



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – MNSD, MNDC, O

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 a Monetary Order to recover double the 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 other issues. 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 *Residential Tenancy Act (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 tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. 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 double the 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 the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this tenancy started on July 01, 2013 for a fixed term which was due to expire on June 30, 2014. Rent for this unit was \$750.00 per month and was due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$375.00 on June 01, 2013.

### **The tenants' application**

The tenant TK testifies that they gave the landlord notice to end the tenancy on August 31, 2013 effective on September 30, 2013 in accordance with the Act. The tenants left the rental unit clean and damage free and the landlord informed the tenants that they would receive their security deposit back minus an amount of \$60.00 for advertising costs. The tenant ZK testifies that they did not agree the landlord could make any deductions from the security deposit.

The tenants submit that they received a cheque from the landlord for \$175.00 for their security deposit less \$200.00 the landlord deducted for advertising costs. The tenants agree they had written to the landlord saying he could deduct this amount if the landlord provided receipts showing the advertising costs incurred. The tenant TK testifies that as the landlord did not show that he incurred advertising costs to re-rent the unit the tenants seek to recover double the security deposit less the amount returned as the landlord did not return it all within 15 days. The tenant TK testifies that they did all the

advertising on free internet sites to get the unit re-rented for October 01, 2013 they also did showings of the unit to prospective tenants.

The tenant TK testifies that the lease agreement states that by August the landlord will provide the tenants with a 3'X4' on site storage. The landlord did not provide this and as this was something that the tenants considered to be essential for their tenancy the landlord agreed he would pay for offsite storage for the tenants. The tenant TK testifies that they incurred costs to remove their items to an offsite storage unit. ZK had to take a day off work to do this and earns \$14.00 an hour. The tenants seek \$140.00 for 10 hours work lost. The tenants also seek to recover \$20.00 for gas. The tenants have not provided receipts for gas or evidence of earnings. The tenants seek to recover the storage unit costs. This was \$42.56 a month from August 23, 2013 to September 23, 2013. An additional six days to September 30, 2013 is calculated at \$8.51. The tenants have provided a copy of their storage rental agreement.

The tenants TK testifies that as the landlord breached the terms of the tenancy agreement first by not providing storage space for the tenants belongings in August; the tenants were entitled to end the tenancy and move from the rental unit. The tenants seek to recover moving costs of \$790.00. The tenants testify that they paid \$160.00 each to two friends to help them move and seek another \$160.00 each for their own time and effort to move. The tenants seek an additional \$75.00 paid to a friend to hire his truck to use to move and \$75.00 for gas to move 25 kilometers away from the unit. The tenants have provided no receipts or invoices for these payments.

The landlord disputes the tenants' claim to recover double the security deposit. The landlord testifies that he has not made any deductions for damages or cleaning but the tenancy agreement addendum informs the tenants that a \$200.00 fee will be charged for advertising costs if the tenants break the lease. The tenants did break the lease early and the landlord has deducted this amount with the tenants' written permission from the security deposit. The landlord refers to a letter received from the tenants dated August 31, 2013 in which the tenants give written notice and state on page three of the

letter that “they understand that the landlord requires \$200.00 for advertising fee for the residence. As we agreed to this before, this will come out of our deposit”.

The landlord testifies that the tenants did ask for receipts showing the amount the landlord paid for advertising but these were not provided as the tenants had already agreed about this fee. The landlord agrees the tenants did advertise the unit on the internet however the landlord also placed an advert in the local newspaper. The fees for this advert were \$43.00 for the first week and \$21.00 for the second week. The landlord testifies that he had to re-advertise the unit as the tenant who took over the unit only stayed there for two months and then left without notice. The landlord testifies that at the time he received Notice from the tenants he started to advertise the unit and it was re-rented by September 08 for the tenancy to commence on October 01, 2013. The landlord testifies that the balance of the security deposit was returned of \$175.00 within 15 days of the end of the tenancy.

The landlord disputes the tenants’ claim for costs for moving out. The landlord testifies that the reason the tenants moved from the unit was because they had decided to keep a stray cat without permission. The tenants were advised that this was a pet free building and were not allowed to keep a cat. The tenants breached the *Act* by keeping this cat in their unit and the reasons given for moving out are factious. The landlord refers to text messages sent from the tenants in which the tenants stated that they would continue their tenancy and pay a pet deposit if the landlord allowed them to keep the cat. If the tenants agreed to stay if the landlord let them keep the cat why now are the tenants stating that their living conditions were intolerable?

The landlord testifies that with regard to the issue with storage; the tenants were given two options for storage when the landlord could not arrange a storage locker in August. The tenants had the option of using a secure on site area to store their belongings or an offsite area for which the landlord would pay a reasonable amount. It was the tenants’ choice to opt for the offsite storage. The landlord disputes that the tenant ZK would have taken 10 hours to remove belongings into this storage space as the landlord had

only offered to provide a space 3' X 4'. The landlord disputes the tenants' claim for costs incurred for storage and for moving.

The tenants dispute the landlord's claim concerning the cat. The tenants testify that they found the cat on August 26, 2013 and removed it from the unit on September 03, 2013. The tenants testify that their issues that led them to give Notice were with storage, parking and noisy neighbours; the cat was just the final straw.

### **The landlord's application**

The landlord testifies that a new tenant who took over the unit when these tenants moved out. This new tenant signed a fixed term tenancy agreement but only stayed for two months. The landlord testifies that he holds these tenants responsible as the tenancy agreement states that tenants must give two months notice. These tenants only gave one months notice and this did not give the landlord enough time to find a more suitable tenant. The landlord seeks to recover unpaid rent for December and January from these tenants as the new tenant failed to pay the rent and moved out at the end of November, 2013.

The landlord seeks to recover the sum of \$230.10 from the tenants for a flea treatment done in the unit after the tenants had brought home the cat. The landlord has provided an invoice for this work and states it was done as a preventative treatment; however ,no fleas were found.

The tenants dispute the landlord's claim for unpaid rent. The tenants testify that they are not reasonable for any rent after the unit was re-rented to a new tenant and a new tenancy agreement was entered into.

The tenants dispute the landlord's claim for the flea treatment. The tenants testify that they had taken the cat to the vets and determined that it did not have fleas. The landlord was informed of this and if the landlord still decided to spray the unit for fleas then this was his decision and not the reasonability of the tenants.

The landlord cross examines the tenants and asks why the tenants were willing to continue their tenancy if they had such problems with storage and the neighbours if the landlord had let the tenants keep the cat. The tenants' respond that they had already made the decision to end the tenancy and decided that with all the issues it was not practical to continue to live there. The decision was made on August 31, 2013 because the landlord had not provided storage as agreed.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

### **The tenants' application**

With regard to the tenants' application to recover double the security deposit; section 38(1) of the *Act* says that 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.

Having considered the documentary evidence before me I find the tenants did write to the landlord on August 31, 2013 and contained within that letter the tenants do inform the landlord that he may deduct \$200.00 from the security deposit as it had been previously agreed in the tenancy agreement addendum. The tenants did not stipulate that this was conditional upon receipt of the landlords advertising receipts, although these were requested. I further find a landlord is entitled to charge tenants a fee when the tenants do terminate a fixed term lease before the expiry date when this clause has been documented in the addendum to the tenancy agreement. I further find this fee is considered to be a fair and genuine pre estimate of costs not only to advertise the unit

but also for the landlord's time and that of the landlord's manager in ensuring any loss is mitigated and the unit is re-rented as quickly as possible. Consequently, the tenants have received a cheque for the balance of the security deposit and therefore their application to recover double the security deposit is dismissed.

With regard to the tenants' application to recover costs incurred for storage. The tenancy agreement clearly states that the landlord will provide storage by August, 2013. I am satisfied from the evidence before me that the landlord informed the tenants that he was not able to provide them with the agreed upon on site storage but did give the tenants two options for alternative storage. The tenants opted to go with an offsite storage unit for which they incurred costs for the storage and for their time off work to place their belongings in the unit. However, the tenants have the burden of proof to show how many hours were spent, or time lost from work, in taking their belongings to this storage unit. The tenants have insufficient evidence to meet the burden of proof. Furthermore the tenants have provided no receipts to show how much gas was used for this endeavor. Consequently, I must limit the tenants' claim accordingly. The tenants will receive a monetary award of **\$50.00** for time and labour in taking their belongings offsite, **\$10.00** for gas to do this work and **\$51.07** for the rent of the storage unit from August 23 to September 30, 2013.

With regard to the tenants' claim for moving costs of \$790.00; having considered the documentary evidence and testimony before me I find the parties have conflicting reasons why the tenancy ended. I find the tenants did document that they would continue with the tenancy if the landlord let them keep the cat in their unit however the tenants now testify that they had already decided to vacate the unit due to the issues with storage, parking and neighbors. I am therefore unclear if the tenants would have continued with the tenancy if the landlord had allowed the tenants to keep the cat. It is therefore my decision that the tenants could have filed a claim against the landlord in August, 2013 for a rent reduction or for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement regarding the storage unit that was not provided as stipulated on the tenancy agreement. Consequently I find it was the tenants choice to

end this tenancy and as such are not entitled to recover moving costs. This section of the tenants' claim is dismissed.

### **The landlord's application**

With regard to the landlords claim for unpaid rent; if the landlord entered into a new tenancy agreement with another tenant on October 01, 2013, then that new tenant ended his tenancy before the end of the fixed term the landlord must file an application against that tenant for unpaid rent. Consequently, this section of the landlord's claim is dismissed.

With regard to the landlord's claim for flea treatment of \$230.10; the landlord has provided insufficient evidence that the tenants agreed to have this treatment done after they brought a cat into the unit without permission. Furthermore the landlord has not met the burden of proof that the tenants' actions or neglect caused fleas in the unit which required a treatment of the unit. I therefore find this treatment was carried out because the landlord wanted to ensure the unit was flea free and is therefore not entitled to pass this cost onto the tenants. This section of the landlord's claim is dismissed.

With regard to the landlord's claim to keep part of the security deposit of \$200.00. As I have found that the tenants did agree in writing that the landlord could retain this amount from the security deposit then the landlord is entitled to do so without filing an application. Consequently, as that matter has been addressed under the tenants' application no further Orders will be made regarding the security deposit.

As both parties have had some success with their applications I find both parties must bear the cost of filing their own applications.



Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$111.07**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

The reminder of the tenants' application is dismissed without leave to reapply

I Hereby Order that the landlord is entitled to retain **\$200.00** from the security deposit.

The reminder of the landlord's application 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: February 04, 2014

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Residential Tenancy Branch

