



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

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

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and her legal counsel and two of the tenants.

At the outset of the hearing the tenants raised concern that the landlords had obtained their new address. The tenants also raised concerns that they had not received the landlord's Application or evidence within the required timeframes.

The tenants testified that they had provided their nephew's work address as the address for service of documents. The service address was at a federal government office. The tenants provided no confirmation from their nephew's employer that they would accept service of documents or registered mail address to the tenants who were no employees of the federal government.

The landlord submitted that an attempt was made to serve the tenants at the service address provided by the tenants and that based on a copy of a hydro bill provided by the tenants in their evidence they also send the package to address noted as the tenants address on the hydro bill.

I accept the tenants were sufficiently served in accordance with the *Residential Tenancy Act (Act)*. I also find that the provision of a work address for someone who was not a party to the Applications of both parties would most likely have resulted in the landlord being unable to serve the tenants at all.

### 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, 45, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to a monetary order for breaching the tenancy agreement; for moving expenses; escalated hydro and gas bills; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 38, 67, and 72 of the *Act*.

### Background and Evidence

Both parties provided a copy of a tenancy agreement signed by them on May 31, 2012 for a 1 year fixed term tenancy beginning on July 1, 2013 for a monthly rent of \$2,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$1,100.00 paid on May 31, 2012.

The tenancy agreement had an addendum listing that the tenants would be responsible for utilities and that the landlord would allow the tenants to deduct \$150.00 per month from the rent to compensate the tenants for the use of utilities by the basement suite.

The tenants submit that when they received an extremely high electrical bill in February 2013 they investigated and found the landlord had installed a marijuana grow operation in the basement suite. This conversion included substantial electrical work for which the parties agree that proper permits had not been obtained from local authorities.

On March 1, 2013 the tenants wrote a letter to the landlord informing the landlord that the tenants intended to move out of the rental unit on March 14, 2013. The letter documents the history of the tenancy including the landlord's attempt to end the fixed term in October 2013. There is no indication of any problems between the landlord and tenant, in fact, the letter states "Relationship between us as tenant and landlord remained cordial and the rent was always remitted to you as per our lease agreement."

The letter states that once the tenants had found out what the landlord had done in the basement the tenants determined that it was "hazardous for us to reside on the premises and after discussion it was decided that we will vacate the premises on March 14." There is no mention in the letter that the tenants felt the landlord had breached a material term of the tenancy or that they would give the landlord any time to correct any such breach.

The letter also indicates the landlord can retain the security deposit. Based on the tenants belief that by vacating the rental unit on March 14, 2013 they would only owe the landlord ½ month's rent the tenants offer for the landlord to retain the deposit as the equivalent payment for ½ month's rent.

The landlord submits the rental unit required cleaning and so it was not suitable until April 2013 for re-renting, however the landlord also submitted that she has not re-rented

the unit because she is not sure that she wants to re-rent the unit and she has made no attempt to re-rent it.

The parties agree the previous renter of the basement suite moved out in mid October and the landlords had told the tenants that they would be using the unit and would not be renting it out to new tenants. The parties agreed that at the time the landlord advised the tenants that they would likely use more utilities and offered to change the utilities into the landlord's name so the tenants would not have to deal with any increases in utility costs. The tenants decided to keep the utilities in their names.

The tenants state that when they received the utility bills in February 2013 they found that the costs were extremely high. The tenants submitted copies of utility bills from January 2013 forward, but did not provide any utility bills from the previous 6 month period.

The tenants submit that in October 2012 the landlord attempted to end the fixed term tenancy agreement but the tenants rejected this as they had specifically wanted a fixed term tenancy for the duration that they had agreed to in May 2012. The tenants submit that after this the landlord and her husband became aggressive when dealing with the tenants for the remainder of the tenancy.

The tenants also submit that they had also suffered illnesses during the time the basement was turned into a grow operation. Specifically they have identified difficulties with sleeping and breathing. No medical documentation was provided.

The landlord seeks compensation in the form of unpaid rent for March 2013 and loss of revenue for the months of April, May and June 2013 in the amount of \$8,800.00. The landlord submits the tenants paid no rent for the month of March 2013 but that they did sign over the security deposit of \$1,100.00 in their letter of March 1, 2013, in lieu of rent.

The tenants seek compensation from the landlord of \$13,200.00 for 6 months worth of rent for the loss of quiet enjoyment; \$1,100.00 return of the security deposit; utility bills (electrical \$820.00 and gas \$305.00); moving costs (including truck rental \$177.04; gas \$70.00; and labour \$300.00); and \$616.31 lost wages for illnesses and moving.

### 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.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Based on the tenant's letter of March 1, 2013, I find the tenants did not provide the landlord with a notice of a breach of a material term of the tenancy or provide the landlord with a reasonable time to correct the problem. As such, I find the tenants had no authority to end the tenancy under Section 45(3) and are therefore responsible for the payment of rent for the remaining months of the fixed term: March, April, May and June 2013, subject only to the landlord's obligation to mitigate any damage or loss.

As the tenants only provided notice to end the tenancy on March 1, 2013 I find the landlord had no obligation to mitigate any loss for March 2013. However, as the landlord has taken no steps to re-rent the property I find that she has taken absolutely no steps to mitigate the loss of revenue for April, May, and June 2013. Therefore, I find the landlord is entitled only to the unpaid rent for the month of March 2013.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Despite the tenants' testimony that they were harassed by the landlord and her husband because they would not end the tenancy in October 2012, I find the tenants have provided no evidence of such harassment. Further, in their letter dated March 1, 2013 the tenants talk about what a cordial relationship they have had with the landlord.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

While I accept the landlord completed electrical work without permits, as per the landlord's own testimony, I find the tenants have provided no evidence that the work that was completed posed an imminent danger to the inhabitability of the rental unit. Further, I find the tenants have provided no confirmation of any medical issues as a result in the change of use of the basement of the residential property.

For these reasons, I find the tenants have failed to provide sufficient evidence to establish the landlord has breached the tenancy agreement or *Act*. I dismiss the portion of the tenants' claim seeking compensation for breach of the tenancy agreement.

In relation to the tenants' claims for moving costs and lost wages due to illness and moving and since the tenants' have failed to provide evidence that their move was required as a result of a breach of tenancy agreement or *Act* I dismiss the portion of the tenants' claim for these costs.

In regard to the additional costs related to utilities I accept that the landlord offered to have the utilities put in their name, however, I find the landlords failed to give the tenants full disclosure about why the utility costs would increase and/or by how much. As such, I find the tenants would be entitled to compensation for the additional use of hydro and gas.

However, as the tenants have provided only bills for the periods in which they paid extra costs; they have provided no evidence of the previous bills they have had or of the history of usage. I note that the period in question is over the winter months, a time when utility costs will generally increase as a result of usage. As such, I find I am not able to determine the value of the loss suffered by the tenants.

For example, the tenants claim \$820.00 for hydro for the period where the bill is \$842.74. Based on the tenancy agreement the tenants would have been responsible for \$692.74 and the basement tenant would be responsible for \$150.00. As such, the tenants did not suffer a loss of \$820.00 but rather the difference between the amount of utilities they would have been charge for the same period less the increased amount of hydro usage that could be attributed to the grow operation.

As a result, I find the tenants have failed to provide sufficient evidence to establish the value of their loss and I dismiss this portion of their Application.

As to the security deposit, claimed by both parties, I find that the tenants authorized the landlord to retain the deposit in their March 1, 2013 letter.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,250.00** comprised of \$2,200.00 rent owed and \$50.00 of the \$100.00 fee paid by the landlord for her application, as she was only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,100.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,150.00**.

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.

As the tenants have been unsuccessful in their Application I also dismiss their claim to recover the filing fee for their Application from the landlord.

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: July 9, 2013

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Residential Tenancy Branch