



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM, MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for their application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- other unspecified remedies; and
- authorization to recover the filing fee for their application from the landlords, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 70 minutes. The two landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords testified that the tenants were served with the landlords' application for dispute resolution, notice of hearing, pages 1-83 of written evidence and first DVD on June 9, 2016, by way of registered mail. The landlords provided a Canada Post receipt and tracking number to confirm service. In accordance with sections 88, 89 and 90 of

the *Act*, I find that the tenants were deemed served with the above evidence on June 14, 2016, five days after its registered mailing. The landlords testified that the tenants were served with pages 84-100 of written evidence and the second DVD on June 19, 2016, by way of leaving a copy in their rental unit mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the above evidence on June 22, 2016, three days after it was left in the mail slot.

#### Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any submissions or appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

#### Preliminary Issue – Amendment of Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' Application to increase the landlords' monetary claim to include July 2016 rent of \$1,450.00 and late fees of \$25.00 for each of June and July 2016. I find that the tenants are aware that rent is due on the first day of each month as per their tenancy agreement and that late fees are due as per their tenancy agreement addendum. The tenants continue to reside in the rental unit. Therefore, the tenants knew or should have known that by failing to pay their rent and late fees, the landlords would pursue all unpaid rent and late fees at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlords' claims for increased rent and late fees, despite the fact that they did not attend this hearing.

#### Issues to be Decided

Are the landlords entitled to an Order of Possession based on a mutual agreement to end tenancy?

Are the landlords entitled to a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlords testified regarding the following facts. This tenancy began on February 15, 2016 for a fixed term ending on August 14, 2016 after which it may continue for another fixed term or on a month-to-month basis. Monthly rent in the amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$725.00 was paid by the tenants and the landlords continue to retain this deposit. Both parties signed a copy of the written tenancy agreement.

### Analysis

I dismiss the landlords' application without leave to reapply for an order of possession based on a mutual agreement to end tenancy, dated May 10, 2016, with a move-out date of May 31, 2016 at 12:00 p.m. ("mutual agreement"). This tenancy continues until it is ended in accordance with the *Act*. I find that the tenants' signatures on the mutual agreement do not match the signatures on the tenancy agreement, the addendum to the tenancy agreement and the condition inspection reports. The landlords agreed during the hearing that the signatures did not match. The tenants also noted in the "details of the dispute" portion of their own application that it was not their signatures on the mutual agreement. The landlords did not witness the tenants sign the mutual agreement and did not produce any other witnesses that saw the tenants sign it. The male landlord said that he signed the mutual agreement first and then gave it to the tenants to sign separately because the tenants refused to sign it in their presence. The landlords pointed to text message printouts in their written evidence, which I do not find to be helpful to their position. The text messages do not confirm that the tenants signed a mutual agreement and refers to the mutual agreement using different terms. The landlords explained that the tenants agreed to move out by May 31, 2016 but the tenants continue to live in the rental unit at this time.

I award the landlords \$3,700.00 in unpaid rent from May to July 2016, as the landlords provided undisputed evidence that the tenants did not pay this rent while residing in the rental unit. The landlords said that the tenants made payments totalling \$650.00 for May 2016 but \$800.00 was still unpaid. The landlords claimed that the tenants did not pay rent of \$1,450.00 for each of June and July 2016.

I dismiss the landlords' claims for late fees totalling \$75.00 from May to July 2016, without leave to reapply. I find that the landlords' tenancy agreement addendum does not indicate that \$25.00 is due for late fees, contrary to section 7(2) of the *Regulation*. The addendum states that "...late rent will carry a late fee of \$20.00, or \$10 per day until fully paid, whichever is greater." This clause is unenforceable because it is contrary to section 7(1)(d) of the *Regulation*, which only allows a maximum of \$25.00 for a late fee, provided it is in the tenancy agreement. It also indicates an unclear amount of how much the late fee is supposed to be with using the word "or."

I dismiss the landlords' claims with leave to reapply for \$200.00 to repaint the wall, \$200.00 to repair the floor and \$100.00 to clean the unit, because the landlords have applied prematurely. The tenants have not yet vacated the rental unit and the landlords agreed that they did not know the full extent of any potential damage. The landlords have not yet incurred the above costs and have estimated based on potentially incurring the costs in the future.

I dismiss the landlords' claims without leave to reapply for unpaid electricity, gas and water utilities from the beginning of this tenancy on February 15, 2016 until May 31, 2016. The landlords said that they did not provide utility bills to the tenants, they only demanded payment amounts by way of text messages. Pursuant to section 59(2)(b) of the *Act*, an application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the tenants with enough information to know the landlords' case so that the tenants might defend themselves. I find that the landlords' testimony and documents relating to the amounts of utilities due, when they were due and for what periods of time, to be unclear and confusing. The landlords did not provide a detailed or clear calculation or breakdown of how they arrived at their figures. The landlords said that the tenants owed 50% of total utilities, as per their tenancy agreement, but when providing me with amounts, they indicated estimates and rounded numbers up and down and could not provide explanations of why. The landlords frequently changed the amounts based on my questions and seemed confused as to what they were claiming. I provided the landlords with ample time during this lengthy hearing, in order to determine these amounts and provide me with clear testimony, but they failed to do so. The landlords

filed their application on June 3, 2016 and had sufficient time of over a month until July 8, 2016, the date of this hearing, to determine their claim for utilities.

As this tenancy is continuing, I do not offset the tenants' security deposit against the landlords' monetary claim.

As the landlords were mainly unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

This tenancy continues until it is ended in accordance with the *Act*.

I issue a monetary order in the landlords' favour in the amount of \$3,700.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' application for \$200.00 to repaint the wall, \$200.00 to repair the floor and \$100.00 to clean the unit, are dismissed with leave to reapply.

The landlords' application to retain the tenants' security deposit is dismissed with leave to reapply. The security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The remainder of the landlords' application is dismissed without leave to reapply.

The tenants' entire 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: July 18, 2016

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Residential Tenancy Branch