



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlord – MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants have applied for an Order for the return of their security 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 landlord for the cost of this application. The landlord has applied for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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.

### Issue(s) to be Decided

- Are the tenants entitled to recover their security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep all or part of the tenants' security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties disagree that a tenancy has been established. The landlord testifies that the tenants entered into a verbal agreement to rent this unit for a two year fixed term. The landlord testifies that the unit had been advertised at a monthly rent of \$1,500.00. The landlord testifies that the tenants viewed the rental unit and negotiated the rent to \$1,300.00 for the first year and \$1,400.00 for the second year. The landlord testifies that the tenants agreed to take the unit for June 01, 2012 and paid a damage deposit of \$650.00 by cheque.

The landlord testifies that the tenant wrote on this cheque that this was a 'damage deposit for unit [address of unit] for a 1 year lease for \$1,300.00 per month and for 2nd year for \$1,400.00 per month'. The landlord testifies that the tenants' also insisted on the landlord giving them a receipt for this cheque and the landlord wrote on the receipt 'For rental of [address of unit] lease to be signed by end of May, 2012. 1<sup>st</sup> year \$1,300.00 per month, 2nd year \$1,400.00 per month'. The landlord has provided copies of the tenants' cheque and receipt in evidence.

The landlord testifies that the tenants then corresponded with the landlord and informed the landlord that they were not going to move into the unit as they still had a lease with their current landlord which did not expire until the end of June, 2012. The landlord testifies that he then took immediate action to re-rent the unit and placed advertisements on Craig's list and in the newspaper. The landlord has provided evidence relating to the advertisements made for the unit.

The landlord testifies that he sent the tenants e-mails advising the tenants that they would be liable for the rent if the landlord could not re-rent the unit and advising the tenants that the landlord would advertise the unit to minimize the loss. The landlord testifies that the unit was re-rented for July, 01, 2012 for \$1,400.00 per month. The landlord seeks to recover a loss of rent for June, 2012 to the sum of \$1,300.00. The landlord seeks to recover the cost of advertising the unit in the local newspaper. The landlord has provided the invoice for this and seeks to recover the sum of \$114.46.

The landlord testifies that in failing to honour the verbal agreement the landlord seeks to recover the sum of \$2,621.00 from the tenants for nominal damages for the breach of contract, a claim in tort and to cover the landlords costs involved in going backwards and forwards from his home to the rental unit in order to re-rent it.

The landlord seeks an Order to keep the damage deposit of \$650.00 to offset against the loss of rent. The landlord also seeks to recover his \$50.00 filing fee.

The tenants dispute the landlords claim. The tenants' testify that no tenancy was established between them and the landlord, no tenancy agreement was signed and they had only gone to view the unit. The tenants testify that they were not sure about renting the unit but the landlord insisted that they gave him a cheque for \$650.00 to hold the unit for 24 hours. The tenants' testify that the landlord agreed to return this cheque after 24 hours if they did not want the unit. The tenants testify that they wrote on the cheque the wording that the landlord dictated. The tenants testify that they did ask the landlord for a receipt for the cheque. The tenants testify that this cheque was not meant to be a damage deposit and it was not a commitment to rent the unit it was just to hold the unit for 24 hours.

The tenants testify that they had a conversation with the landlord about their current lease and the landlord said "it's OK we are all friends just let me know"

The tenant testifies they called the landlord the next day and said they could not get out of their current lease as it had another month to run. The tenants' testify the landlord asked them to lie to their current landlord and to send the landlord a copy of their current lease so he could look at it. The tenants testify that they sent the landlord a copy of the lease and an e-mail saying they did not want to take the unit and the landlord should continue to try to find a new tenant. The tenants' testify that they later found that the landlord had cashed the cheque a few hours after receiving it instead of holding it for 24 hours.

The tenants' testify that they never gave the landlord permission to keep the \$650.00 paid to hold the unit and the landlord was given the tenants forwarding address by e-mail on May 22, 2012 with a request to return this sum to the tenants.

The tenant seek to recover the \$650.00, the \$50.00 filing fee and an additional \$50.00 for the previous filing fee paid for their hearing held earlier which was dismissed with leave to reapply. The tenants also seek to recover the sum of \$200.00 in compensation for two days of missed work dealing with this matter.

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s.1 of the *Act* which provides definitions of wording used in the *Act* and states, in part,

***"tenancy agreement"*** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

The tenants argue that they did not enter into a tenancy agreement with the landlord and simply paid the landlord a sum of \$650.00 to hold the rental unit for 24 hours. The landlord argues that this was not the case and the tenants had agreed to take the rental unit and paid a damage deposit for the rental unit of \$650.00.

When one person's evidence is contradicted by that of the other, then the person making the claim has the burden of proof. In this matter the landlord is making the claim that the tenants entered into a verbal agreement to rent the unit for June 01, 2012, therefore the landlord must provide corroborating evidence to satisfy the burden of proof. The landlord has provided a copy of the tenants' cheque and the receipt for this cheque which clearly states that this is a damage deposit and a lease is to be signed by the end of May for a monthly rent of \$1,300.00 for the first year and \$1,400.00 for the second year. Consequently, I find on a balance of probabilities that the tenants did agree to rent the unit for two years and then later changed their minds. Consequently, I find the landlord is entitled to recover a loss of rent for June, 2012 to the sum of \$1,300.00.

The landlord seeks further damages from the tenants for his time and trouble in re-renting the unit and the cost of advertising the unit again. I find the landlord is entitled to recover the sum of \$114.46 for the cost to re-advertise the unit in order to further mitigate any losses by ensuring steps were taken to re-rent the unit as quickly as possible. The landlord seeks additional costs to the sum of \$2,621.00 for damages due to the tenants breach of contract, a claim in tort for the landlord time in having to travel to the rental unit in order to re-rent it.

I refer the parties to the Residential Tenancy Policy Guidelines #16 which deals with monetary claims and states in part,

*The Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or*

*the Act. Damages are money awarded to a party who has suffered a loss which the law recognizes. Claims may be brought in Tort and/or Breach of Contract.*

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In this matter I find the landlord has been successful with his claim for loss of rent resulting in the tenants’ breach of the verbal agreement made between them to rent this unit and the landlord has been awarded out of pocket expenses for the cost to re-advertise the unit. The landlord has provided no other evidence to show he has suffered a loss and there is no provision under the *Act* for me to award damages to a landlord for performing his duties as a landlord even if the landlord is an absent landlord that does not live in the same local as the rental unit. I therefore find the landlords loss has been satisfied by the monetary awards made and no further awards will be made for money owed or compensation for damage or loss.

With regards to both parties claim concerning the damage deposit; I refer the parties to s. 38 of the *Act* that says a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on May 22, 2012. As a result, the landlord had until June 07, 2012 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord did not file an application to keep all or part of the security deposit until October 31, 2012 well outside the 15 days time limit to do so. Therefore even though the tenants have not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the sum of \$1,300.00 to the tenants pursuant to s. 38(6)(b) of the *Act*.

With regard to the tenants claim for money owed or compensation for damage or loss the tenant seeks to recover the sum of \$50.00 for a filing fee paid for a previous hearing. As that hearing was dismissed with leave to reapply the tenants are not entitled to recover the filing fee paid for that hearing. The tenants have also applied to recover the sum of \$200.00 for lost wages in attending these hearings. There is no provision under the *Act* for me to award damages of this nature to the tenants particularly as the tenants have not shown that the landlord is responsible for this loss. Consequently, this section of the tenants claim is dismissed.

As both parties have been partially successful I find each party must bear the cost of filing their own application. I have deducted the tenants' monetary award for double the security deposit from the landlord's monetary award as follows.

Loss of rent	\$1,300.00
Total award for the landlord	\$1,414.46
Less double the security deposit	(-\$1,300.00)
Total amount due to the landlord	\$114.46

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$114.46. The order

must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. The tenants' monetary award of \$1,300.00 has been offset against the landlord's monetary award.

The reminder of the tenants claim is 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: November 16, 2012.

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Residential Tenancy Branch