



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy as well as for monetary compensation. The teleconference hearing first convened on January 6, 2016. The tenants confirmed that they moved out of the rental unit on December 31, 2016, and accordingly I dismissed the tenants' application to cancel a notice to end tenancy. I then adjourned the hearing to allow the landlord to make his application for monetary compensation, which I would hear together with the tenants' claim.

The hearing reconvened on March 2, 2016. On that date, the tenants called in to the hearing but the landlord did not. The landlord had not filed his own application in the interim. I was satisfied that the landlord was served with notice of the reconvened hearing time and date, and I proceeded with the tenants' monetary claim in the absence of the landlord.

On January 20, 2016 the tenants amended their application to request double recovery of their security and pet deposits.

### Issue(s) to be Decided

Are the tenants entitled to double recovery of the security and pet deposits?  
Are the tenants entitled to other monetary compensation as claimed?

### Background and Evidence

The tenancy began on March 1, 2015, with monthly rent of \$1,400.00 due in advance on the first day of each month. At the outset of the tenancy the tenants paid the landlord a security deposit of \$700.00 and a pet deposit of \$700.00. The tenancy ended on December 31, 2015.

The tenants stated that they moved out of the rental unit because the landlord gave them a two month notice to end tenancy. The tenants stated that the notice was not valid, but they decided to move out of the unit because of all of the problems they were having with the landlord. The tenants stated that a portion of their fence blew down in a storm, and as a result they could not keep their dog in the backyard. The tenants stated that the landlord refused to fix the fence. The tenants stated the landlord removed their oven and replaced it with a hotplate. The tenants stated that the landlord kept putting things in the t driveway; he shut off the hot water tank; and he stood in the driveway and yelled at them. The tenants stated that they therefore suffered a loss of quiet enjoyment, for which they have claimed \$2,800.00 in compensation. The tenants have also claimed \$238.90 for their moving expenses.

The tenants stated that on January 13, 2016 they sent the landlord their forwarding address in writing via registered mail. The tenants have also provided evidence that on January 14, 2016 the landlord attended at the male tenant's place of work because he wanted to give the tenant "something pertaining to the deposit." The tenant informed the landlord that he should not be at the tenant's place of work, and he should mail it to the address the tenants had given him. The tenants indicated that they sent the landlord a text to meet up with the landlord on January 20, 2016 and get their deposit back, but the landlord did not respond. By the time of the reconvened hearing on March 2, 2016 the landlord did not return the deposits or make an application to keep the deposits.

### Analysis

I accept the tenants' undisputed evidence that they suffered some loss of quiet enjoyment in the last two months of their tenancy. I accept the tenants' evidence that they lost use of the backyard for their dog, and they were deprived of an oven. I find that the loss of use of the backyard and an oven are also compensable. However, I do not find it appropriate to award the tenants 100 percent of their rent for those two months. Quiet enjoyment is merely one aspect of the numerous services and facilities that monthly rent is intended to pay for, and the tenants lost use of the backyard and an oven but still had use of most or all other services and facilities covered in their tenancy agreement. I therefore find it appropriate to grant the tenants compensation equivalent to 10 percent of their monthly rent of \$1,400.00 for loss of quiet enjoyment and 10 percent of their rent for loss of use of the backyard and the oven for the period of two months. I therefore grant the tenants \$560.00 for this portion of their claim.

The tenants originally applied to dispute the notice to end tenancy, but they then decided to move out of the rental unit. I therefore find that the tenants are not entitled to moving costs as claimed.

In regard to the security and pet deposits, section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit(s) or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the deposit(s).

In this case, the tenancy ended on December 31, 2015, and the landlord is deemed to have received the tenants' forwarding address in writing on January 18, 2016. It is not clear whether the landlord intended to return the deposits on January 14, 2016, and the landlord made no other attempt to repay the deposits or make an application for dispute resolution to keep the deposits. The landlord did not appear in the reconvened hearing to provide any evidence in response to the tenants' claim. I therefore find that the tenants have established a claim for recovery of double the security and pet deposits, in the amount of \$2,800.00.

As their application was successful, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of their application.

### Conclusion

The tenants are entitled to total compensation of \$3,410.00. The balance of the tenants' claim is dismissed.

I grant the tenants an order under section 67 for the balance due of \$3,410.00. This order may be filed 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: March 23, 2016

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Residential Tenancy Branch