



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, MND, O, FF

### Introduction

In the first application one of the tenants, Mr. M., applies to recover alleged over paid rent and double the amount of a security deposit pursuant to s.38 of the *Residential Tenancy Act* (the “Act”).

In the second application the landlord seeks to recover damages for rental loss resulting from a repudiation of a fixed term tenancy agreement, for repair cost and for cleaning.

### Issue(s) to be Decided

Does the relevant evidence produced at hearing show on a balance of probabilities that either party is entitled to the relief requested?

### Background and Evidence

The rental unit is a furnished, two bedroom, condominium apartment in a twenty floor condominium apartment building.

The tenancy started October 1, 2014. There is a written tenancy agreement between the parties. Mr. R. is Mr. M.’s father. It is not clear that Mr. R. intended to reside in the rental unit, however, that is not particularly relevant to these applications.

The tenancy was for a fixed term ending September 30, 2015. The tenancy agreement provided that the tenants must vacate at that the end of the fixed term. As Ms. K, the landlord’s property manager explained it, the landlord is out of the country and intends to return at that the end of the fixed term and resume living in the apartment.

The monthly rent was \$1950.00. The landlord holds a \$975.00 security deposit.

In January 2015 Mr. R. contacted the manager Ms. K. and reported that Mr. M. could no longer afford the accommodation. It would appear that Ms. K. undertook to find new tenants and was successful in locating a tenant who would rent the premises for four months commencing in mid-January. She suggested to Mr. R. that the tenants might consider subleasing to the new prospective tenants but that did not interest Mr. R.

Ultimately, the parties arranged that the tenants would pay a "re leasing fee" of \$682.50, being the fixed cost to the landlord of having his agent locate a new tenant. After some discussion between Ms. K. and Mr. R. it was agreed that the tenants would also pay an amount equivalent to one month's rent of \$1950.00. The tenants, who had already paid the January rent, would receive a rebate of \$750.00 for the twelve days in January when the new tenants would have possession.

Ms. K. says that the \$1950.00 charge was an offer to forego a claim for a likely loss of rental income after the expiry of the four month tenancy with the new tenants. She says that after the new tenants' term expires there will remain about four months in the fixed term of these tenants, when the landlord returns to move back in. She says it would be difficult to find a tenant for a furnished apartment for only four months and so the landlord could well lose the rent for that period; rental income he would have had if these tenants had honoured their fixed term tenancy. Thus it was proposed that the tenants pay \$1950.00 now and that would be the end of the matter, despite whether the landlord was able to rent it or not for the final four months.

Ms. K. put this proposal to Mr. R. by email dated January 17, 2015, along with a mutual end of tenancy agreement, in the government form, added as an attachment to the email. Mr. R. accepted the offer. He attached what appears to be his electronic signature to the email offer and to the mutual agreement to end the tenancy and returned them to the landlord's manager.

The agreement, as set out in Ms. K.'s email was as follows:

As agreed, the following as liquidated damages to end the lease early on Feb. 1, 2015. This forms part of the Mutual [*sic*] end to tenancy agreement.

One months [*sic*] rent of \$1950

Pro rated leasing fee \$650 plus gst = \$682.50

Payable on Jan 19:

$1950 + 682.50 - 975 \text{ security deposit} = \$1657.50$

Rent for 12 days in Jan 1950/31  $\times 12 = \$754.84$ . That will be received [*sic*] by the landlord to offset this amount so  $\$1657.50 - 755 = 902.50$  owing to [landlord's name redacted] by Feb 1, 2015. [Mr. R.'s name redacted] to give [Ms. K.'s name redacted] a cheque for this amount Jan 19, 2015.

It was agreed that the tenants would pay the landlord's manager Ms. K, the amount of \$902.50 on January 19<sup>th</sup>, as that was the inspection and move out date.

The tenant Mr. M. attended with Ms. K. for the move out inspection on January 19<sup>th</sup>. The \$902.50 was not paid at that time. The move out report, signed by Mr. M., notes that the \$902.50 will be paid by January 27<sup>th</sup>, but Mr. M. testified that note was added by someone after he signed the document.

Ms. K. testified that she and Mr. R. traded texts after that and in one of the texts Mr. R. said he could not pay until February 1<sup>st</sup>.

At move out Ms. K. and Mr. M. fell into dispute about cleaning and the repair of a hole in a wall. It does not appear they reached agreement on any of it. The landlord claims \$462.00 for the cleaning services of a cleaning service and \$525.00 for the repair of a holes in the bathroom paid to a repair company. Receipts for both items were submitted.

Mr. R. testified that after he signed and returned Ms. K.'s January 17<sup>th</sup> email proposal, his son Mr. M. told him he did not agree. Mr. M. had apparently received advice from the Residential Tenancy office and was of the view that since the landlord had re-rented the premises he should not have to pay. Mr. R. says sent the landlord an email saying Mr. M. wouldn't sign the deal.

Mr. R. says that he was at the move out inspection on January 19<sup>th</sup> and that Ms. K. never offered up the settlement agreement for Mr. M. to sign.

Mr. R. admits to the hole but says that Mr. M. could have repaired it for much less and that \$200.00 would be fair. He agrees some cleaning was required and suggests a proper cleaning cost should be \$230.00, an amount Ms. K. had given as an estimate at the end of the tenancy.

### Analysis

The evidence establishes that the tenants broke their lease by leaving early. The landlord accepted the tenants' repudiation and attempted to re rent the premises with notice to the tenants that they were expected to make up any loss.

Ms. K.s' email offer to resolve the matter, sent January 17<sup>th</sup>, was clearly accepted by Mr. R. and I find that both tenants were bound by that acceptance. The tenants under a residential tenancy agreement are jointly and severally responsible. That means that generally, one tenant can by his words or actions bind the other tenants in their relationship with a landlord. Ms. K. did not need to get Mr. M.'s signature on the agreement. Mr. R.'s acceptance of the arrangement was sufficient to bind both tenants.

Similarly, Ms. K. made an offer to the tenants by her January 17<sup>th</sup> email, it was accepted and that acceptance was conveyed to her with the signed email and mutual agreement to end tenancy. The landlord is bound by her actions and cannot ignore the settlement agreement to claim anticipated loss of rental income for the last four months of the fixed term tenancy. He can only "sue" to enforce the terms of the settlement agreement.

As a result, the landlord is entitled to \$1950.00 plus the \$682.50 re-lease cost, less \$754.84 tenant credit for January rent's rebate portion. Further, the landlord has the tenants' written authorization to retain the \$975.00 security deposit. The landlord is owed \$902.50 as per the settlement.

I award the landlord \$525.00 for the hole repair. The tenants may have been able to accomplish the repair for less, but they failed to do so before returning possession to the landlord. The landlord had no obligation to permit them back to do the work.

The landlord claims \$462.00 for cleaning. The tenants dispute that amount but admit to \$230.00 as a reasonable cost for cleaning. A tenant's responsibility under s.37(2) of the *Act* is to leave the premises "reasonably clean, and undamaged except for reasonable wear and tear." The evidence, including the cleaning service receipt does not show what level the cleaners raised the state of the premises to. It may well have been to a higher standard than the level required of a vacating tenant. In these circumstances I award the landlord \$230.00 for cleaning the rental unit after the tenants vacated.

In total, I award the landlord \$1657.50 plus recovery of the \$50.00 filing fee.

Conclusion

The tenants' application is dismissed.

The landlord will have a monetary order against the tenants, jointly and severally, in the amount of \$1707.50.

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: April 02, 2015

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Residential Tenancy Branch

