



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MND, MNDC, MNSD & FF

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$2500 to recover double the security deposit and pet damage deposit.
- b. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1500 for loss of rent, liquidated damages and the failure to clean
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was personally served on the landlord on August 20, 2016. I find that the Application for Dispute Resolution filed by the Landlord was served on the Tenants by mailing, by registered mail to where the Tenants reside on October 28, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term on July 1, 2015, end on June 30, 2017 and become month to month after that. The rent was \$1250 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$625 and a pet damage deposit of \$625 at the start of the tenancy.

Previously the tenants had the misfortune of experiencing a significant fire in their residence. After moving into the rental unit the female Tenant suffered injuries to both ankles and was confined to a wheelchair. She was fearful she would not be able to escape the rental unit should there be a fire. On July 19, 2016 the Tenant gave the landlord notice they were vacating the rental unit on July 21, 2016. The tenants vacated that date after completing a condition inspection.

The evidence relating to the two inspections and when the new tenants took possession is in dispute. After carefully considering all of the evidence I made the following determinations:

- It is not necessary for me to determine whether the parties conducted an inspection at the start of the tenancy as I determined the landlord failed to provide the Tenant with a copy of the Condition Inspection report during the course of the tenancy based on the landlord's evidence..
- The parties conducted a condition inspection at the end of the tenancy. There is a dispute as to what the parties agreed to as the tenant disputes that she agreed to some of the notations although she did sign it. There are no notations as to the unsatisfactory condition of the rental unit. However, I find the tenant was aware of the notation "Please hold security deposit in lieu of liquidation costs."
- I find that the notation "Hold \$150 for cleaning and disposal of personal effects left - empty plastic containers, cloths- small table" was added to the Condition Inspection Report after the tenant signed it and she was not aware of this. The landlord failed to provide a copy End of Tenancy Condition Inspection Report at the end of the tenancy. I accept the testimony of the Tenant that she would not have signed it with that notation as she was leaving small items for friends who

would be moving in. She testified it was easy to remove these items if the landlord objected.

- I am satisfied the tenant signed the document agreeing the landlord could keep the security deposit. However, I determined the part permitting the landlord to keep the pet damage deposit of \$625 was crossed out and she did not agree to this. The Condition Inspection Report filed by the landlord has a line through the damage deposit. This interpretation is consistent with the other evidence.
- It is unclear when the new tenants moved in. The tenants testified they saw the new tenants in the rental unit on August 6, 2016. The landlord testified they moved in 2 or 3 days before August 15, 2016 but did not start paying rent until August 15, 2016. I determined the new tenants moved in on August 12, 2016. The tenants testified the new tenants were friends. I would have been easy for them to get evidence as to when they moved in.
- I determined the Tenants gave the landlord their forwarding address in writing on July 21, 2016 as it is contained in the Condition Inspection Report.

### Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Section 23(1) of the Residential Tenancy Act provides as following:

#### **Condition inspection: start of tenancy or new pet damage deposit**

**23 (1)** The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

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(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Section 18(1) of the Residential Tenancy Act Regulations provides as follows:

Condition inspection report

18 (1) The landlord must give the tenant a copy of the signed condition inspection report

- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

Section 24(2) of the Residential Tenancy Act provides as follows:

**Consequences for tenant and landlord if report requirements not met**

**24 (2)** The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Analysis

The tenants paid a security deposit of \$625 and a pet damage deposit of \$625 on June 8, 2016. I determined the tenancy ended on July 21, 2016. I further determined the tenants provided the landlord with their forwarding address in writing on July 21, 2016.

The parties have not agreed in writing that the landlord can retain the pet damage deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the pet damage deposit in the sum of \$1250 (\$625 x 2 = \$1250).

I determined the tenants agreed in writing the landlord could keep the security deposit. The tenants may have been confused as to what they were agreeing to. This does not relieve the tenants of their legal obligations to understand what they are agreeing to. However, the Act states the landlord's right to claim the security deposit was extinguished as the landlord failed to provide the Tenants with a copy of the condition inspection report within 7 days of completing it.. The Act does not permit the parties to enter into agreements which are inconsistent with the Act. I determined the Tenants are entitled to the return of the security deposit in the sum of \$625 but not the doubling of the security deposit..

Conclusion:

In summary I determined the landlords have established a claim against the landlord in the sum of \$1875 plus \$100 for the cost of the filing fee for a total of \$1975.

Landlord's Claim:

With respect to each of the landlords' claims I find as follows:

- a. I determined the landlord is entitled to the sum of \$625 pursuant to a liquidated damage clause. I determined the sum is a genuine pre-estimation of the loss the landlord would suffer if the tenant breached the fixed term tenancy agreement. The tenants breached the one year fixed tenancy agreement within 21 days of entering the rental unit. I do not accept the submission of the Tenants that they should be relieve of this obligation because of the tenant's fear of leaving in the case of an emergency as the tenants were not using the normal paths to enter and vacate the rental unit.
- b. I find that the new tenants moved in on August 12, 2016. The tenants are not obliged to pay for the tenancy of the new tenants. I determined the landlord is entitled to 12 days of loss rent for the period August 1, 2016 to August 12, 2016 or the sum of \$484.
- c. I dismissed the landlord's claim of \$150 for cleaning and disposal of personal possessions. The amount claimed is excessive. The landlord failed to prove the Tenants agreed to this when they signed the Condition Inspection Report.

In summary I determined the landlord has established a claim against the Tenants in the sum of \$1109 plus \$100 for the cost of the filing fee for a total of \$1209.

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Conclusion:

I determined the Tenants have established a claim against the landlord in the sum of \$1975. I determined the Landlord has established a claim against the tenants in the

sum of \$1209. After setting off one claim against that of the other I ordered that the Landlord pay to the Tenants the sum of \$766.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 01, 2016

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Residential Tenancy Branch