



# 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 return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other about 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 landlord for all or part or double the amount of the security deposit?
- 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 compensation under Section 51 of the *Residential Tenancy Act* after a notice ending the tenancy for landlord's use of property?

### Background and Evidence

**The tenant** testified that this fixed term tenancy began on March 1, 2012, expired after 1 year and then reverted to a month-to-month tenancy. The tenants moved out of the rental unit on December 22, 2014. Rent in the amount of \$850.00 per month was

payable in advance on the 1<sup>st</sup> day of each month 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 \$425.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlord raised the rent after the first year of the tenancy by \$25.00 per month without giving notice other than an email. The landlord raised the rent again effective May 1, 2014 to \$901.25 per month. The tenant believes the tenant agreed to the second increase in an email, but does not recall agreeing to the first increase.

The tenant further testified that on November 30, 2014 the landlord sent an email to the tenants saying that the landlord was going to move back into the rental unit, and the tenancy was ending on February 1, 2015. The tenant called the landlord stating that the notice had to be signed, and on December 6, 2014 the landlord signed the email and faxed it back to the tenants.

The tenants found another place to live and were able to move on December 22, 2014. The tenants paid rent for December, 2014 in the amount of \$901.25, and the landlord reimbursed the tenants \$300.00 as a pro-rated amount for the month. The tenants claim \$901.25 as compensation for the landlord's use of property.

The tenant also testified that the landlord didn't move into the rental unit, and the tenants have provided a copy of an advertisement that was found on a local website advertising the rental unit for rent for \$980.00 per month. The advertisement is dated February 19, 2015. The tenants claim \$901.25 for the landlord's failure to use the rental unit for the purpose claimed.

No move-in or move-out condition inspection reports were completed, however the parties met at the rental unit on January 2, 2015 and the tenants gave the landlord their forwarding address in writing.

**The landlord** testified that when the first term expired, the parties met and the landlord said that increases would be in the amount of strata increases, about \$25.00 per year, and the tenants were happy with that.

The landlord agrees that a signed copy of the email giving the tenants notice to move out of the rental unit by February 1, 2015 was sent by facsimile to the tenants, but the landlord believes it was on December 7, 2014. The landlord had 2 rental units in different communities and found herself without a home, having had a marital breakdown, and met with the tenants from both rental units explaining that she would

have to determine which one to move into. The landlord decided on this rental unit and notified the tenants in the email on November 30, 2014.

The landlord subsequently reconciled with her partner and didn't move into the rental unit. The tenants in the other rental unit moved out having only given 10 days notice, and the landlord had both units vacant.

However, the landlord does not believe she could have stayed in the rental unit due to the excessive smoke damage from cigarette smoke. The landlord talked to the tenants about it and told the tenant that he could paint the rental unit or forfeit the security deposit, and the tenant chose to forfeit, although not in writing. The landlord made an application for dispute resolution on April 16, 2015 claiming damages, however has not yet received a notice of the hearing to serve on the tenants. The landlord has been advised by the Residential Tenancy Branch that the hearing will be scheduled for sometime in September, 2015.

The landlord also testified that the parties together calculated the reimbursement amount of December's rent by dividing the rent over 30 days, and the landlord reimbursed the tenants \$300.00.

The landlord agrees that the tenants' forwarding address was received in writing on January 2, 2015.

### Analysis

Firstly, with respect to the security deposit, the parties agree that the landlord received the tenants' forwarding address in writing on January 2, 2015 and the parties agree that the tenancy ended on December 22, 2014. The *Residential Tenancy Act* states that unless a tenant otherwise agrees in writing, a landlord must return to a tenant any security deposit or pet damage deposit in full, or make an application for dispute resolution claiming against the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord does neither, the landlord must be ordered to repay the tenant double. In this case, I find that the tenants did not agree that the landlord should keep the security deposit in writing, and therefore the landlord had until January 17, 2015 to either apply to keep it or return it in full. The landlord did neither, having testified that an application for dispute resolution was made on April 16, 2015 which is not yet scheduled for hearing, and therefore the tenants are entitled to double the amount, or \$850.00.

With respect to the tenant's testimony respecting rent increases, I am not satisfied that the tenants have established that the increases were not consented to.

With respect to the balance of the tenants' claim, the *Act* states that in order to be effective, a notice to end a tenancy for landlord's use of property must be in the approved form. In this case, the landlord did not give the tenants notice in the approved form, and therefore, I find that the notice is ineffective, and the tenants did not have to move out of the rental unit. Having found that the notice is not valid, the tenants are not entitled to the compensation for the landlord's use of property, or for the compensation for the landlord's failure to use the property for the purpose set out in the notice. The tenants have been reimbursed for the pro-rated amount of rent for the last month of the tenancy, and I find that the tenants are not entitled to the compensation under Sections 51 (1) or 51 (2) of the *Residential Tenancy Act*. That portion of the tenants' application is therefore dismissed.

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 \$900.00.

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: April 29, 2015

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Residential Tenancy Branch

