



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords and both tenants attended the hearing, and one of the landlords and both tenants gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for rent, damages and mailing costs?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on December 6, 2015 and the tenants moved out of the rental unit on April 5, 2016. Rent in the amount of \$1,300.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$650.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a mobile home on acreage and a copy of the tenancy agreement has been provided.

The landlord further testified that on March 5, 2016 the tenants sent a text message to the landlords stating that the tenants were moving out at the end of the month. Copies of the text messages exchanged have been provided. The landlords started to advertise the rental unit for rent on Kijiji and other sites, as well as the landlords' own site, immediately after receiving the tenants' text message on March 5, 2016.

A move-in condition inspection report was not completed at the beginning of the tenancy, however one of the landlords and one of the tenants walked through the rental unit. A move-out condition inspection was scheduled and the landlord attended, as well as both tenants. The landlord mentioned unpaid rent for April and the tenants started to swear at the landlord, yelling and calling the landlord foul names. The male tenant was between the landlord and the door, so the landlord was afraid to walk past him to leave and felt very threatened. The landlord had something written stating that there was no damage to the rental unit and asked the tenants to sign it but they refused. A copy of that document has not been provided. The tenants refused to pay April's rent and told the landlord that she had 10 days to return the security deposit or they would take the landlords to Court.

The landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$1,300.00 for April's rent;
- \$125.00 for filling the cistern at the end of the tenancy;
- \$210.40 for cleaning after the tenants had moved out;
- \$100.00 for recovery of the filing fee;
- \$12.55 for registered mail;
- \$12.55 for registered mail;
- \$12.55 for registered mail; and
- \$12.55 for registered mail.

The landlords' total claim is \$1,795.60, and the landlord testified that the rental unit was re-rented for May 1, 2016.

The landlord also testified that the tenancy agreement contains a clause requiring the tenants to ensure the water cistern is full at the end of the tenancy. The landlords paid for the first fill during the first month of the tenancy, but the tenants did not leave it full at the end of the tenancy. A copy of a receipt for that service has been provided in the amount of \$125.00. Potable water is sometimes stored in a cistern which is how it's pumped into the house.

The tenants did not leave the rental unit reasonably clean at the end of the tenancy. The landlords have provided copies of photographs, but they are photocopies or faxed copies and not easy to make out. The landlord testified that 3 people cleaned inside, outside and under the stove, inside and outside and behind the fridge, walls, the microwave oven, windows, floors, cigarette butts from outside the rental unit, raked up garbage, removed bin lids that were left as garbage. Also the fire pit was full of garbage, wood was left beside the shed, and the landlords cleaned the inside of the shed and hauled all of the garbage to the landfill. The landlords claim

a total of 10 hours at \$20.00 per hour, and have made an invoice which has been provided. The work was completed on April 29, 2016 which is when the photographs were taken; the landlords didn't have a new tenant yet and didn't want to complete the work right away in case the tenants came back.

The landlords offered to reduce rent by keeping the security deposit in lieu of April's rent, and the landlords tried to rent earlier than May 1, 2016, but the rental unit was not in a state to be re-rented.

**The first tenant** (JCE) testified that the landlord ought not to have felt threatened at move-out because the tenants had 2 small children with them. The tenant was upset because the landlord was 35 minutes late. Then the landlord said the yard looked great and thanked the tenants for that. Things got heated when the landlord said she was going to take the tenants to Court for rent. The landlord was told of the tenant's recent bankruptcy and the landlord laughed at them.

Two days prior, the landlord texted the tenants stating that she had a prospective tenant.

The tenant further testified that he was present with the husband landlord for the walk-through at the beginning of the tenancy. At that time, the landlord said that as long as the cistern was half full at the end of the tenancy, that would be fine. The tenants had already moved in before the tenancy agreement was signed. At no time was the fridge or stove pulled out to inspect.

The tenants do not smoke, and there was snow on the ground when the tenants moved in, so the tenants do not know where the cigarette butts may have come from. Also, the landlord told the tenants that they could burn garbage in the fire pit.

With respect to April's rent, the tenant testified that as soon as he could, he gave notice to vacate. On March 31, 2016 the tenants gave the landlord a forwarding address in a text message, and again on a later date.

**The second tenant** (TLE) testified that during the walk-through at the end of the tenancy, the landlord didn't have a pen for the tenants to sign the document she referred to in her testimony. Also, the husband landlord did the walk-through at the beginning of the tenancy, and ought to have conducted the end of the tenancy walk-through as well, but did not attend.

The tenants left because they could not afford to stay. The tenancy began on the 5<sup>th</sup> of the month and the tenants gave notice to move out on the 6<sup>th</sup> day of the month, paid a pro-rated amount for the first month of the tenancy, and offered to pay the landlords a pro-rated amount of rent for April to benefit both parties, but the landlord refused and the tenants could not negotiate with her.

### Analysis

Firstly, the *Residential Tenancy Act* specifies that the onus is on the landlord to ensure that move-in and move-out condition inspection reports are completed by the parties, and the regulations go into detail of how that is to happen. If the landlord fails to comply, the landlord's right to make a claim against the security deposit for damages is extinguished. In this case, I find that the landlords have failed to comply with the *Act* or the regulations, and therefore the landlords' right to claim against the security deposit for damages is extinguished.

The landlords' right to claim against the security deposit for unpaid rent is not extinguished. The *Act* specifies how a tenancy ends, and a tenant may give 1 month's notice in writing to end a tenancy prior to the date rent is payable under the tenancy agreement. The landlord has provided numerous text messages, and although text messages and emails exchanged do not necessarily constitute "in writing" notice, I accept, given the undisputed text messages provided by the landlords that the parties regularly communicated in that fashion. One of the tenants testified that rent paid at the beginning of the tenancy was in a pro-rated amount, and the tenancy agreement specifies that rent is payable on the 1<sup>st</sup> day of each month. Therefore, any notice provided by the tenants after the 29<sup>th</sup> of February, 2016 would not take effect until the end of April, 2016. The landlords had the obligation to mitigate any loss of rental revenue once receiving the tenant's notice, and the landlords did so. The landlord testified that immediately upon receiving the tenants' notice to vacate, the landlords posted advertisements in several websites, and there were several viewings. I am satisfied that the tenants are liable for the rent for the month of April, 2016 in the amount of \$1,300.00.

The tenancy agreement clearly states that the tenants will fill the cistern at the end of the tenancy but didn't, and the landlords have provided a receipt for that. One of the tenants testified that prior to signing the tenancy agreement one of the landlords told him that half full would be alright. If that were the case, I question why the tenant would have signed the tenancy agreement the way it was written. In the circumstances, I find that the landlords have established the \$125.00 claim.

With respect to the landlords' claim for cleaning inside and outside of the rental unit, the tenant testified that the tenants do not smoke and there was snow on the ground at move-in. He also testified that when the parties completed a walk-through at the beginning of the tenancy, the fridge and stove were not inspected nor were they pulled out. In the absence of any move-in or move-out condition inspection reports, I am not satisfied that the landlords have established that the tenants have failed to comply with the *Act*, and the landlords' claim for cleaning is dismissed.

The *Residential Tenancy Act* provides for claims for recovery of the filing fee but not for costs associated with preparing for a hearing or serving documents. Therefore, the landlords' application for registered mail costs is dismissed. However, since the landlords have been

partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

I further find that the landlords have filed the application for dispute resolution within the 15 days as required by the *Residential Tenancy Act*.

Having found that the tenants owe \$1,300.00 for rent, \$125.00 for filling the cistern and \$100.00 for the landlord's filing fee, I order that the landlords keep the \$650.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlords for the difference in the amount of \$875.00.

### Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$650.00 security deposit and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$875.00.

This order is final and binding and may be enforced.

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: September 01, 2016

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Residential Tenancy Branch