



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF (Landlord's Application)  
                             MNSD, MNDC, FF (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlord and the Tenants.

The Landlord applied for a Monetary Order for: unpaid rent; damage to the rental unit; to keep the Tenants' security deposit, and to recover the filing fee. The Tenants applied for: the return of their security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and for "Other" undisclosed issues.

### Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. However, there was no appearance by any of the Tenants during the 20 minute duration of the hearing despite the Tenants being provided with this same date and time to hear their Application. As the Tenants failed to appear for this hearing and present the merits of their Application, I dismissed the Tenants' Application.

The Landlord testified that she had served the Tenants with a copy of her Application, the Notice of Hearing documents, and her evidence by registered mail on May 15, 2015. The Landlord testified that she sent it to the Tenants' address which was documented on the Tenants' Application. The Landlord provided a copy of the Canada Post tracking number as evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenants were deemed served with the required documents on May 20, 2015 pursuant to the Act.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for May 2015?
- Is the Landlord entitled to damages caused to the unit by the Tenants?
- Is the Landlord entitled to keep all of the Tenants' security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this written tenancy agreement for a fixed term tenancy commenced on June 1, 2014 and was scheduled to end on May 31, 2015. The Tenants were required to pay rent of \$1,000.00 on the first day of each month. At the start of the tenancy, the Tenants paid \$500.00 as the security deposit which the Landlord still retains. The Landlord completed a move in Condition Inspection Report (the "CIR") on May 31, 2014 and produced this into evidence for this hearing.

The Landlord testified that in April 2015, the Tenants sent her an e-mail explaining that they were moving out of the rental unit but that they would still be paying rent for May 2015. No specific move out date was provided. The Landlord explained that the rental unit was for sale at that time and was being managed by a property manager.

However, on May 1, 2015 the Tenants failed to pay rent. The Landlord testified that the Tenants were personally served with a 10 Day Notice for Unpaid Rent or Utilities (the "Notice") on May 2, 2015. The Notice was provided into evidence and shows a vacancy date of May 12, 2015 in the amount of \$1,000.00 due in unpaid rent.

The Landlord testified that in the interim time the Tenants had abandoned the rental unit and left without giving any written notice. The Landlord was unsure of the exact date the Tenants had abandoned the rental unit. The Landlord recalled receiving an e-mail containing the Tenants' forwarding address at the end of April 2015 but was unable to remember the exact date. The Landlord testified that she made her Application on May 11, 2015 using the Tenants' address detailed on their Application which she was served with.

The Landlord testified that when she took possession of the rental unit after the Tenants had abandoned it, the Tenants had failed to clean the rental unit. In addition, a glass shelf in the fridge was damaged and there was damage caused to a bath as a result of the Tenants using a suction mat. The Landlord testified that she had forbidden the Tenants to use any suction mats on the bath as the bath had been recently glazed.

The Landlord provided photographic evidence to support her testimony, including photographs of the lack of cleaning of the rental unit. The Landlord now claims \$131.25 for the re-glazing of the bath tub, \$150.00 for cleaning the rental suite, and \$254.86 for the replacement of the fridge shelf. The Landlord provided receipts and invoices to verify these losses. The Landlord noted that she had not charged for carpet cleaning as the Tenants did have the carpets cleaned. The Landlord also seeks unpaid rent for May 2015 in the amount of \$1,000.00

### Analysis

In relation to the timing of the Landlord's Application to retain the Tenant's security deposit, I find there is insufficient evidence before me to make a finding that the Tenants provided the Landlord with a forwarding address in writing using the service methods outlined in Section 88 of the Act. I also find that there is not sufficient evidence before me to make a finding of when the tenancy ended.

Section 38(1) of the Act requires a Tenant to provide the Landlord with a forwarding address in writing before a Landlord is required to deal with it in accordance with the Act. Putting a Landlord on notice of a forwarding address detailed on an Application is not sufficient to meet the service requirement of Section 38(1) of the Act. As a result, I deal with the Landlord's Application accordingly.

I have carefully reviewed the undisputed evidence of the Landlord on the balance of probabilities as follows. I accept the Landlord's oral and written evidence that the parties had engaged into a fixed term tenancy that was to expire on May 31, 2015. In relation to ending a fixed term tenancy, Section 45(2) of the Act states:

*A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

[Reproduced as written]

Therefore, I find that the Tenants were responsible to pay rent for the last month of the fixed term tenancy which was the contracted end date of the agreement. I accept the Landlord's oral testimony along with the Notice, as sufficient evidence that the Tenants failed to pay rent for May 2015. Therefore, the Landlord is awarded **\$1,000.00** for May 2015 unpaid rent.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean, and undamaged except for reasonable wear and tear at the end of a tenancy. Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

I find the Tenants provided no evidence prior to the hearing to dispute the preponderance of evidence provided by the Landlord in respect to the cleaning and damage costs claimed by the Landlord. Therefore, I rely on the undisputed testimony and evidence of the Landlord to make findings in this respect.

The move in CIR shows that the rental unit at the start was provided to the Tenants in a reasonably clean and undamaged state. I accept the Landlord's evidence that the Tenants damaged the fridge shelf and the bath tub, and failed to clean the rental unit as evidenced by the photographs.

Therefore, I find the Landlord is entitled to the cleaning and damage costs claimed for a total amount of **\$536.11** (\$131.25 + \$150.00 + 254.86) as evidenced by the receipts and invoices provided into evidence.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$1,586.11** (\$1,000.00 + 536.11 + \$50.00).

As the Landlord already holds **\$500.00** in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of **\$1,086.11**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenants have breached the Act by failing to pay rent and not leaving the rental unit reasonably clean and undamaged. Therefore, the Landlord may keep the Tenants' security deposit and is granted a Monetary Order for the remaining balance in the amount of \$1,086.11.

As the Tenants failed to appear for the hearing their Application is dismissed without leave to re-apply.

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: October 08, 2015

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Residential Tenancy Branch

