had a copy of this letter. The landlord submitted into evidence a copy of a Notice of Rent Increase – Residential Rental Units dated March 25, 2011 indicating the current rent was \$1,200.00; there would a rent increase of \$25.00 and the new rent would be \$1,225.00.

The tenants assert they rent increase notification never did indicate \$1,200.00 per month increasing to \$1225.00 but rather that it stated \$1,000.00 increasing to \$1,225.00.

The landlord testified the tenants paid ½ of the rent for the month of March 2012 and that when they failed to pay the balance he issued them a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of March 15, 2012. The tenants assert that because the tenancy ended on March 15, 2012 the landlord is not entitled to rent for the last half of the month of March 2012.

The parties agree the tenants vacated the rental unit on March 15, 2012; that a move out inspection was completed on March 17, 2012 at which time the tenants provided the landlord with their forwarding address.

The parties agree the landlord returned the pet damage deposit and continues to hold the security deposit. The tenants testified they received the pet damage deposit on April 4, 2012 but that they could not read the postmark on the envelope to confirm when it was mailed.

The landlord testified he filed his Application for Dispute Resolution on March 30, 2012 and that when he mailed the hearing documents to the tenants on March 30, 2012 he forgot to include the pet damage deposit and stopped in the next community to mail it later the same day.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As the only evidence of any agreement on the amount of rent for the rental unit is the tenancy agreement signed by both parties and since the parties do not agree to what the terms of any additional verbal agreements were, the burden falls to the tenants to provide sufficient corroborating evidence to establish that the rent agreed to was different than the amount they signed agreement to in the tenancy agreement.

I find the tenants have failed to meet this burden and I find the rent at the start of the tenancy was \$1,200.00 and as such I find the landlord did not increase rent in October 2011 as asserted by the tenants. I note that in making this finding, I have only considered the tenancy agreement itself and not the Notice of Rent Increase issued by the landlord in March 2011.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security and pet damage deposits or file an Application for Dispute Resolution to claim against the deposits. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security and pet damage deposits.

As per the testimony of both parties the landlord received the tenant's forwarding address on March 17, 2012 and as such in accordance with Section 38(1) the landlord had until April 1, 2012 to return the security and pet damage deposits. As April 1, 2012 was a Sunday the deadline is extended to April 2, 2012.

I accept, based on the landlord's undisputed testimony that he mailed the pet damage deposit cheque on March 30, 2012. The *Act* requires the landlord return the deposit within 15 days; not that the tenant receives it within 15 days. As such, I find the landlord has complied with Section 38(1) by mailing the pet deposit on March 30, 2012.

In relation to the landlord's claim to retain and the tenant's claim for the return of the security deposit I note Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement. As the tenancy was still active on March 1, 2012 the tenants were obligated to pay rent for the full month of March, 2012.

The tenants cannot rely on their act of failing to pay the rent in full to diminish this obligation regardless of the fact the landlord issued them a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of March 15, 2012. I find the tenants are responsible for the full payment of rent for the month of March 2012.

### Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety without leave to reapply.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$650.00** comprised of \$600.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 20, 2012.

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Residential Tenancy Branch