



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MNDC, MNR, FF

Tenants: MNDC, MNSD, OLC, RPP, FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought a monetary order. The tenants sought a monetary order and an order requiring the landlord return their possessions.

The hearing was originally convened via teleconference and was attended by the landlord and the male tenant. The hearing was adjourned to allow the landlord to pick up the tenants' application and evidence that had been sent by registered mail but not received by the landlord. The reconvened hearing was conducted also by teleconference and was attended by the landlord and the male tenant.

During the first hearing the landlord submitted that she wished to reduce her claim by \$500.00 and no longer sought to be compensated for items removed from the property. She clarified in the reconvened hearing that she only sought compensation for lost rent for January 2013 and ½ month for February 2013 plus utilities for ½ of the month of January 2013. This amendment reduced the landlord's claim from \$2,760.00 to \$2,470.00.

The tenant, at the start of the reconvened hearing, reduced his claim amount from \$2,290.00 to \$1,490.00. The tenant explained he only is seeking compensation for return of double the security deposit; a replacement bed; and a box of Legos/toys and receipts; and cancelled cheque charges.

### **Issue(s) to be Decided**

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for lost revenue; and unpaid utilities and to recover the filing fee from the

tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to an order requiring the landlord to return personal possessions; to a monetary order for return of double the amount of the security deposit; to compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on November 15, 2013 as a month to month tenancy for a monthly rent of \$1,600.00. The parties agreed that rent would be paid twice per month on the 15<sup>th</sup> and on the 30<sup>th</sup> or 31<sup>st</sup> and that the tenants would be responsible for 50% of the utilities.

The parties acknowledge the landlord collected a deposit from the tenants. The tenants submit that originally they offered the landlord a \$400.00 "holding deposit" and that they would later pay the landlord an additional \$400.00 as a damage deposit. The parties agree the tenants never did pay the additional \$400.00.

The landlord submits the tenants did not pay rent or utilities when they were due for January 2013 and that she issued them a 10 Day Notice to End Tenancy for Unpaid Rent on January 2, 2013 with an effective date of January 11, 2013.

The landlord provided copies of cheques confirming that payment had been stopped by the tenants including one dated for January 1, 2013. The other cheques include ones dated January 15, 2013 and February 1, 2013 and one noted as damage deposit dated December 15, 2012.

The landlord submits that because she was not sure of their intent she could not advertise the rental unit until she was sure the tenants were vacating the property. The landlord submits she re-rented the unit effective February 15, 2013.

The tenants submit that on January 12, 2013 the parties signed a mutual agreement to end the tenancy on January 12, 2013 at 2:00 p.m. This document includes a written statement that 3 keys were returned. The landlord submits that while the signature on the mutual agreement looks like her signature she did not sign a mutual agreement to end the tenancy. She does acknowledge signing what she thought was a receipt for the tenants returning 3 access keys.

The landlord testified that she did sign a document acknowledging receipt of 3 keys from the tenants but nothing agreeing to a mutual agreement to end the tenancy. The landlord submits the tenants vacated the rental unit as result of the 10 Day Notice and not a mutual agreement.

The landlord seeks compensation for rent for the entire month of January 2013 and for the ½ month of February 2013 during which time the unit was not rented for a total of \$2,400.00. The landlord seeks utilities in the amount of \$70.00 for the period of January 1, 2013 to January 15, 2013. The landlord has provided no utility bills.

The tenants submit they provided the landlord with their forwarding address in writing on the day they vacated the rental unit; the landlord testified that the tenants did not provide their forwarding address in writing on the day they moved out. The tenants seek return of double the amount of the security deposit.

The tenant also seeks compensation for a bed that had been stored in the garage after they vacated the rental property and despite agreement from the landlord that they could return to get the bed the landlord refused to return the bed. The tenant seeks compensation in the amount \$300.00 for a replacement bed that they have already had to purchase. No receipts provided.

The tenants also submit that they had an additional box of legos; toys; and business receipts that they would like returned and failing return of this box the tenants would like compensation in the amount of \$350.00, no receipts were provided.

The landlord submits that she had offered, as shown in the text messages submitted by the tenant, that she had offered for the tenant to return and pick up anything that may have been left behind but the tenants never did come back. She also states that she is not aware of anything that is still left behind.

The tenants submit the landlord did not return any of their post dated cheques and as such they had to cancel the outstanding cheques at a cost of \$40.00. The tenants seek compensation for this expense. The tenants did not provide receipts.

### 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.

Based on the documentary evidence I accept the tenants did not pay rent on January 1, 2013 and find the landlord is entitled to the amount she would have received for the period between January 1, 2013 and January 14, 2013.

As to the utilities, I also accept the tenants did not pay any of the utilities for this period, however the landlord has not provided any evidence to establish the value of the utilities owed. While the email showing the tenants understanding of the terms of the tenancy agreement indicates the tenants are responsible for 50% of the utilities, I find there is no evidence provided by either party that establishes a value for the utilities used by the tenants. Therefore, I dismiss this portion of the landlord's testimony.

I acknowledge the landlord submits that she did not sign a mutual agreement to end tenancy but she has provided no evidence to establish that the signature on the mutual agreement is not hers. The landlord testified that the signature looks like hers.

In addition, the agreement stipulates that 3 keys were returned and as the landlord submits that she signed a document acknowledging receipt of these keys, I find, based on the balance of probabilities the landlord signed the mutual agreement to end tenancy.

As to the balance of the landlord's claim for lost rent, I find that despite the issuance of a 10 Day Notice by the landlord on January 2, 2013 the parties signed a mutual agreement to end tenancy as of January 12, 2013 and as such the landlord is not entitled to any rent or lost revenue from the tenants beyond January 12, 2013.

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 deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As to the tenant's claim, I find the tenants have failed to provide sufficient evidence that they provided the landlord with their forwarding address on the day they vacated the rental unit. I note that the tenants retained a copy of the mutual agreement to end the

tenancy that was signed on that date but they did not have a copy of their notice of forwarding address.

While the tenant's originally classified the deposit provided to the landlord as a "holding deposit" and stated that the landlord could not convert it to a "damage deposit" I note that *Act* does not allow for either a holding deposit or for damage deposit. Section 17, 2013 allows a landlord to request a security deposit.

Section 1 defines a security deposit as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. As such, a security deposit functions as both a holding deposit and a damage deposit.

However, I find the tenants did provide the landlord with their forwarding address in their Application for Dispute Resolution which the landlord confirmed she received on April 22, 2013 by collecting her registered mail that the tenants had sent to her on April 11, 2013.

The landlord's Application for Dispute Resolution before me does not include that she is seeking to retain the security deposit and the landlord has not submitted any additional Applications seeking to retain the security deposit.

To comply with Section 38(1) the landlord would have had to return the security deposit to the tenants or file an Application within 15 days of receipt of the forwarding address in the tenant's Application and evidence package the landlord received on April 22, 2013. As she has not returned the deposit or filed an Application I find the landlord has not complied with Section 38(1) and the tenants are entitled to double the amount of the deposit.

As to the tenant's claim for compensation for a replacement bed and the box of legos/toys and receipts I find that because the landlord disputes the tenants left anything behind and the tenants have provided no additional evidence that they had left items behind that are still being held by the landlord the tenants have failed to provide sufficient evidence to establish the landlord prevented the tenant from retrieving these items.

In addition, even if the tenants had provided sufficient evidence to establish the landlord prevented them from retrieving their belongings they have provided no evidence to establish the cost of any losses that resulted. For these reasons, I dismiss this portion of the tenant's claim.

In addition, while I accept the landlord did not return the tenant's posted cheques as proven by the submission of cheques dated January 15, 2013 and February 1, 2013 that she tried to cash, the tenants provide no evidence to establish the value of the cost of these charges. For this reason I dismiss this portion of the tenants claim.

From the content of the text messages and testimony of both parties I am not satisfied that the landlord has been withhold any of the tenants' possession however if there are still tenants' possessions on the property I order the parties make an agreement to meet at the rental property for the tenants to look for the belongings at a mutually agreeable time.

### Conclusion

As I have found the landlord is entitled to rent for the period of January 1, 2013 to January 15, 2013 in the amount of \$800.00 and the tenants are entitled to return of double the amount of the security deposit in the amount of \$800.00 I find that by setting these amounts off against each other both parties claims are fulfilled.

As both parties were only partially successful in their claims, I dismiss each party's claim to recover the filing fees for their respective Applications.

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 30, 2013

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Residential Tenancy Branch

