



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Preliminary Matters

The original hearing for this matter was scheduled for November 17, 2015 and was adjourned because the Arbitrator did not receive the Landlords' application due to a clerical issue within the Residential Tenancy Branch.

The hearing was reconvened on January 20, 2016 at which time both parties gave their opening remarks to explain their applications. As the parties opening remarks took the full hour (plus) scheduled for the hearing the Arbitrator adjourned the hearing to his first available hearing date to continue the testimony and the hearing. The hearing was adjourned to March 16, 2016.

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, for unpaid rent or utilities, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and for the return of the Tenants' security deposit.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on June 15, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery by the Tenants on October 30, 2015 in accordance with section 89 of the Act.

The Tenants and the Landlords confirmed that they had received the other party's hearing packages.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent or utilities and if so how much?
6. Are the Landlords entitled to unpaid rent or utilities and if so how much?
7. Are the Landlords entitled to retain all or part of the Tenants' security deposit?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to the return of the security deposit?

### Background and Evidence

This tenancy started on January 1, 2015 as a fixed term tenancy with an expiry date of March 31, 2016. Rent was \$1,650.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$825.00 on December 31, 2014. A move in condition inspection report was completed on December 31, 2014 and a move out condition report was completed on May 31, 2015, but the Tenants' did not agree with the report and did not sign it. The Tenants gave the Landlord their forwarding address on the move out report on May 31, 2015.

The Property Manager said the Tenants gave notice on May 26, 2015 to move out of the rental unit on May 31, 2015. The Property Manager said they agreed to end the tenancy but did not agree with the Tenants' reasons to end the tenancy. The Property Manager said this was a mutual agreement to end the tenancy. The Tenants agreed that the Landlord accepted their request to given on May 26, 2015 to end the tenancy on May 31, 2015. The Property Manager said the tenancy ended on May 31, 2015. The Property Manager said on June 10, 2015 the Landlord filed this application for compensation for the following items:

- 1). Unpaid hydro and gas in the amount of \$326.21. (Invoices included in the Landlord's evidence package)

- 2). The cost to repair 54 nail holes in the walls ranging in size from ¼ and larger. The Landlord said they are requesting \$191.63 which is the amount paid by the Landlord to repair the walls (receipt submitted in the evidence package)
- 3). The third claim the Landlord is requesting is \$60.00 to replace a garage remote. The Landlord said the move in condition inspection report shows 2 remote were given to the Tenants and they only returned one.
- 4). The Landlord also requested to recover the filing fee of \$50.00.

The Property Manager said their total claim is for \$627.84.

The Tenant said they had to end the tenancy because they were being harassed by the tenants in the lower rental unit, the Property Manager R.B. and another property manager C.B. The Tenants said there were a number of incidents that made them feel unsafe in their home. The Tenants said the following are some of the incidents:

- 1). The Tenants believe the lower unit tenants were part of a motorcycle gang and were very threatening in how they interacted with the Tenants. The Tenants said the other tenants parked their motorcycles in the driveway which the Tenants said was part of their tenancy agreement. The Tenants said the Property Manager was told about this and he did nothing.
- 2). The Tenants said the Property Managers did not give proper notice to visit the property and to do inspections. One inspection was done on May 4, 2015 and the Property Manager harassed them about how they heated the unit.
- 3). The Tenants said the lower unit tenants phoned the police to investigate the Tenants for allegedly looking in the lower tenants window. The Tenant said no charges were laid and they are unsure if a police file was opened.
- 4). The Tenant said the Property Manager harassed the Tenants during the May 4, 2015 inspection about the heating costs. The Tenant said the Property Manager said they were using too much hydro. The Tenant said this was because the tenancy agreement says the Tenant pays ½ the hydro and 100% of the gas. The Tenant said it was not the Property Manager's business how they heated the unit.
- 5). The Tenants continued to say that the lower unit tenants said they could enter the Tenants unit through the laundry area if they wanted to unscrew the screws holding the lock on the door. The Tenant said this comment or threat made them feel unsafe in their unit.
- 6). The Tenants also indicated that the lower unit tenants made inappropriate remarks outloud about the Tenants so the Tenants could hear. The Tenants said the remarks were that the Tenants would soon be out of the unit and the Tenant should get out of the unit. The Tenant said the lower tenants made the remarks out loud but not directly to the Tenants. The Tenant said this made them feel unsafe.

- 7). The Tenants continued to say that the Property Managers came to the unit unannounced and were rude and aggressive towards the Tenants. The Tenant said the Property Manager blow kisses at them when they were leaving the rental unit at the end of the tenancy. As well the Tenant said the Property Manager sided with the lower unit tenants about the parking issues
- 8). The Tenants continue to say they requested a new Property Manager a number of times starting on May 8, 2015 and with follow up emails on May 12, 14, 21 and 22, 2016. The Tenants said their Property Manager was changed on May 22, 2015. The Tenants said this shows that the Property Manager and the Property Management Company did not want to work with them.

The Tenants continued to say that because of these problems and issues they had to move out of the rental unit. The Tenants said they gave the Landlords/ Property Manager notice on May 26, 2015 that they were ending the tenancy on May 31, 2015. The Tenants said the Property Manager agreed by email on May 28, 2015 and they moved out on May 31, 2015.

Further the Tenants said because of the problems and issues with the lower tenants and the Property Managers the Tenants have made the following application for monetary compensation from the Landlord:

- 1). Storage space for 7 months after moving out of the unit in the amount of \$1,199.66.
- 2). Storage space for 7 months after moving out of the unit for a second storage unit in the amount of \$1,689.03.
- 3). Moving supplies in the amount of \$86.78.
- 4). Trailer rental for moving in the amount of \$80.00.
- 5). Movers to assist with larger and heavier items in the amount of \$233.00.
- 6). The cost of a mail box with Canada Post during the move time in the amount of \$120.75.
- 7). The cost of redirecting mail with Canada Post in the amount of \$54.55.
- 8). Cost of serving documents in the amount of \$38.60.
- 9). Compensation for loss of quiet enjoyment in the rental unit because of the lower tenants and the Property Managers harassing and disturbing the Tenants.
- 10). Double the security deposit because the Landlord did not return the deposit correctly in the amount of \$1,650.00.

The Tenants said their total claim is \$5,977.90.

The Tenant continued to say they had a witness to corroborate their claims. The witness is the male Tenant's mother D.R. The Witness D.R. was affirmed and gave the following testimony. The Witness said she was in the unit from May 25, 2015 to May 31, 2015 helping the Tenants move out. The Witness said the new Property Manager

J.R. said the unit was clean and she had no issues on move out and the Tenants' deposit would be returned to them. As well the Witness said she was told by the Tenants not to make noise in the unit as it would provoke the lower tenants. The Witness said she did hear the lower tenants speaking loudly about the Tenants as if the lower tenants wanted the Tenants to hear but they were not speaking directly to the Tenants. The Witness said the lower tenants said they wanted the Tenants to move out and they should be gone soon. The Witness said this was upsetting for the Tenants and for her. As well the Witness said the male lower tenant came into the Tenants garage when they were moving out and although he did not say anything he was intimidating. The Witness said this was a poor situation for the Tenants to be in.

The Property Manager responded to the Tenants' application by saying the Tenants requested to end the tenancy and the Landlord agreed to end the tenancy by mutual agreement so any costs associated with the Tenants move are the responsibility of the Tenants. As well the Property Manager said the Tenants' issues started in the first part of May, 2015 and he scheduled an inspection of the property on May 4, 2015 at which time the Property Manager offered the Tenants an opportunity to meet with him and the lower tenants to discuss and resolve any issues. The Property Manager said the Tenants declined his offer and requested a new property manager so he did not contact the Tenants again. The Property Manager said the Tenants were given a new property manager on May 22, 2015 which was within 2 weeks of their request. The Property Manager said this is within normal business practice. As well the Property Manager said the Tenants advertised the rental unit on May 19, 2015 for rent and then requested to break the fixed term tenancy agreement on May 26, 2015. The Property Manager said this was a regrettable situation but he believes that he and the Property Management Company acted responsibly in how they handled the situation. The Property Manager said he does not believe they are responsible for any of the Tenants moving costs as the Tenants requested to end the tenancy. Further the Property Manager said he does not agree with the Tenants claim for loss of quiet enjoyment as there were complaints from both the upper and lower tenants and the lower tenants were the ones who called the police about the Tenants behaviour. The Property Manager said the tenants did not get along. Further the Property Manager said they have applied to retain the Tenants' security deposit within the 15 days of the tenancy ending as the Act instructs landlords to do. The Property Manager said he does not believe the Tenants have proven their claims.

The Tenant said in response to the Landlords' claims that they agree they owe the utilities in the amount of \$326.21. The Tenants continued to say that they were not given instruction on how to hang things on the wall and were told they could hang their TV on the living room wall as there was no other place for it. As well the Tenants thought the nail holes were less than a ¼ therefore they did not have to repair the holes. Further the Tenants said they were only given one remote and they returned it at the end of the tenancy. The female Tenant said the move in condition inspection report says there were two remotes but this is wrong. The female Tenant continued to say there was only one remote and they missed it on the report when completing the form.

As a result the Tenants do not think the Landlord has a claim for the nail holes or the second remote.

The Tenant said in closing no damage was done to the unit and the unit was left in clean condition. As well the Tenants said they felt that they were harassed by the lower tenants and the Property Managers to the point that they felt unsafe in their home. As a result they felt they had to move out and the Tenants believe the Property Manager/Landlord is responsible for their moving costs and for compensation for their loss of quiet enjoyment of the rental unit.

The Property Manager said in closing that he did not take sides in the disputes between the upper and lower tenants and he tried to have a meeting to resolve the issues in his office which was offered to the Tenants on May 4, 2015. The Property Manager said the Tenants declined his offer and he did not pursue the situation after that. Further the Property Manager said he or the other property manager did not harass or bully the Tenants they agreed to the Tenants breaking the fixed term tenancy agreement even after complying with the Tenants request for a new property manager. The Property Manager said he believes 54 holes in the walls are excessive and the move in report indicates 2 remotes were issued and only one remote was returned. The Property Manager said he believes his claims are justified and proven.

### Analysis

In some tenancy neighboring tenants or tenants and landlords/property managers do not get along. It appears from the testimony that this was the situation in this tenancy. When this happens it is the Landlord/Property Managers responsibility to make efforts to resolve the situation or the parties can apply for dispute resolution or the parties can end the tenancy. In this tenancy I accept the Property Manager testimony that on May 4, 2015 he offered a meeting to get the upper and lower tenants to meet with the Property Manager to try to resolve the issues. The Tenants declined the offer and then decided to end the tenancy. The Landlord and the Property Manager agreed to end the tenancy to accommodate the Tenants. As this was a fixed term tenancy the Landlord and Property Manager were not obligated to agree to end the tenancy before March 31, 2016 the expiry date in the tenancy agreement.

Section 45 of the Act says a tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

I find this tenancy end by mutual agreement on the request of the Tenants therefore the Landlord has no responsibility for the Tenants moving costs. The Tenants chose to end the tenancy and declined the opportunity to try to resolve the issues with the lower tenants and the Property Manager. Further the Property Management Company replaced the Property Manager on the request of the Tenants prior to the Tenants requesting to end the tenancy therefore the Tenants have no grounds to end the

tenancy based on the Property Manager R.B. handling their tenancy. Property Manager J.R. had taken over the tenancy on May 22, 2015 and the Tenants requested the tenancy end on May 26, 2015. Consequently, I find the Tenants have not established grounds to prove they could not continue the tenancy because of the Property Manager's action or the lower tenants' behaviour. I dismiss the Tenants claims for all costs associated with moving. The storage claims of \$1,199.66 and \$1,689.03 are dismissed. As well the moving supplies of \$88.78, the trailer rental of \$80.00, the cost for movers of \$233.00 and the Canada Post charges of \$120.75 and \$54.55 are all dismissed without leave to reapply.

With regard to the Tenants' claim for double the security deposit I find the Landlord applied to retain the security deposit on June 10, 2015 which is 10 days after the end of the tenancy and when the Landlord received the Tenants forwarding address. Therefore the Landlord applied within the time limits to retain the Tenants security deposit which invalidates the Tenants claim for double the security deposit. I dismiss the Tenants' claim for double the security deposit of \$1,650.00.

Further the Tenants have requested compensation of \$825.00 for loss of quiet enjoyment of the rental unit. The Tenants testified that the lower tenants called the police to investigate the Tenants' behaviour and the Property Manager testified that there were complaints from both the upper and lower tenants about each other. Consequently I find it is not clear that the lower tenants were the only party with issues in this tenancy. As a result it is a situation of one party's word against the other party's word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Tenants have not established grounds to prove the lower tenants or the Property Manager caused sufficient loss of quiet enjoyment to be successful in a monetary claim. I dismiss the Tenants claim for loss of quiet enjoyment in the amount of \$825.00.

With regard to the Tenants' claim for postal costs for the hearing this is not an illegible claim under the process. The Tenants' claim for registered mail costs of \$38.60 is dismissed.

With regard to the Landlords' claim for unpaid utilities; the Tenants agree that they owe \$326.21 for utilities; therefore I award the Landlord \$326.21 for unpaid utilities.

Further in regard to the Landlords' claim of \$191.63 for excessive nail hole in the wall of the rental unit Policy Guideline #1 says in part about nail holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

I find that even though the Landlord did not give specific instructions about wall hangings and nail hole; 54 nail holes are excessive. With this number of nail hole the Tenants are responsible to fill or make repairs pursuant to section 32 of the Act. I find the Tenants are responsible to repair the nail hole or pay the Landlord to make the repairs. I award \$191.63 to the Landlords for nail hole repairs.

Further the move in condition inspection report indicates 2 remotes were given to the Tenants at the start of the tenancy. As both parties signed this report in agreement; therefore I accept that the Tenants received 2 remotes. Both parties testified that only one remote was returned; therefore I find for the Landlord and award \$60.00 for the replacement of one remote.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep \$627.84 of the Tenants' security deposit as full payment of the Landlords' claims and application.

Further I order the Landlords to return the balance of the Tenants security deposit in the amount of  $\$825.00 - \$627.84 = \$197.16$  forthwith.

### Conclusion

The Landlords are order to retain \$627.84 of the Tenants security deposit.

The Tenants' application is dismissed without leave to reapply.

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 16, 2016

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Residential Tenancy Branch