



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:57 a.m. in order to enable him to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords testified that they sent a copy of their dispute resolution hearing package to the tenant's current mailing address by registered mail on February 15, 2014. They entered into written evidence a copy of the Canada Post Customer Receipt containing the Tracking Number, as well as a copy of Canada Post's Online Tracking System which reveals that their package was successfully delivered to the tenant on February 19, 2014. In accordance with sections 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlords' dispute resolution hearing package on February 20, 2014, the fifth day after its registered mailing. I am also satisfied that the parties exchanged written evidence with one another in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for their application from the tenant?

### Background and Evidence

This periodic tenancy began on November 1, 2012. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlords, the monthly rent was set at \$1,250.00, less a \$50.00 hydro allowance provided to the tenant in exchange for the tenant's assumption of hydro costs for a guest cabin on this rental property. The landlord continues to hold the tenant's \$600.00 security deposit paid on September 30, 2012.

The landlords provided undisputed sworn testimony and written evidence that the tenant advised them in mid-January 2013 of his intention to vacate the rental unit by the end of March 2013. The tenant removed his belongings from the rental unit by mid-March 2013. In his written evidence, the tenant maintained that when he returned to the rental unit on March 17 or 18, 2013 to conclude any remaining cleaning required, he discovered "the doors wide open" and the "landlords were in the unit with equipment, making renovations causing a considerable mess in the unit." The male landlord disputed this written evidence, maintaining that the landlords did not take access of the rental unit until sometime between March 20 and March 25, 2013. The female landlord testified that she was in the rental unit when the tenant returned on March 17 or 18, 2013, but said that the tenant had given her permission to access the rental unit to see what if anything needed cleaning or repair. The landlords told me that the tenant did not have to return any keys as they had never issued keys to him during this tenancy.

The female landlord testified that no joint move-in or move-out condition inspections were conducted with the tenant for this tenancy. She said that the landlords did not know where the tenant was living until they drove around the island looking for his truck. Once they found his truck and sent him dispute resolution hearing package materials, they have had a number of conversations with the tenant, including some at his place of residence.

The landlords' application for a monetary award of \$1,551.11 included the following items as listed in their Monetary Order Worksheet of May 20, 2014:

<b>Item</b>	<b>Amount</b>
Unpaid March 2013 Rent	\$1,200.00
BC Ferry Fare	24.60
Pesticide Purchase for Decks and Patio	13.42
Pesticide Purchase for Interior	30.23
Flea Fumigator	82.86
Landlords' Cleaning Costs	120.00
Landlords' Time to Apply Flea Treatments	30.00

Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,551.11</b>

The female landlord testified that the damage resulting in the pesticide and flea treatments occurred two to three months after this tenancy ended when the tenant's cat returned to the rental property and spread his fleas to the premises. The landlords entered written evidence regarding the tenancy that followed that of the tenant/respondent in their application. They maintained that the subsequent tenants ended their tenancy because the tenant's cat returned and spread fleas to their indoor cats.

The tenant's written evidence disputed most of the landlords' claims and asserted that the landlords owed the tenant \$300.00 from what appears to have been a previous tenancy and another \$500.00 from work he performed in felling trees on their property in August 2013, well after this tenancy ended. He asserted that he had to end this tenancy because the utility bills were too high.

### Analysis

I should first note that I can only consider the landlord's application for a monetary award, the only issue properly before me. Any counter claim that the tenant may have is a separate issue.

At the hearing, I advised the landlords that I cannot consider their application for a monetary award for the recovery of damages that they claim to have incurred for events that did not arise during the course of this tenancy. Their claim for damage that resulted from the tenant's cat some two or three months after this tenancy ended does not fall within the *Act*. I can only consider claims that arose from damage or losses arising during the course of this tenancy. Even if that were not the case, the absence of joint move-in or move-out condition inspection reports and an intervening tenancy would make it exceedingly difficult to ascertain the extent to which any alleged flea infestation occurred during the course of this tenancy and was the responsibility of the tenant. For the above reasons, I dismiss the landlord's claim for damage arising out of this tenancy without leave to reapply.

In considering this matter, I have first given regard to the landlords' claim to retain the tenant's security deposit. The landlords gave convincing sworn testimony that their only means of discovering the tenant's mailing address was by driving around this Gulf Island and locating the tenant's very distinctive truck. They testified that they did not receive the tenant's forwarding address in writing from the tenant. Section 39 of the *Act* reads as follows:

***Landlord may retain deposits if forwarding address not provided***

**39** *Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

*(a) the landlord may keep the security deposit or the pet damage deposit, or both, and*

*(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.*

Even after the landlord applied for dispute resolution to retain the tenant's security deposit, the tenant still had time to send his forwarding address in writing to the landlords or to apply for authorization to obtain a return of his security deposit. On the basis of the undisputed evidence before me, I find on a balance of probabilities that the tenant's failure to provide his forwarding address in writing to the landlords within one year of the end of his tenancy has allowed the landlords to keep his security deposit as per the provisions of section 39(a) of the *Act*. Pursuant to this section of the *Act*, I therefore allow the landlords to keep the tenant's security deposit plus applicable interest. No interest is payable over this period.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for March 2013, the tenant would have needed to provide his notice to end this tenancy before February 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing.

While the tenant gave his notice to the landlords of his intention to end his tenancy by March 31, 2013, both parties provided evidence that the tenant did not provide any written notice of this intention to the landlords. I find that the tenant contravened the *Act* by failing to provide his notice to end tenancy to the landlord in writing as required by section 52 of the *Act*. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for March 2013, the last month of his periodic tenancy. However, there is evidence from both parties that the landlords actually took possession of this rental unit before the end of that month,

and were involved in repairing and renovating the rental unit before the tenant was finished with his efforts to leave the rental unit in acceptable condition at the end of his tenancy. The tenant maintained in his written evidence that the landlords effectively took possession of the rental unit on March 17 or March 18, 2013, without obtaining his permission to do so and without obtaining an Order of Possession. The male landlord admitted that this occurred, but testified that the landlords did not take physical possession of the rental unit until sometime between March 20 and 25, 2013.

Usually the transfer of the keys to the rental unit is a good measure of when a tenancy ended and the landlord assumed vacant possession of a rental unit. In this case, strange as it may seem, no such handover of keys could occur as the landlords had never provided the tenant with keys to secure this rental unit. Although the female landlord testified that she had the tenant's oral permission to enter the rental unit on March 17 or 18, 2013, the tenant's written evidence maintained that this was not the case and that the landlords were in the midst of renovations and cleaning when he returned to the premises on one of those days. I find that there is disputed evidence as to when this tenancy ended and whether the landlords took premature action to remove the tenant from the rental unit before he was willing to do so. The tenant's failure to pay his monthly rent for March 2013 had no bearing on whether the landlord could take possession of the rental unit and commence renovations.

Under these circumstances, I find that the landlords' failure to provide the tenant with a key to access the rental unit was the source of the confusion regarding when and if the tenant had actually ended his tenancy. Based on the male landlord's sworn testimony, I find on a balance of probabilities that the landlords ended this tenancy on March 20, 2013, by which time the landlords had taken possession of the rental unit without the tenant's clear direction that he no longer intended to require possession of that rental unit and without legal authority to do so. Under this scenario, I find that the tenant is responsible for paying rent for the first 20 days of March 2013. I find that the landlords are therefore entitled to a monetary award of \$774.19 ( $\$1,200.00 \times 20/31 = \$774.19$ ) for unpaid rent owing from March 2013.

As the landlords have been successful in their application, I allow the landlords to recover their \$50.00 filing fee from the tenant.

### Conclusion

I order the landlords to retain the tenant's security deposit pursuant to section 39 of the Act.

I also issue a monetary Order in the landlords' favour under the following terms, which allow the landlords to recover unpaid rent and their filing fee from the tenant:

Item	Amount
Unpaid March 2013 Rent (March 1 – March 20, 2013 = \$774.19)	\$774.19
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$824.19</b>

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the landlords' application 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: June 02, 2014

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Residential Tenancy Branch

