



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing was convened by conference call in response to the Landlords' Application for Dispute Resolution (the "Application") made on August 29, 2016 under the *Residential Tenancy Act* (the "Act"). The Landlords applied for a Monetary Order for unpaid rent and utilities, to keep the Tenants' security and pet damage deposits, and to recover the filing fee.

One of the Tenants, an agent for both Landlords, one of the Landlords named on the Application, and the co-owner of the rental unit appeared for the hearing. However, only the Landlords' agent and the Tenant provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the issues to be decided.

### Preliminary Issues

The Tenant confirmed receipt of the Landlords' Application and the Landlords' first batch of documentary evidence by registered mail. However, the Tenant submitted that the Application had been served to them outside of the three day time limit provided for by Section 59(3) of the Act.

In response to this, the Landlords' agent provided the Canada Post tracking number for these documents into oral evidence; this number is detailed on the front page of this Decision. The Canada Post website shows the Landlords sent the documents by registered mail on September 2, 2016 which was the same day they had been issued by the Residential Tenancy Branch. Section 59(3) of the Act requires the Hearing Package **be sent**, not received, within three days. Therefore, I reject the Tenant's submission that the Hearing Package was served late and accept the evidence before me that service was affected by the Landlords pursuant to Section 89(1) (c) of the Act.

The Tenant confirmed that they had not provided any documentary evidence prior to this hearing.

During the hearing, the Landlords' agent was not clear as to the total amount of the utilities that was outstanding in this tenancy. In addition, there had been a percentage reduction in the amount the Tenants were to pay and the Tenant stated that she had not been provided with all of the utility bills to show the amounts being claimed in the Application.

On this basis, the parties agreed that the Landlords would provide the Tenants with all of the outstanding utility bills in this tenancy along with correct and clear calculations of the amounts to be paid by the Tenants for resolution outside of the dispute resolution process. If there is a dispute in the amount payable for utilities, the Landlords are at liberty to re-apply for the outstanding utilities and must then submit the appropriate and clear evidence to support the claim being made. The Tenant agreed with this course of action.

The Landlords had applied for unpaid rent and utilities but had not elected on the Application the box requesting monetary compensation for damage to the rental unit. However, I noted the Landlords had indicated in the Details of Dispute section on page two of the Application and the Monetary Order Worksheet that they were also claiming for carpet cleaning. In this respect, I amended the Landlords' Application to include this request as I find the Tenants had been put on sufficient notice of this portion of the monetary claim.

#### Issues to be Decided

- Are the Landlords entitled to unpaid rent for August 2016 and the ensuing late fee?
- Are the Landlords entitled to carpet cleaning costs?
- Are the Landlords entitled to keep the Tenants' security and pet damage deposits in partial satisfaction of the monetary claim made?

#### Background and Evidence

The parties agreed that this tenancy started on September 1, 2015 and was for a fixed term of one year due to end on August 31, 2016; after this time the tenancy was to end and the Tenants were required to vacate the rental unit. The signed residential tenancy agreement was provided into evidence and shows the Tenants initialled the boxes

indicating their agreement that it was a fixed term tenancy that was to end. Rent was payable in the amount of \$1,875.00 on the first day of each month. The Tenants paid a security deposit of \$937.50 on August 24, 2015 and a pet damage deposit of \$937.50 on September 1, 2015. These amounts are herein referred to as the "Deposits" in this Decision. The Landlords still retain the Deposits.

The move-in Condition Inspection Report (the "CIR") was completed on August 31, 2015 and the move-out CIR was completed at the end of the tenancy on August 16, 2016. The parties confirmed the Tenants provided a forwarding address on the move-out CIR which the Landlords used to file the Application.

The Landlords' agent testified that for the last month of the tenancy, the Tenants failed to pay rent of \$1,875.00 which the Landlords now seek to recover. The Landlords also seek to recover a \$25.00 late fee for the August 2016 unpaid rent. The Landlord referred to the "Arrears" clause of the addendum to the tenancy agreement which states "Late rent is subject to a \$3.00 per day fee".

The Tenant testified that they did not pay rent because the Landlords owed them last month's rent as compensation for the Landlords ending the tenancy for their own use of the rental unit.

The Tenant argued that it was her understanding that if the Landlords ended the tenancy to use the rental unit for their own use, they were eligible for the last month's rent for free. The Tenant also argued that she did not know that they had signed a tenancy agreement that had a firm fixed end date as they had a verbal agreement with the Landlords to continue the tenancy after that date which was then because the Landlords wanted to use the property for their own use. The Tenant stated that they moved out of the rental unit on August 16, 2016 because they had been given a notice to end tenancy for unpaid rent which had not been provided into evidence by the Landlords.

The Landlords' agent testified that the Tenants were required to have the carpets professionally cleaned at the end of the tenancy pursuant to section g of the addendum as the carpets were provided to the Tenants professionally cleaned at the start of the tenancy. The Landlords' agent testified that the Tenants provided no receipt or evidence to show the carpets had been professionally cleaned as they had a dog, even though the Tenants were given an opportunity to provide one prior to the filing of the Application. The Landlords originally claimed an estimated amount of \$250.00 for carpet cleaning but amended the Application to reduce this amount to \$175.00 as supported by an invoice from a professional carpet cleaning company provided into evidence.

The Tenant testified that she had the carpets professionally cleaned along with professional house cleaning and that she had evidence of this. However, the Tenant confirmed that she had not provided any of this into evidence prior to this hearing or when the Landlord had requested this after the tenancy had ended. The Tenant then testified that she had not received the Landlord's invoice for this cost in the Landlord's evidence.

The Landlord rebutted this by providing the Canada Post tracking number into oral evidence for service of a second package of evidence sent at the start of February 2017. This number is detailed on the front page of this Decision. The Canada Post website shows the documents were signed for by the Tenant on February 22, 2017. Despite the Canada Post website showing the Tenant's name and signature as the signatory receiving them, the Tenant denied this stating that they must have been signed for by renters in the basement suite at the address they were currently residing at.

### Analysis

I accept the parties' evidence that this tenancy ended on August 16, 2016 and that the Landlords were provided with the Tenants' forwarding address on the same day which was detailed on the move-out CIR. Accordingly, I find the Landlords made the Application to keep the Tenants' Deposits within the 15 day time limit provided for by Section 38(1) of the Act.

In relation to the Landlords' monetary claim for unpaid rent, I make the following findings. Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement. Section 44 of the Act explains the ways in which a tenancy may end. In particular, Section 44(1) (b) of the Act states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

I informed the Tenant during the hearing that they had signed and initialed the tenancy agreement with the Landlords agreeing that the tenancy would end on August 31, 2016 and that the agreement required the Tenants to move out on this date. Therefore, there was no obligation on any of the parties to provide any notice to end the tenancy as the agreement itself informs the parties of when the tenancy was to end.

As a result, it is irrelevant as to what use of the rental unit was intended by the Landlords after the tenancy ended as there was no obligation to provide any reason or

compensation to the Tenants for ending the tenancy under the terms of the tenancy agreement.

The only way the tenancy could have been extended was for the parties to have agreed this **in writing** or by signing a new tenancy agreement or amended the current one to reflect a continuation. As it was the Tenants that were seeking to continue the tenancy, the responsibility for them to secure a continuation or a new tenancy would have rested with them. Accordingly, the Tenants were still obligated and required to pay August 2016 rent under the fixed term tenancy agreement they signed and committed to. Therefore, I grant the Landlords' request for the \$1,875.00 in unpaid rent.

Section 7(1) (d) of the *Residential Tenancy Regulation* (the "Regulation") allows a landlord to charge an administration fee up to \$25.00 for the late payment of rent only if the tenancy agreement provides for this fee. I have examined the Landlord's addendum to the tenancy agreement for late payment of rent. While I find the term is not exactly laid out to reflect an amount of \$25.00 for late rent, the term did put the Tenants on sufficient notice that there would be a charge if there was late payment of rent. Accordingly, I grant the Landlords' claim for the late payment fee and I limit this amount to \$25.00 as claimed. The Landlords should look to clarify the \$3.00 per day term for future tenancies.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Policy Guideline 1 to the Act details the responsibility of both a landlord and a tenant for residential premises. In relation to carpets, the guideline explains that a tenant is expected to steam clean or shampoo the carpets at the end of one year tenancy or if they have had pets that were not caged.

Based on the foregoing, I grant the Landlords' claim for the carpet cleaning in the amount of \$175.00. This is because the tenancy lasted for one year and the Tenants had a dog. Therefore, the Tenants were required to steam clean or shampoo the carpets at the end of the tenancy. The Landlords gave the Tenants an opportunity to provide them with evidence that this responsibility had been undertaken and the Tenants provided no such evidence.

In addition, the Tenants had been put on notice of the Landlords' claim for carpet cleaning in September 2016 through the Application and still failed to provide such evidence prior to this hearing. I do not accept the Tenant's assertion that she did not receive the second set of evidence which contained the Landlords' receipt for the carpet cleaning. I find the Canada Post evidence much more reliable and compelling and I accept on the balance of probabilities the Tenants had been served with that evidence.

I am satisfied that the invoice provided by the Landlords for the carpet cleaning is valid and reflective of the cost claimed which I hereby award to the Landlords.

As the Landlords had to make this Application to recover unpaid rent and carpet cleaning and were successful in doing so, I also award the Landlords the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlords is \$2,175.00 (\$1,875.00 + \$175.00 + \$25.00 + \$100.00).

As the Landlords already hold \$1,875.00 in the Tenants' Deposits, pursuant to Section 72(2) (b) of the Act I order the Landlords to retain these amounts in partial satisfaction of the claim awarded. No interest is payable on the Deposits.

As a result, the Landlords are issued with a Monetary Order for the remaining balance of \$300.00. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if payment is not made in accordance with the Landlords' written instructions. Copies of this order are attached to the Landlords' copy of this Decision.

### Conclusion

The Tenants breached the Act by not paying rent and failed to clean the carpets. Therefore, the Landlords can keep the Tenants' Deposits and are issued with a Monetary Order for the remaining balance of \$300.00. The Landlords' Application for utilities is dismissed with leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 28, 2017

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Residential Tenancy Branch

