



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND, MNDC, MNSD, FF / MNDC, MNSD, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The parties agree that the tenancy began on or about November 1, 2011. There is a written "Rental Agreement" in evidence which bears the signature of both parties, however, the tenants claim that this document was completed by them as an "application" for tenancy. The tenants also claim that the manual notation on the document, "we are entering a 1 year lease contract," was added by the landlord after they had signed what they considered was an application form. The landlord disagreed.

The landlord testified that monthly rent was \$1,200.00, and that a reduction to \$1,100.00 per month was verbally offered to the tenants as a condition of their agreeing to a year-long tenancy. However, there is no reference to such a condition in the "Rental Agreement" which simply identifies monthly rent of \$1,100.00, and the tenants disagree with the landlord's claim. The parties agree that a security deposit of \$550.00 was collected.

A standard move-in condition inspection report was not completed, however, a checklist addressing a very limited range of conditions within the unit formed part of the "Rental Agreement."

A decision issued by date of March 19, 2012 (file # 789200), sets out some of the details in the dispute that gradually evolved between the parties.

By letters dated May 2 & 4, 2012 the landlord instructed the tenants to vacate the unit, respectively, by the end of May and by May 14, 2012. The tenants testified that they subsequently gave notice to end the tenancy effective June 30, 2012, by way of letter dated May 25, 2012. The landlord did not dispute this.

A move-out condition inspection report was not completed and the landlord testified that new renters were found for the unit effective August 1, 2012.

Thereafter, by letter dated July 4, 2012, the tenants informed the landlord of their forwarding address for purposes of the return of their security deposit. However, the landlord has not returned the security deposit, and the landlord's application for dispute resolution which includes application to retain the security deposit was filed on October 24, 2012.

### Analysis

Based on several forms of documentary evidence, the testimony of the parties, and the relevant legislation, the miscellaneous aspects of the respective applications and my findings around each are set out below.

Concerning the nature of the tenancy, as earlier noted, there is no reference on the "Rental Agreement" to a reduction in rent as a condition of agreeing to a year-long fixed term tenancy, as opposed to agreeing to a month-to-month tenancy. In short, I find that the landlord has failed to meet the burden of proving on a balance of probabilities, that the parties agreed to a year-long fixed term tenancy. Rather, I find it is more likely than not that the parties agreed to a month-to-month tenancy.

### TENANTS' CLAIM:

**\$1,100.00:** *double security deposit (2 x \$550.00).*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenants' forwarding address in writing, the

landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

As above, I have found that the parties entered into a month-to-month tenancy. Related to this finding, section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Following from the above, I find that the tenants gave proper notice on May 25, 2012 of their intent to end tenancy effective June 30, 2012. As earlier noted, the tenants subsequently provided their forwarding address in writing by letter dated July 4, 2012. The landlord's application for dispute resolution was filed on October 24, 2012.

As the landlord neither repaid the security deposit, nor filed an application for dispute resolution within 15 days after being informed by the tenants of their forwarding address, I find that the tenants have established entitlement to compensation reflecting the double return of their security deposit in the total amount of **\$1,100.00** (2 x \$550.00).

\$73.00: post office box rental fee.

\$59.36: renewal of post office box rental fee.

The tenants testified that they rented a post office box in order to prevent the landlord from knowing of their new residential address following the end of this tenancy. It appears that this provided the tenants with some comfort that the landlord would then be unable to personally attend their new residence in order to address any outstanding concerns related to the tenancy.

I find that the tenants' decision to rent a post office box was discretionary, and that the legislation makes no provision for related compensation to be awarded. In the result, this aspect of the application is hereby dismissed.

\$97.00: *truck rental.*

I have found that the tenants ended the tenancy after giving proper notice. While the tenants were clearly not satisfied with the tenancy, I find that they have failed to meet the burden of proving entitlement to compensation for costs incurred for renting a truck in order to move. This aspect of the application is therefore dismissed.

\$1,100.00: *compensation for breach of the right to quiet enjoyment.*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**. I find that the relationship which evolved between the parties reflects a history of mutual animosity. Having carefully considered all forms of the relevant documentary evidence and testimony, I find that the tenants have failed to meet the burden of proving entitlement to compensation pursuant to an alleged breach of the right to quiet enjoyment. This aspect of the application is therefore dismissed.

\$35.00: *photographic evidence;*

\$5.60: *additional photographic evidence;*

\$12.30: *compact disk evidence;*

\$13.33: *postage.*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the 4 aspects of the application immediately above are hereby dismissed.

\$550.00: *compensation for "delayment" of hearing.*

In response to the tenants' application a hearing was scheduled for October 26, 2012. However, at the time of that hearing the Arbitrator determined that a hearing had also been scheduled on January 25, 2013 in response to the landlord's application, and that both parties sought related compensation. In the result, the Arbitrator adjourned the hearing scheduled for October 26, 2012 in order that the tenants' application could be heard as a cross application with the landlord's application on January 25, 2013.

The Residential Tenancy Branch Rules of Procedure provide that an Arbitrator may exercise the initiative and authority to adjourn a hearing. The legislation makes no provision for compensation to either party as a result of such a decision. Accordingly, this aspect of the application is hereby dismissed.

\$550.00: *compensation for "numerous false claims."*

This decision includes findings related to claims made in the landlord's application. I find that this particular aspect of the tenants' application is therefore redundant, and it is hereby dismissed.

**\$50.00: filing fee.**

As the tenants have achieved a measure of success with their application, I find that they have established entitlement to recovery of the full filing fee.

**Total entitlement: \$1,150.00** (\$1,100.00 + \$50.00).

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**LANDLORD'S CLAIM:**

**\$800.00: shortfall in rent for early termination of lease (8 months x \$100.00 per month).**

As above, I have found that the parties entered into a month-to-month tenancy, that rent was \$1,100.00 per month, and that the tenants gave proper notice to end tenancy. Accordingly, this aspect of the application is hereby dismissed.

**\$1,200.00: compensation arising from tenants' early termination of lease.**

For reasons essentially identical to those set out immediately above, this aspect of the landlord's claim is hereby dismissed.

**\$400.00: reimbursement of rent reduction awarded to tenants in previous decision (\$50.00 x 8 months from November 1, 2011 to June 30, 2012).**

As indicated, this aspect of the application concerns a finding made by another Arbitrator in a separate proceeding. In this regard, Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from the foregoing, this aspect of the application is hereby dismissed.

**\$200.00: compensation arising from tenants' alleged failure to adhere to the agreement to maintain "lawns & flowerbeds."**

**Section 23: Condition inspection: start of tenancy or new pet**

**Section 24: Consequences for tenant and landlord if report requirements not met**

**Section 35: Condition inspection: end of tenancy**

**Section 36: Consequences for tenant and landlord if report requirements not met**

In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$550.00: retention of security deposit for alleged damage to carpet, in addition to alleged pet stains and odours.

As above, the tenants have established entitlement to compensation reflecting the double return of the security deposit. Arising broadly from the absence of move-in and move-out condition inspection reports, pursuant to sections 26 and 36 of the Act I find that the landlord's right to claim against the security deposit is extinguished.

\$50.00: filing fee.

As the landlord has not succeeded with the main aspects of his application, his application to recover the filing fee is hereby dismissed.

**Total entitlement: Nil**

### Conclusion

The landlord's application is hereby dismissed in its entirety.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,150.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and 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: January 28, 2013

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Residential Tenancy Branch

