



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNR, MNSD, O, FF

### Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- other remedies, identified as a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and both tenants attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant DJ ("tenant") confirmed that he had authority to speak on behalf of the other tenant, his wife "DH," as an agent at this hearing (collectively "tenants").

The tenant confirmed that both tenants received the landlord's application for dispute resolution hearing package ("Application") by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's Application.

The tenant testified that he served the landlord with the tenants' written evidence package on March 4, 2015, by way of registered mail. The tenants provided a Canada Post receipt and tracking number to confirm this mailing. The landlord testified that she did not receive the tenants' written evidence because she has been out of the country since January 2015. The landlord confirmed that she did not advise the tenants that she was out of the country or that she had a different address for service. I advised both parties that as the tenants' evidence was served in accordance with section 89 of the *Act* to the only service address provided by the landlord, that I would be considering the tenants' evidence at this hearing. Moreover, the tenants' written evidence contained emails that the landlord sent to the tenants, so the landlord would have reviewed this evidence prior to this hearing. The written evidence also included a short video clip. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was

deemed served with the tenants' written evidence package on March 9, 2015, five days after its registered mailing.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

Both parties agreed that this fixed term tenancy began on October 1, 2013 and was to end on September 30, 2014, as per the tenancy agreement. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. The landlord provided a copy of the written tenancy agreement and addendum with her Application.

The tenant testified that both tenants vacated the rental unit on August 5, 2014, while the landlord stated that the tenants vacated on August 6, 2014. Both parties agreed that the tenants initially gave written notice to leave the rental unit one month earlier than the fixed term date, on August 31, 2014. The landlord testified that she accepted this as reasonable notice to vacate and did not wish to pursue the tenants for compensation for September 2014 rent. Both parties agreed that the tenants subsequently gave notice on July 31, 2014 to vacate the rental unit on August 1, 2014. Both parties agreed that this notice was amended by the tenants to vacate as of August 5, 2014 without payment of rent from August 1 to 5, 2014. The landlord testified that this non-payment of rent was accepted in lieu of compensation to the tenants for water leaks and electricity issues during this tenancy. The tenant stated that this was only compensation for July 2014 water and electricity issues, not for the entire tenancy. Both parties agreed that a security deposit of \$850.00 was paid by the tenants on September 21, 2013 and the landlord continues to retain this deposit. The landlord confirmed that she was not given written permission from the tenants to retain this deposit. The landlord confirmed that she was provided with the tenants' forwarding address in writing on July 31, 2014.

The landlord stated that she filed a previous application with the Residential Tenancy Branch ("RTB") for the same relief on August 13, 2014, which she cancelled by way of a telephone call to the RTB on December 18, 2014. No hearing was set for the previous application and the landlord confirmed that she was advised by the RTB that no evidence from the previous application would be transferred to this current file.

The landlord seeks to retain the tenants' security deposit of \$850.00 for lack of sufficient notice to vacate the rental unit and breach of the fixed term tenancy agreement. The landlord also

seeks \$1,425.00 as a prorated rent amount from August 6 to 31, 2014, for breach of the fixed term tenancy agreement and for the tenants leaving on August 5 rather than August 31, 2014, as agreed. The landlord seeks compensation of \$218.40 for having to hire a locksmith to rekey the rental unit after the tenants failed to return the rental unit keys upon vacating. The landlord provided a receipt for this expense with her Application. The landlord also seeks to recover the \$50.00 filing fee for her Application.

The tenants claim that they are entitled to a return of double their security deposit, totalling \$1,700.00, as it was not dealt with in accordance with section 38 of the *Act*. The tenants also claim that they are entitled to monetary compensation for a loss of use of the rental unit, due to water leaks, water shut off and electricity shut off, as well as for having to reside with family outside the rental unit due to these problems. The tenants confirmed that they did not file an application for dispute resolution for these claims.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain \$487.00 from the tenants' security deposit;
2. Both parties agreed that the landlord will return the remainder of the tenants' security deposit in the amount of \$363.00 to the tenants by way of electronic transfer by March 20, 2015;
3. Both parties agreed that this agreement settles all aspects of the landlord's monetary claims against the tenants in the landlord's Application, including for the \$50.00 filing fee, and arising out of this tenancy;
4. Both parties agreed that this agreement also settles all aspects of the tenants' potential monetary claims against the landlord arising out of this tenancy, including for return of double their security deposit, monetary compensation for loss of use of the rental unit and any other claims;
5. Both parties agreed to waive their legal rights and not pursue any future monetary claims or applications against each other at the Residential Tenancy Branch with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above terms free of any duress or coercion. Both parties testified

that they understood and agreed to these terms as legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

### Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain \$487.00 from the tenants' security deposit and to return the remainder of the tenants' security deposit in the amount of \$363.00 to the tenants.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$363.00. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord does not abide by condition #2 of the above monetary agreement. The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible after a failure to comply with condition #2 of the above monetary agreement. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 16, 2015

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Residential Tenancy Branch

