



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC

### Introduction

This hearing was convened by way of conference call concerning the tenants' amended application seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for return of all or part of the pet damage deposit or security deposit.

Both landlords and both tenants attended the hearing, and all parties gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for moving expenses for the landlords' breach of a fixed term tenancy?
- Have the tenants established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?

### Background and Evidence

The first tenant testified that the landlords had originally contracted with another tenant who rented a house from the landlords, and subsequently rented out the basement suite to the tenants commencing January 17, 2014. The tenants believed that the persons

they rented from owned the property because they told the tenants they were purchasing the house on a rental purchase arrangement.

Once the tenants in the upper unit moved out, a new tenancy agreement was signed by the parties which specified a commencement of the tenancy on July 1, 2014 for a fixed length of time. The tenants moved out of the rental unit on October 5, 2014 without advising the landlords, however the keys to the rental unit were mailed to the landlords to avoid confrontation. Rent in the amount of \$1,000.00 per month was payable under the tenancy agreement, a copy of which has been provided, and the landlords collected a security deposit from the tenants in the amount of \$500.00 as well as a pet damage deposit in the amount of \$250.00. Both deposits are currently held in trust by the landlords, and the tenants have not yet provided the landlord with a forwarding address. The tenant also testified that there are rental arrears in the amount of \$2,000.00 to the end of October, 2014. A move-in condition inspection report was completed at the commencement of the tenancy but a move-out condition inspection report has not been completed.

The tenant also testified that the landlords never stayed at the rental unit during the tenancy, and that to the best of her knowledge, the landlords didn't stay in the upper unit either.

The tenant further testified that the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and then served the tenants with a 1 Month Notice to End Tenancy for Cause, accusing the tenant of yelling, threatening and swearing at new tenants in the upper unit. One of the tenants is the grandmother of the other tenant, and the granddaughter's boyfriend was making repairs in a storage unit and had asked for permission to move the landlords' belongings into the attic in the garage.

When the tenants in the upper unit moved in, her boyfriend made a comment with his back up because he couldn't have his dogs, but the tenants in the basement suite had a dog. There was no swearing, but the tenant called him a young punk, and he called the tenant an old hag. The tenant called the landlord saying that it wasn't working, and that if the tenant and her boyfriend didn't apologize, perhaps the tenants would move out, hoping that the landlord would talk to them and solve the issue. Instead, the landlord offered to allow the tenants out of the fixed term and the landlords issued a 1 Month Notice to End Tenancy for Cause. A copy has been provided and it states that the reason for issuing it is: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The tenant believes that the tenants have only had conversations with the tenants in the upper unit about 3 times.

The tenant also testified that an argument ensued between her and one of the landlords. The tenant in the upper unit had asked for a mailbox key and the tenant advised that she could get one from the post office. Instead, the tenant in the upper unit had the mailbox lock changed, which was a shared mailbox between the 2 units. The tenant called the post office about it who advised that there shouldn't be 2 keys, but the tenant was provided with a key to the new lock. The tenant in the upper unit wanted her sister to move in, and the landlord had told the tenant that if she wanted to move out prior to the end of the fixed term that would be okay because she already had a prospective tenant.

The tenant further testified that whenever the tenant would be late with rent, the tenant would let the landlords know, and they were okay with that. In August, 2014 the tenant advised the landlord that rent would be late and stated that it would be paid by September 5, 2014 but due to banking problems August's rent wasn't paid until September 10, 2014. The landlord wanted the tenants out and issued the notice to end tenancy and accused the tenants of being abusive and late with the rent. The tenant cancelled the rent cheque for August stating that it might have been stale-dated, and that September's rent was not paid due to a banking error; the tenant had withdrawn money from an instant teller machine and the machine didn't give her any money but the account showed that the money had been withdrawn. It took several days to correct that error.

The tenant also testified that there had been a flood in the rental unit causing the tenants to go elsewhere but returned to the rental unit because they liked the home. The landlord has breached the fixed term of the tenancy.

During cross examination the tenant testified that the landlord sent the tenants a letter, a copy of which has been provided, explaining that the tenants in the upper unit were complaining about the tenants' dog. The dog would howl when the tenants were not at home. The landlord had mentioned it to the tenant on 2 occasions and the tenants purchased an anxiety coat for the dog and recorded the dog, and believed the complaint was from the upstairs tenant which was unfounded.

The second tenant testified that the tenants and the tenant in the upper unit had a misunderstanding, and the tenants went to speak with the tenant in the upper unit and her boyfriend. They had never complained about the tenants' dog but the tenant asked about it and the boyfriend stated that he wasn't pleased about the dog's howling and said if it continued he'd call the SPCA. She testified that the only disturbance was maybe when they went upstairs to talk about the garage. They didn't have much to do with the upstairs tenants.

The tenants claim damages for moving expenses for the landlords harassing the tenants and issuing notices to end tenancy that are not founded, considering that the landlords had agreed to the tenants paying the rent late, and there was no cause to issue the 1 Month Notice to End Tenancy for Cause. The tenants also claim recovery of the cost of repairing a dryer vent in the rental unit as well as recovery of the \$500.00 security deposit and \$250.00 pet damage deposit, for a total claim of \$3,465.00.

The first landlord testified that the tenants were evicted because they didn't pay rent. The landlords had agreed to receive it at the end of the month when rent wasn't paid at the end of August, 2014. The landlords have still not received any rent for September or October, 2014.

The landlord further testified that the tenants in the upper unit told the landlords that the tenants' dog in the lower unit was howling and they couldn't sleep during the day. Also, the tenant was verbally abusive to the other landlord, witnessed by the landlord who was standing beside her and could hear the tenant yelling at his wife over the phone.

The second landlord testified that the tenant was verbally abusive toward her and was told by the upstairs tenants that the tenant was swearing at her. The landlord had given the tenants a letter with a notice to end tenancy, asking for no further altercations. The tenant said that as a result of the altercation with the tenants upstairs, the tenant would look for a new place to live and the landlord told the tenant she wouldn't be held to the fixed term. The tenant took it that she was being evicted and started yelling and swearing. Her granddaughter took the phone and wouldn't give it back to her till she calmed down. The tenant threatened to report an illegal suite and hung up on the landlord 3 or 4 times.

The landlord also testified that the agreement included that the landlord would live with the tenants when in town during the summer time and Christmas, but made it clear that the landlord needed the 3<sup>rd</sup> bedroom and that was the only way the tenancy would be able to work. The landlord remained neutral between the upstairs and downstairs tenants until the tenant started yelling and swearing and threatening to cause problems for the landlords unless the landlords let them stay.

The 1 Month Notice to End Tenancy was issued because things came to a head and weren't going to get better.

The landlord further testified that prior to the commencement of this tenancy, the landlord checked with the City who advised that the tenant, who was already living there under a different tenancy agreement, would have to move out and then back in after

improvements were done to make it a legal suite. However, the parties had agreed that the 3<sup>rd</sup> bedroom would be occupied by the landlord when in town, and nothing else would change for the tenants. When the landlord was not there, the tenants were welcome to use that 3<sup>rd</sup> bedroom.

### Analysis

I have reviewed the tenancy agreement, and nowhere is it evident that the rental unit was shared accommodation with the landlords or that the landlords, or either of them, shared kitchen or bathroom facilities with the tenants, and I accept jurisdiction with respect to this dispute.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the tenants claim that the landlord had no cause to issue either of the notices to end the tenancy and the landlords caused the tenants to move prior to the end of the fixed term, causing considerable expense. One of the tenants testified that there was a misunderstanding between the tenants and the tenants in the upper unit and that may very well be the case. However, the other tenant did not deny yelling and hanging up on the landlord.

In the circumstances, I am not satisfied that the tenants have satisfied elements 2 or 4 in the test for damages. I find that the landlords issued the 1 Month Notice to End Tenancy for Cause due to complaints received from the tenants in the upper unit about the tenants' dog howling and that the tenants had been yelling and swearing at them. A landlord is required to ensure that all tenants' rights to quiet enjoyment are protected, which can result in issuing a notice to end the tenancy. Further, I have no evidence with respect to the costs associated with the dryer vent. The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

With respect to the tenants' application for return of the security deposit and pet damage deposit, it is clear in the evidence that the landlords have not returned them, however the *Act* states that a tenant must give the landlord a forwarding address in

writing, and the tenants have advised that they have not done that. The *Act* also states that if a landlord does not make a claim against the deposits within 15 days of receipt of the forwarding address, the tenant is entitled to double recovery, and that if a tenant does not provide a forwarding address in writing within 1 year after the tenancy has ended, the landlord is not required to return the deposits. I therefore dismiss the tenants' application with leave to reapply. If the landlords do not return the deposits or make a claim against them within 15 days of the date the landlords receive the tenants' forwarding address in writing, the tenants will be at liberty to apply for double the amount.

### Conclusion

For the reasons set out above, the tenants' application for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenants' application for a monetary order for return of all or part of the pet damage deposit or security deposit is hereby dismissed with 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: October 31, 2014

---

Residential Tenancy Branch

