



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: MNDC, MNSD  
TENANT: MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for loss or damage under the Act, regulations or the tenancy agreement and to retain the Tenants' security deposit.

The Tenants filed for the return of the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on March 9, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on July 27, 2015, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

### Issues to be Decided

Landlord:

1. Are there loss or damages to the Landlord and if so, how much?
2. Is the Landlord entitled to compensation for loss or damages and if so how much?
3. Is the Landlord entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to recover the security deposit?

### Background and Evidence

This tenancy started on November 1, 2014 as a fixed term tenancy with an expiry date of October 31, 2015. Rent was \$1,200.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$525.00 on October 1, 2014. No condition inspection reports were completed and signed by the parties. The Landlord said the rental unit was just newly renovated.

The Landlord said the Tenants moved out of the rental unit on March 1, 2015 without giving proper notice so the Landlord is claiming \$1,725.00 for the Tenant breaking the fixed term tenancy agreement. The Landlord said this amount equals one and ½ month's rent or \$1,200.00 and the security deposit of \$525.00.

The Tenant said the unit flooded 4 times in 40 days which in his mind made the unit unlivable. The Tenant said the first flood was December 20, 2014 and the Landlord compensated the Tenants for their stay at a hotel while the Landlord repaired the rental unit. The Tenant said they moved back in and the unit flooded again on January 24, 2015. The Tenant said the Landlord had installed a pump with a timer but it did not solve the flooding problem. The Tenant continued to say the unit flooded again on February 7 and February 9, 2015 and after this flood the Tenants decided the unit was not livable and the tenancy was frustrated because of the flooding and the Landlord's inability to correct the issue of leaking water and flooding. The Tenant said the pump did not work to control the flooding and three floods occurred after the pump was installed.

The Landlord said the pump was an emergency stop gap until he could repair the leaking walls correctly. As well the Landlord said the Tenant is overstating the extent of the flooding. The Landlord said the first flood was considerable but the other three were not floods but just water leaking in.

The Tenant said the Landlord saw the first and last floods but was not around for the other two floods. The Tenant said the water leak was substantial in all floods.

The Landlord continued to say that he put the pump in as a temporary measure until he could get machinery in to dig a correct sump pump pit and correct the problem. The Landlord said this has been done now.

The Tenant said they believed the tenancy was frustrated as defined by the Residential Tenancy Act so they gave notice to the Landlord 12 days before they moved out by email as the Landlord was on vacation and this was the only way to contact the Landlord. The Tenant said he understands when a tenancy is frustrated no notice is required by the tenant.

The Landlord said this was not a frustrated tenancy because he was taking reasonable action to correct the problem and that an inconvenience to a tenant is not grounds to

frustrate a tenancy. The Landlord said the unit was livable and he was working on the water problem by adjusting the pump settings.

The Tenant said adjusting the pump did not stop the water leaking in and it was not inconvenient it was stressful and the unit was uninhabitable.

The Tenant said in closing that the tenancy was frustrated because the Landlord did not stop the leaking water and flooding problem. The Tenant said they moved out because the unit was uninhabitable and now they are requesting the return of their security deposit in the amount of \$525.00.

The Landlord said in closing that the tenancy was not frustrated because the Landlord was responding to the water leak issue and need time to get machinery in to dig a correct sump pump pit. The Landlord said the Tenant is overstating the water leak issue and it was an inconvenience to the tenancy not an issue that would frustrate the tenancy. The Landlord said the Tenant broke the fixed term tenancy agreement and he is requesting \$1,725.00 in compensation.

### Analysis

**Section 32** (1) of the Act says: A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

It is common for repair or emergency repair issues to arise in a tenancy and when they do it is the Landlord's responsibility to make the repairs in a timely manner and/or compensate a tenant for any inconvenience if the repairs happen over an extended period of time. If a repair issue is reoccurring over a short period of time then the Landlord is held responsible to find the tenant suitable lodging until the repairs are completed or the Landlord can compensate the tenants with a rent reduction or settlement agreement. If the repair is not completed then the tenant has a case to say the tenancy has been frustrated because the unit is not livable or the Landlord has not repaired the unit. In this situation there were 4 flood or water leaks in 40 days and the Landlord's attempts to repair the problem failed. The Landlord offered compensation for the first flood but nothing was offered to the Tenants in the second, third and fourth water incident. Therefore I accept the Tenant's affirmed testimony that the rental unit was prone to random water leaks and possible flooding which made it uninhabitable. As the Landlord did not fix the water leaking problem and he did not offer compensation to the Tenants; I find that the tenancy was frustrated. Pursuant to section 44 (e) of the

Residential Tenancy Act I deem this tenancy to be frustrated due to reoccurring water leaks or flooding and the Landlord's inability to correct the situation in a timely manner.

Consequently I dismiss the Landlord's application for compensation as a result of the Tenants breaking the fixed term tenancy agreement as the tenancy ended on March 1, 2015 as a frustrated tenancy. The Landlord's monetary claim is for loss of rental income for April and ½ of May, 2015 in the amount of \$1,725.00 due to the Tenants breaking the tenancy agreement. I deem the tenancy ended on March 1, 2015 by frustration therefore the Landlord has no claim.

With regard to the Tenants' claim for the return of their security deposit I find that the Tenants have established grounds for the security deposit to be return and as the Landlord's claim on the security deposit is dismissed; I award the Tenants' claim in the amount of \$525.00.

In addition as the Tenants have been successful I order the Tenants to recover the filing fee from the Landlord in the amount of \$50.00

### Conclusion

A monetary order has been issued to the Tenants in the amount of \$575.00.

The Landlord's application is dismissed without 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: August 31, 2015

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Residential Tenancy Branch

