



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LANDLORDS: OPR, MND, MNR, MNSD, MNDC, FF  
TENANTS: CNC, FF, O

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlord filed seeking an Order of possession, a monetary order for compensation for unpaid rent, for damage to the unit, site or property, for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Tenant filed seeking to cancel the Notice to End Tenancy to recover the filing fee and for other considerations.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on March 27, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by fax on March 24, 2014. This method of service is not in accordance with section 89 of the Act and consequently I do not accept the service of the Tenants' hearing package to the Landlords.

The Tenants and the Landlords confirmed that they had received the other party's hearing packages.

At the start of the conference call the parties agreed they had signed a Mutual Agreement to End the Tenancy on April 1, 2014 and the tenancy ended on April 30, 2014. Consequently the Tenants withdrew their application to cancel the Notice to End the Tenancy and the Landlord withdrew their request for an Order of possession.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?

2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?
6. Are the Landlords entitled to unpaid rent and if so how much?
7. Are the Landlords entitled to retain the Tenants' security deposit?

### Background and Evidence

This tenancy started on June 1, 2013 as a fixed term tenancy with an expiry date of April 30, 2014. Rent was \$3,060.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,500.00 May 15, 2014 and a pet deposit of \$1,500.00 in June, 2014. No move in or move out condition inspection reports were completed for this tenancy and the Tenants have not given the Landlords their forwarding address in writing as of yet.

The Landlord said the Tenant has unpaid rent for July, August and September, 2013 in the amount of \$60.00 for each month for a total amount of unpaid rent of \$180.00. The Tenant agreed that the rent cheques for these months were incorrect and they owe the Landlord \$180.00 in unpaid rent.

The Landlord continued to say that since the tenancy has ended he has inspected the rental unit and he has discovered damage in the house. The Landlord said he is requesting to retain both the security and pet deposits in a total amount of \$3,000.00 to make repairs to the rental unit. The Landlord said he has not done the work and he hoped the deposits would cover the costs.

The Tenants said they had the carpets professionally shampooed and they hired professional workers to make repairs to the walls and paint any walls that they may have damaged during the tenancy. The Tenants said they repaired any damage that they did to the house and therefore the Tenants do not believe the Landlords have a valid claim on their security and pet deposits. As well the Tenant said there was damage to the walls in the rental unit when they moved in, but as no condition inspection report was done on move in it is only their word against the Landlords' word. The Tenants said they owe the Landlord \$180.00 for unpaid rent and that is all they believe they owe. The Tenants requested the Landlord send their security and pet deposits back to them.

### Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy

agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants do not have the right to withhold the unpaid rent from July, August and September in the total amount of \$180.00. Consequently, I find the Tenants are responsible for the unpaid rent of \$180.00 and I order the Landlord to retain \$180.00 from the Tenants' security deposit as full settlement of the unpaid rent.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlords said they have not completed the repairs and work on the rental unit therefore the amounts claimed by the Landlords are only estimates. As a result the Landlord has not proven an actual loss exists and the Landlord has not verified that loss with receipts, consequently I dismiss with leave to reapply, the Landlords' damage claims and the Landlords request to retain the Tenants' security and pet deposits for damages. The Landlord is ordered to handle the Tenants' security and pet deposits as prescribed in the Act.

As the Landlords have only been partially successful in this matter, I order the Landlords to bear the cost of the filing fee of \$50.00 which they have already paid.

As the Tenants withdrew their application as a result of a Mutual Agreement to End the Tenancy I order the Tenants to bear the cost of the filing fee of \$50.00 which they have already paid.

### Conclusion

The Landlord is order to retain \$180.00 of the Tenants' security deposit for unpaid rent.

The Tenant's application is withdrawn.

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 06, 2014

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Residential Tenancy Branch

