



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for an order to keep the security deposit in partial satisfaction of the claim, for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

The Tenants filed for a monetary order for return of the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Are the Tenants entitled to return of the security deposit?

### Background and Evidence

This dispute arose after the Tenants and the Landlord signed a fixed term tenancy agreement on November 11, 2013, for the Tenants to rent the subject rental unit. In fact, the Tenants did not move into the rental unit at all.

The Landlord testified he placed an ad for the rental unit in October and the Tenants viewed the rental unit on or about October 31, 2013. On or about November 11, 2013, the parties signed the tenancy agreement for rent of \$3,000.00 per month, payable on the first day of the month. The Tenants paid the Landlord the security deposit of \$1,500.00 in two installments of \$400.00 on the 11<sup>th</sup> of November 2013, and \$1,100.00 on November 23, 2013.

It appears from the evidence and testimony that the Tenants were also looking for roommates to share the house.

A witness has entered a statement stating the Tenants wanted to move into the subject rental unit early, on December 1, 2013; however, the Landlord's family was unable to move out then and the parties agreed the Tenants could move in on December 15, 2013.

The security deposit receipts were photocopied onto a page and on top of the document they wrote out an agreement, both parties signed this and they agreed as follows:

“Rental Property at [address of subject rental unit] will be rented by Tenants as of December 15, 2013. Subsequently, rent will be paid on 1<sup>st</sup> of the month as per contract.”

According to the witness, toward the end of November the Tenants informed the Landlord they were having problems finding roommates and wanted to back out of the rental agreement and not move in.

On December 2, 2013, the Landlord and the Tenants met and signed a mutual agreement to end the tenancy. The parties also signed a second document that day, as follows:

“I, [Tenants’ names] agreed to rent [subject rental unit address] from Dec 15, 2013. We want to terminate the contract, but the new tenants we want to take over the lease can only move-in beginning on Jan, 1, 2014. We will let the Landlord [Landlord’s name] keep our Damage Deposit of \$1,500.00 as the rent for the period from December 16-31, 2013. We will not have access to the property during this time. We do not owe each other any other amounts and we will not take action on each other based on this mutually agreed to ending the tenancy. Landlord will be responsible for the Utilities during the Dece 16-31, 2013 period. Today’s date is Dec 2, 2013.”

[Reproduced as written.]

On or about December 12, 2013, the Tenants wrote the Landlord and wanted to re-negotiate the security deposit. They agree they will not move into the house on December 15, 2013, and requested the return of the security deposit.

The Landlord is now claiming to keep the security deposit for the unpaid rent and requests \$200.00 for utilities, and the \$50.00 filing fee for the Application.

The Tenants want to have the security deposit of \$1,500.00 returned, plus the \$50.00 filing fee for the Application.

The Landlord testified that he had his nanny, the witness who submitted the statement as described above, translate these documents to the Tenants before they signed. The Landlord testified that the Tenants did have a good command of English, but he acted out of an abundance of caution for the Tenants.

During the course of the hearing the Tenant agreed he understood he was signing over the security deposit of \$1,500.00 to the Landlord for the two weeks of rent for December 2013. The Tenant also agreed he understood the mutual agreement to end the tenancy and that he and the Landlord had agreed to not claim against each other for anything further. He also testified and agreed that the Tenants had wanted to move into the rental unit for December 15, 2013.

The Tenant then testified he wanted the deposit back because the original tenancy agreement set out that the tenancy did not start until January 1, 2014, and this contradicted what was set out in the letter both parties signed on December 2, 2013.

The Tenants also allege the spouse of the Landlord said they could live in the rental unit for the two weeks in December, although the Landlord himself would not allow this.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each of the Applicants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the respective Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I dismiss the Applications of both parties, except for the filing fee for the Application of the Landlord.

I find that neither party has breached the Act allowing further compensation to each other in these Applications. The Tenants breached the Act and Tenancy Agreement by ending the fixed term tenancy; however, the parties entered into agreements to resolve the breach of the Tenants. I find that the agreements reached between the parties were not contrary to the Act or the tenancy agreement; that the agreements are legally binding and should not be disturbed by the Arbitrator; and that the parties should be held to the strict terms of these agreements.

When the Tenants decided they would not go through with the fixed term tenancy, they and the Landlord entered into agreements to end the tenancy as of December 2, 2013, and to compensate the Landlord for loss of rent for the two weeks of December that the Tenants were going to live in the rental unit.

Had the Landlord not agreed to end the tenancy, the Tenants would have been financially responsible for the duration of the fixed term tenancy, unless other renters were found. That was the case here. Other renters were found for January 1, 2014. Therefore, I find that both parties mitigated their losses.

At the end of the hearing, I cautioned the Tenants and explained that when they sign a contract they are agreeing to the terms of the contract. I explained they should not be

signing legally binding contracts and then deciding they do not want to abide by the terms of the contracts they have signed.

I also do not accept that the Tenants should have been allowed to live in the rental unit for the two weeks in December, once they ended the tenancy on December 2, 2013. They agreed to compensate the Landlord and not move into the rental unit for those two weeks. It is not open to the Tenants to now claim they would have moved into the rental unit for two weeks and then moved out again, in order to claim back the two weeks of rent they owed the Landlord.

Lastly, I find the Tenants must pay the Landlord the cost of the filing fee for the Application. The Landlord was compelled to file this claim when the Tenants sent him a letter wanting the security deposit back and he did so only because the Tenants were attempting to breach the terms of their agreements previously agreed to.

### Conclusion

The claims are dismissed as the agreements entered into by the parties are valid and binding and not contrary to the Act or the tenancy agreement.

The Tenants must pay the Landlord the filing fee for the Application as the Landlord was compelled to make the Application when the Tenants began requesting the security deposit back in contradiction to the agreements they previously signed.

The Landlord is granted a monetary order in the amount of **\$50.00** which must be served on the Tenants and may be enforced in Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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

