



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD

### Introduction

This was a hearing with respect to the landlord's application for a monetary award. The hearing was conducted by conference call. The landlords and the tenants called in and participated in the hearing.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award and if so, in what amount?  
Are the landlords entitled to retain all or part of the tenants' security deposit?

### Background and Evidence

The rental unit is an upstairs suite in the landlord's house. The tenancy began on February 1, 2015 for a one year term. Monthly rent in the amount of \$1,250.00 was payable on the first of each month. The tenant paid a security deposit of \$625.00 on January 16, 2015. The copy tenancy agreement provided by the landlord referred to:

"Other: \_Hydro\_ + Heat\_ \_as stated in the Addendum to this Tenancy Agreement\_\_\_\_"

The landlord did not provide a form of addendum to the agreement. According to the tenants' documents, no addendum was given or signed.

The landlord said that after the tenancy agreement was signed, by mutual verbal agreement the parties decided that the tenancy would proceed on a month to month basis, rather than as a fixed term tenancy. The landlord testified that the tenants said they might move out as early as June 1<sup>st</sup>. The tenants sent the landlords an e-mail message on June 13<sup>th</sup> to say they would be moving on July 1<sup>st</sup>. The landlords told them that one month's written notice was required and the tenants would be responsible for paying July rent plus utilities for May and June in the amount of \$275.00. The landlord

said the tenants refused to pay July rent and moved out in June. The landlord did not submit any documentary evidence to show what steps were taken to attempt to re-rent the unit for the month of July.

The tenants testified that the former occupants of the rental unit had many cats and the unit was infested with fleas. There was also an odour problem due to the cats in the rental unit. The tenants said that there were mold issues in the unit as well. The tenants submitted photos of what they said were windows with significant amounts of mould. The tenants tried to address the flea and odour problems with sprays and treatments, but they were unsuccessful in solving the problem. The tenants said that the landlord provided them with a more powerful treatment spray. The tenants said they were uncomfortable using this treatment while still living in the rental unit. They notified the landlord on June 13<sup>th</sup> that they found new accommodation and would move out and return the keys on July 1<sup>st</sup>.

The tenants submitted two photographs of the rental unit. They said the photos were taken less than 48 hours after they moved out of the rental unit and showed that the landlord started the demolition and major renovation of the rental unit immediately after they moved out and therefore made no attempt to re-rent the unit for July.

### Analysis

The tenants did not give the required notice to end the tenancy effective June 30<sup>th</sup>. They informed the landlords that they were moving by e-mail on June 13<sup>th</sup>. I find that the tenants were not justified in ending the tenancy early without providing proper notice, but, the fact that the tenants failed to provide adequate notice does not automatically entitle the landlord to payment of rent for July. Although the tenants breached their obligation to give proper notice, the landlords are required to take reasonable steps to mitigate their loss by seeking to re-rent the unit. The landlords did not submit any documentary evidence to show what steps they took to re-rent the unit. If they were seeking to rent the unit and acted reasonably, the property should have been advertised for rent within a day or two after June 13<sup>th</sup>. The landlord did not submit evidence to demonstrate efforts to mitigate and based on the tenant's evidence, it appears that they chose to perform significant renovations after the tenancy ended. The tenants should not be responsible for subsidizing the landlord's renovations and I therefore deny the landlords' claim for July rent. The landlords are entitled to recover unpaid utilities as claimed in the amount of \$275.00. The landlords have been only partially successful in this application. Because the tenants agreed by message that the landlord could deduct the unpaid utilities from their security deposit, I decline to award the landlords the filing fee for this application.

## Conclusion

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlords requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been allowed in an amount less than the amount of the security deposit it is appropriate that I order the return of the balance of the tenant's security deposit; I so order and I grant the tenants a monetary order in the amount of \$350.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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 07, 2016

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Residential Tenancy Branch

