



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with monetary claims by the tenants and the landlord. The tenants and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's application. The tenants confirmed that they received the landlord's evidence. The tenants did not serve their evidence on the landlord, and I therefore did not admit that documentary or photographic evidence. Both parties were given full opportunity to give testimony and present their admissible evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?  
Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on February 1, 2012, with monthly rent in the amount of \$1100. The written tenancy agreement indicates that the tenancy was for a fixed term of one year, ending April 30, 2013. At the outset of the tenancy the tenants paid the landlord a security deposit of \$550 and a pet deposit of \$550. The parties agreed in the hearing that the rental unit had been renovated just before the tenancy began. The tenancy ended on April 30, 2013.

### *Tenants' Claim*

The tenants have claimed double recovery of the security and pet deposits. The tenants stated that at the end of the tenancy they gave the landlord their forwarding address via email, which was their normal form of communication with the landlord, and the landlord replied to the tenants' email with the forwarding address. The tenants stated that there were no move-in or move-out inspections. The tenants also stated that they had discussed waiving the pet deposit, but did not consent in writing for the landlord to retain the deposits.

The landlord's response to the tenants' application was as follows. The landlord submitted that the tenants "consumed" the deposits by consenting to the landlord keeping the deposits in lieu of April 2013 rent. In support of this position the landlord submitted an email from the landlord to the tenant, which reads: "That's right both pet and damage deposit of \$1100. will be kept in lieu of April's rent." I note that the landlord's evidence does not contain an email from either of the tenants in which they agreed to let the landlord keep the deposits.

### *Landlord's Claim*

The landlord claimed \$2100 in rental arrears and \$2350 for damage to the rental unit.

Regarding arrears in rent, the landlord submitted that the tenants paid \$1100 per month for six months, \$900 a month for five months and they paid no rent for April 2013. The landlord stated in the hearing that as of November 1, 2012 he reduced the tenants' rent to \$900 per month with the understanding that the deposits would be deducted from the total lease.

In regard to compensation for repairs and other items, the landlord claimed as follows:

- \$1200 for repainting and cleaning the whole house, at \$30 per hour for 40 hours
- \$120 to replace four broken window blinds;
- \$420 for three area rugs;
- \$300 to replace the lower front bedroom carpet;
- \$60 for two cans of flea spray;
- \$50 for dump fees;
- \$200 for gas and ferry fees; and
- \$23 for photo development.

In support of this portion of his claim, the landlord submitted 54 photographs of damaged or dirty areas of the rental unit. The landlord did not submit a copy of any move-in or move-out condition inspection reports. The landlord acknowledged that he has not replaced the stained rugs, and the flat paint in older homes tends to come off. The landlord also acknowledged that he did not know where the fleas came from.

The tenants stated that they had to move out of the rental unit because of all the mould. They stated that the rental unit was renovated before they moved in, but it was unfinished. The tenants stated that when mould began to appear they tried to wash the walls, but the paint started coming off. The tenants stated that they were sick all the time because of the mould. The tenants stated that the landlord lowered the rent to \$900 per month, and he waived April 2013 rent. The tenants submitted that the landlord's rate of \$30 per hour was "more than a professional electrician" and not reasonable.

The tenants acknowledged that their cat left scratches on a wall, and their daughter put stickers on her bedroom wall.

### Analysis

#### *Tenants' Claim*

I find that the tenants are entitled to double recovery of the security and pet deposits. I accept the testimony of the tenants that the landlord received the tenants' forwarding address by email at the end of the tenancy. The landlord did not dispute this evidence. Under section 38 of the Act, if the landlord does not either return the deposit(s) or make an application to keep the deposit(s) within 15 days of the later of the two of the tenancy ending, the tenants are entitled to double the amount of the deposit(s). In this case the tenancy ended on April 30, 2013 and the landlord received the tenants' forwarding address in writing at that time. The landlord did not return the deposits or make an application to keep the deposits until December 12, 2013. The landlord did not provide evidence that the tenants agreed in writing that the landlord could keep all or part of the deposits.

#### *Landlord's Claim*

I find that the landlord is entitled to the amount claimed for rental arrears. The tenancy agreement indicates that the monthly rent was \$1100. Rent is a material term of a tenancy agreement, and a material term can only be agreed to in writing. I find no evidence that the landlord and the tenant agreed in writing that the monthly rent would be reduced from \$1100 per month to \$900 per month. I therefore find that the monthly

rent remained at the rate of \$1100 per month to the end of the tenancy. The landlord is entitled to \$1000 for the five months that the tenants only paid \$900 per month for rent. I also find that the landlord is entitled to rent of \$1100 for April 2013, as there is no written agreement from the landlord to waive April 2013 rent. The tenants' own testimony was that they had only discussed allowing the landlord to retain the deposits in lieu of rent, but had not agreed to it in writing.

In regard to the landlord's claim for compensation for cleaning and repairs, I find that the landlord's claim was mostly unsuccessful. The landlord did not provide a move-in condition inspection report to establish the condition of the unit at the outset of the tenancy. The landlord acknowledged that he did not know where the fleas came from, and flat paint, used in older homes such as the unit rental unit, tends to come off. The tenants acknowledged that their cat and their daughter's stickers did some damage to the walls, and I therefore grant the landlord a nominal award of \$100 for those damages. The landlord is not entitled to recovery of his gas or ferry costs, as the landlord chose to engage in the business of renting a house in a distant location. The landlord is not entitled to recovery of his photo development fees, as the only recoverable cost associated with the dispute resolution process is the filing fee.

### *Filing Fees*

As the tenants' claim was successful and the landlord's claim was partly successful, I grant each party recovery of their respective filing fees.

### Conclusion

The tenants are entitled to \$2250. The landlord is entitled to \$2250. As these amounts offset each other, the balance remaining to both parties is \$0.00. It is therefore not necessary for me to issue a monetary order.

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: April 14, 2014

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Residential Tenancy Branch