



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, FF  
                             MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for a monetary order for damage to the unit, site or property; for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied 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 landlords.

Both landlords and the tenant attended the hearing, and one of the landlords and the tenant gave affirmed testimony. The parties were given the opportunity to question each other respecting 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.

### Issues to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation for ending the tenancy for landlord's use of property?
- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit or pet damage deposit?

### Background and Evidence

**The tenant** testified that this fixed term tenancy began on October 15, 2014 and was to expire on April 15, 2015 and then revert to a month-to-month tenancy. A copy of the tenancy agreement has been provided which states that at the end of the fixed term, the tenancy may continue on a month-to-month basis or another fixed length of time. The tenancy ended on May 9, 2015. Rent in the amount of \$925.00 per month was payable on the 1<sup>st</sup> day of each month, and the tenant paid a pro-rated amount for the first month of the tenancy. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$462.50 as well as a pet damage deposit in the amount of \$462.50.

The tenant further testified that a move-in condition inspection report was completed at the beginning of the tenancy on October 15, 2014. The tenant requested a copy that day but didn't get it. The tenant requested a copy again on December 27, 2014 and received it on February 2, 2015. The tenant requested that the same landlord attend for the move-out condition inspection report for consistency, but the other landlord attended instead. The tenant did not feel comfortable signing it because it was a very poor move-out because the tenant was trying to vacate by April 15, 2015 but due to several events the tenancy didn't end until May 9.

The tenant had originally rented with the intention of living there with her 3 grandchildren whose mother (the tenant's daughter) was ill and required care. However, 5 days after the tenancy began the tenant's husband passed away and the tenant never did move into the rental unit. The rental unit became occupied by the tenant's ill daughter and her father who was the fulltime care-giver. The landlords were notified of that on December 1, 2014.

The fixed term was to expire on April 15, 2015 and the landlords provided the tenant with a letter dated March 1, 2015 stating that the tenancy would end at the end of the fixed term because the landlords intended to do renovations. The envelope for the letter is postmarked March 7, 2015 however the tenant received it on March 23, 2015. A copy of the letter has been provided. The tenant contacted the Residential Tenancy Branch and learned that the tenant didn't have to vacate in accordance with the notice because it was not legal or binding, however the tenant felt that if the landlords wanted to regain possession, the tenant should end the tenancy, and tried to be moved out by the effective date of April 15, 2015. The landlords did not provide the tenant with compensation as required when a landlord ends the tenancy for landlord's use of property, and the tenant claims \$925.00 from the landlords.

The tenant provided the landlord with a forwarding address in writing in a letter dated April 20, 2015 which was sent to the landlords by registered mail on April 22, 2015. The landlords returned the security deposit and pet damage deposit in full, which the tenant received on May 19, 2015. The tenant's application for dispute resolution was filed on April 22, 2015 and amended on May 1, 2015, both prior to receiving the security deposit and pet damage deposit from the landlords.

The tenant disputes the landlords' claims stating that the move-in/out condition inspection report only shows 2 bedrooms, and the rental unit had 3. Further, the landlords' claim includes replacement of the front entry door, but it was in extremely poor condition at the beginning of the tenancy and still has not been replaced. The tenant saw it yesterday and took a photograph. Also, a window in one of the bedrooms was cracked at the beginning of the tenancy, but it is not mentioned in the report. The report was completed by the landlord, not by the tenant, and the tenant didn't receive a copy until well after the tenancy began. The tenant agrees to replace the bathroom door, which she agrees was damaged by her daughter who got a replacement door, but whoever put it on did a terrible job. The tenant agrees to pay \$210.00 for the door.

The tenant disputes the landlords' claim for unpaid rent for the month of May, 2015 and testified that since the landlords collected a pro-rated amount at the beginning of the tenancy the landlord should only be entitled to a pro-rated amount at the end of the tenancy, given the landlords' notice to end the tenancy.

**The landlord** testified that with respect to damages, the front door had obviously been kicked in and as a result the lock was changed without the landlords' consent. The condition inspection reports reveal that the weather stripping needed replacement at the beginning of the tenancy which the landlords completed during the tenancy. The report also shows that there was a small dent in the door at the beginning of the tenancy but needed replacing along with the door frame at the end of the tenancy. It's a steel skinned door with no window. The landlords have provided a copy of an estimate which includes that door and installation at a cost of \$1,400.00. Photographs of the door have been provided and the landlord specified one that shows the small dent that was existent when the tenancy began, and others showing the condition of the door and door frame at the end of the tenancy.

The landlord further testified that the bathroom door and 2 bedroom doors and frames had to be replaced at the end of the tenancy. Somebody mudded the doors but none of the work was done properly. The estimate referred to by the landlord shows a cost of \$210.00 per door, which the landlords claim as against the tenant, or \$630.00.

The estimate also includes the cost to replace a broken window at \$120.00 and the landlord testified none of the windows were broken at the beginning of the tenancy.

The bedroom window also had a broken screen at the end of the tenancy and the landlord has provided photographs and a receipt for \$40.00 for its replacement, which the landlords also claim as against the tenant. The landlord testified that the reports are on a form provided by the Residential Tenancy Branch, and only has 2 bedrooms specified in it, and the form has been adjusted to show all 3 bedrooms.

The landlord also testified that the rental unit could not be re-rented due to poorly patched holes in the walls and pink dye or something on the carpet in one of the bedrooms.

### Analysis

Firstly, with respect to the landlords' damage claim, the *Residential Tenancy Act* and regulations state that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The tenant testified that she did not feel comfortable signing it at the end of the tenancy because it was poorly done. The tenant also testified that the move-in condition inspection was completed on October 15, 2014 but the tenant didn't get a copy until February 2, 2015. A landlord is required to provide the tenant with a copy of the report within 7 days of its completion at the beginning of the tenancy and within 15 days of completion at the end of the tenancy. If the landlord fails to do so, the landlord's right to claim against the deposits is extinguished. In this case, the landlords have not made a claim against the security deposit or pet damage deposit.

I have reviewed the reports and I find that there is no mention of broken windows or damaged doors at the beginning of the tenancy, and the tenant did not deny that some damage existed at the end of the tenancy. If there were such issues, the tenant ought to have written to the landlords upon receiving the move-in condition inspection report on February 2, 2015 that errors existed, but the tenant did not do that, and I find that the landlords have established that the damage or loss occurred as a result of the tenant's failure to comply with the *Act* by repairing any damage caused by a tenant.

A landlord is not required to complete all repairs prior to making an application for dispute resolution, and an estimate from a qualified supplier is sufficient as to evidence of the cost. Because the landlords' evidence also contains a receipt from the same company on the same type of invoice, I am satisfied that the estimate is a legitimate

estimate of the costs associated with repairs. Upon reviewing the reports, the photographs and the estimate and receipt, I find that the landlords have established a monetary claim as against the tenants for \$2,297.50 for the receipted and estimated repairs.

Both parties have made a claim with respect to rent for the month of May, 2015. I have reviewed the letter of the landlords telling the tenant that the tenancy would end on April 15, 2015. The tenant obtained correct advice from the Residential Tenancy Branch that the notice was not legal and the tenant didn't have to move out. The tenant chose to move out and tried to do so by April 15, 2015, however as a result, the tenant was not given a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant is not entitled to compensation under Section 49 of the *Act* unless the landlord serves the approved form. If not, the tenant is not obligated to move out and the landlord is not obligated to pay compensation. However, in this case, because the landlords attempted to have the tenant move out, I find that the tenant is obligated to pay rent to the end of the tenancy, or May 9, 2015, and the landlords have established a claim for unpaid rent in the amount of \$268.55 ( $\$925 / 31 \times 9 = \$268.55$ ), and the tenant's application for compensation is hereby dismissed.

With respect to the security deposit and pet damage deposit, the *Act* requires a landlord to return both deposits to a tenant 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. The tenancy ended on May 9, 2015 and the tenant received the deposits from the landlord on May 19, 2015, which I find is within the 15 days, and the tenant has since filing the application for dispute resolution already obtained that money. Therefore, I find that the tenant is not entitled to double the amount and the tenant's application for recovery of the deposits is dismissed. The tenant has a cheque for that amount and should cash it.

Since the tenant's application was filed prior to receiving the deposits, I find that both parties have been partially successful with the applications, and I decline to order that either party recover the filing fees.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,566.05.

I order the tenant to cash the cheque provided by the landlords as return of the security deposit and pet damage deposit, and the tenant's application is hereby dismissed.

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: September 30, 2015

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Residential Tenancy Branch

