



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both landlords, a witness for the landlord and both tenants participated in the teleconference hearing.

The tenants were not served with the landlord's photographs, and I therefore did not admit or consider the landlord's photographs. All other evidence was admitted. The parties were given full opportunity to give affirmed testimony and present their admissible evidence. I have reviewed all testimony and other admissible evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?  
Are the tenants entitled to monetary compensation as claimed?

### Background and Evidence

The tenants first began occupying the rental unit on September 1, 2013. Rent in the amount of \$1,500.00 was payable in advance on the first day of each month. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$750.00 and a pet deposit of \$500.00. On September 1, 2013 the landlord and the tenants carried out a move-in inspection and completed the condition inspection report.

At the end of the first year, the landlord and the tenants entered into a second tenancy agreement for a fixed term ending September 30, 2015. On March 31, 2015 the tenants advised the landlord that they were looking for a house to buy. On April 20, 2015 the tenants sent the landlord a text message that they bought a house and they would be

moving out on June 30, 2015. The tenancy ended on June 30, 2015. On that date, the landlord and the tenants did a move-out inspection and completed the condition inspection report. On the report the landlord wrote “applying for damage deposits to keep all of them for unpaid rent/lease agreement July + Aug.” Below that, the tenant signed that the landlord could keep the security and pet deposits of \$750.00 and \$500.00. The tenants also provided their forwarding address in writing on the bottom of the report. The landlord applied to keep the deposits on July 15, 2015, and the tenants applied for double recovery of the deposits on July 28, 2015.

### *Landlord's Claim*

In their application, the landlord indicated that they were applying to keep the damage deposit and pet deposit and applying for unpaid rent for July and August 2015, in the amount of \$3,000.00. The total monetary amount the landlord claimed on their application was \$4,250.00. The landlord did not submit a monetary order worksheet until November 23, 2015. The total amount set out on the monetary order worksheet is \$800.26, for various costs associated with the dispute resolution process and utilities for July and August 2015.

### *Tenants' Claim*

The tenants applied for double recovery of their security and pet deposits, on the basis that the landlord did not return the deposits. In the hearing, the tenants stated that they only signed on the condition inspection report for the landlord to keep part of the deposits to clean whatever was dirty, “but not the whole thing.”

### Analysis

#### *Landlord's Application*

The landlord's application is problematic, in that the monetary amounts being claimed are not clear, and the wording on the condition inspection report is different than what is on the landlord's application. On the condition inspection report, the landlord indicated that they were applying to keep all of both deposits *for* unpaid rent for July and August 2015. In the landlord's application, it appears that the landlord was applying to keep the deposits totalling \$1,250.00 *on top of* \$3,000.00 for unpaid rent for July and August 2015. The monetary order worksheet makes no reference to any claims for lost revenue. Nowhere does the landlord claim for September 2015 lost revenue, though the fixed term did not end until September 30, 2015.

When a term of an agreement contains an ambiguity, the legal doctrine of *contra proferentem* provides that the preferred meaning should be the one that works against the interests of the drafter of the agreement.

In this case, on the condition inspection report, the landlord drafted the statement that they were entitled to the deposits for unpaid rent or lost revenue for July and August 2015. The landlord and the tenants signed the move-out portion of the condition inspection report.

I find that the parties entered into an agreement regarding the deposits and lost revenue for July and August 2015, and the landlord was the drafter of that agreement. I find that the two most likely meanings of this agreement were either:

- 1) that the landlord was entitled to the deposits as a full and final settlement; or
- 2) that the landlord could put the deposits toward unpaid rent or lost revenue for July and August 2015 and then make an application for the balance of lost revenue for those two months (as the landlord could not apply to keep the deposits on top of the lost revenue).

The meaning that the parties made a full and final settlement by agreeing for the landlord to keep the full amount of both deposits is the meaning that works against the landlord's interests. Upon the application of the legal doctrine of *contra proferentem* I therefore find that the parties made a full and final settlement by agreeing for the landlord to keep the full amount of both deposits. The landlord therefore is not entitled to claim any additional amounts beyond \$1,250.00, the total amount of the security deposit and pet deposit.

In regard to the remainder of the landlord's claim, they did not properly amend their application to claim additional amounts and I therefore decline to consider it. I note that the landlord would not have been entitled to recovery of costs associated with the dispute resolution process, as those amounts (aside from the filing fee) are generally not recoverable.

The landlord may retain the security and pet deposits. The remainder of the landlord's application is dismissed.

*Tenants' Application*

The landlord applied in time to keep the deposits, and the tenant signed to allow the landlord to keep the deposits. I therefore find that the tenants are not entitled to recovery or double recovery of their deposits, and I dismiss their application.

*Filing Fees*

As neither application was successful, I find that neither party is entitled to recovery of the filing fee for the cost of their respective applications.

Conclusion

The landlord may keep the security deposit of \$750.00 and the pet deposit of \$500.00 as a full and final settlement with the tenants.

The remainder of the application of the landlord and the full application of the tenants are dismissed.

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: January 4, 2016

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Residential Tenancy Branch

