



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for return of all or part of the pet damage deposit or security deposit, and to recover the filing fee from the landlord for the cost of the application.

The landlord and one of the tenants attended, appearing for both tenants. The parties each gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided.

During the course of the hearing the tenant advised that the evidence that the tenants provided for this hearing was not provided to the landlord. Therefore, I decline to consider any of the tenants' evidentiary material.

Also, the landlord advised that another hearing respecting this tenancy is scheduled for June 6, 2014 concerning the landlord's application. The landlord was not able to join that dispute with this hearing, but the tenants have been served by registered mail.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for moving expenses and aggravated damages?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

The tenant testified that this fixed term tenancy began on July 1, 2013 and expired on June 30, 2014, at which time the tenants moved out of the rental unit. Rent in the amount of \$1,600.00 per month was payable on the 31<sup>st</sup> day of each month, less \$100.00 per month for doing maintenance on the  $\frac{3}{4}$  acre property, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 and a pet damage deposit of \$250.00 on July 28, 2013, both of which are still held in trust by the landlord.

The tenant further testified that on July 4, 2014 the tenant sent an email to the landlord requesting the deposits be returned, and the email contained a forwarding address. The landlord didn't respond, but acknowledges receiving a forwarding address to serve the landlord's application at.

The tenant also testified that although the tenancy agreement shows that the fixed term ends on June 30, 2014, the landlord agreed to a year and then a month-to-month tenancy, but the landlord changed her mind on June 29, 2014 without prior mention. Five days prior to the end of the month, the landlord's son called the tenants saying that they had to move out. The tenant emailed the landlord and on June 29, 2014 received an email back from the landlord agreeing that the parties had talked about a month-to-month but that the tenants had breached an agreement without going into any detail, and the landlord would not renew the tenancy.

The tenants claim double recovery of the deposits in the amount of \$2,100.00 as well as the equivalent of one month of rent for moving expenses and the equivalent of 2 months rent for damages for the landlord's failure to comply with the verbal agreement requiring the tenants to move out with very little notice.

The landlord testified that on June 25, 2014 the landlord sent the tenants an email reminding them that the lease was expiring and that they would have to move out. The landlord waited for the tenants to respond before scheduling a move-out condition inspection and the parties emailed back and forth from June 25, 2014 to July 27, 2014. The tenants did not advise the landlord of their availability. On July 4, 2014 the tenants emailed the landlord stating that a lawyer had told the tenants that they didn't have to move out.

The landlord agrees that the parties had talked about a month-to-month tenancy, and the landlord told the tenants that the landlord wanted to see how things went, and the landlord did not agree to the month-to-month.

The tenants didn't leave until July 15, 2014. The landlord drove by and saw the tenants loading the moving truck, but the landlord didn't schedule the inspection at that point because the landlord didn't want to deal with the tenant. The landlord received the keys to the rental unit on July 17, 2014 from the mailbox, which the tenants had moved.

The landlord's application for dispute resolution was filed on January 20, 2015. The landlord received the Tenant's Application for Dispute Resolution in August or September, 2014 but the landlord fell and broke a hip and was unable to deal with the paperwork.

### Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to prove the claim. In this case, the tenant testified that the landlord verbally agreed that the tenancy would continue after the fixed term expired, on a month-to-month basis, then changed her mind leaving the tenants little time to find another place to live and get moved. The landlord agrees that a month-to-month tenancy was discussed but that it wasn't agreed to; the landlord told the tenants that the landlord would see how things go. Where it boils down to one person's word over another, the claim has not been proven. Therefore, I find that the tenants are not entitled to any aggravated damages or moving expenses.

With respect to the deposits, the tenant testified that the landlord was sent an email which contained the tenants' forwarding address but the landlord did not respond. The landlord testified that a claim has been filed against the tenant and sent it to the forwarding address, and that the landlord received the Tenant's Application for Dispute Resolution in August or September, 2014 but suffered a broken hip and wasn't able to deal with the paperwork. The tenant's forwarding address is contained in the Tenant's Application for Dispute Resolution and the landlord applied for dispute resolution on January 20, 2015. Regardless of which day the landlord received the email, I find that the landlord received the tenant's forwarding address in writing twice, the latest of which was September 30, 2014. The landlord did not apply to keep the deposits within 15 days, and therefore, I find that the tenants are entitled to double the amounts, or \$2,100.00.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,150.00.

This order is final and binding and may be enforced.

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: January 28, 2015

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Residential Tenancy Branch

