



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent and utilities, and for 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, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord MK" did not attend this hearing, which lasted approximately 97 minutes. The other landlord, JK ("landlord") and the two tenants (male and female) 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 landlord confirmed that he had authority to speak on behalf of landlord MK, who is his wife, as an agent at this hearing (collectively "landlords").

The tenants confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and both landlords were duly served with the tenants' written evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to correct the spelling of the female tenant's first name, which she confirmed during the hearing. The female tenant consented to this amendment during the hearing.

### Issues to be Decided

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

Are the landlords entitled to retain the tenants' security deposit?

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, 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.

Both parties agreed to the following facts. This tenancy began on September 1, 2015 and was for a fixed term of one year, as per the parties' first written tenancy agreement. A second written tenancy agreement was signed on September 1, 2016 and was for a fixed term of one year ending on August 31, 2017. The tenants vacated the rental unit on February 28, 2017. Monthly rent of \$1,852.00 was due on the first day of each month as per the parties' second written tenancy agreement. The tenants were required to pay 55% of the total gas and hydro utilities to the landlords. A security deposit of \$900.00 was paid by the tenants and the landlords continue to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy. A written forwarding address was provided by the tenants to the landlords by way of the move-out condition inspection report on February 28, 2017.

The landlords seek a monetary order of \$1,852.00 for a loss of rent for March 2017, unpaid hydro and gas utilities totaling \$325.48 from January to March 2017, agent fees of \$947.50 and \$775.00 to find prospective tenants to re-rent the unit, and prospective tenant credit check fees of \$67.98. The landlords also seek to recover the \$100.00 filing fee paid for their application. They seek to offset the tenants' security deposit of \$900.00 against the above amounts.

The landlord claimed that the tenants ended their fixed term lease prior to August 31, 2017, so they are responsible for rent losses incurred by the landlords, agent fees to find prospective tenants to re-rent the unit, credit check fees to verify tenants and unpaid utilities while the tenants were residing in the unit and after they left. The landlord stated that he was unable to show the unit himself because he lives far away and his costs would be greater than hiring agents to do the work instead. The landlord claimed that he had to incur costs of re-rental earlier than expected because of the tenants' breach. He claimed that he re-rented the unit to new tenants on April 15, 2017, so the tenants are responsible for costs incurred during March 2017. The landlord said that he researched previous decisions of other Arbitrators at the Residential Tenancy Branch ("RTB") who awarded damages to landlords for losses, but he did not provide

any of these decisions to the tenants or to me, so I was unable to consider them. I am also not bound to follow prior decisions of other Arbitrators at the RTB.

The landlords provided detailed written evidence for this hearing, including but not limited to invoices, receipts and proofs of payment for agent fees and credit checks. They also provided utility bills for the unit, copies of email communications between the parties, written tenancy agreements, the move-in and move-out condition inspection reports, lengthy submissions regarding their claim and monetary order worksheets.

The tenants dispute all of the landlords' claims except for \$209.21 of the utilities, which they agreed to pay during the hearing. They said that they provided 60 days' notice to the landlords to vacate and the landlords delayed in advertising the unit for re-rental, increased the rental price of the unit in advertisements, showed the unit many times during a busy market, and failed to rent it to prospective tenants earlier. They claimed that they were present during many showings of the unit to prospective tenants, who they heard were told by the landlords' agents to apply for tenancy starting on March 1, 2017, in order to be considered.

According to the tenants, there was a busy market for rentals in the area and it was not difficult for landlords to find tenants. The tenants stated that the landlords' neighbor, who showed the unit to prospective tenants, informed them that two suitable prospective tenants had applied for the unit and he was surprised that one of the landlords' agents was still showing the unit in late February 2017. The tenants provided evidence including but not limited to copies of emails and text message communications between the parties, letters, and lengthy submissions regarding their claim.

### Analysis

I find that the landlords and tenants entered into a fixed term tenancy for the period from September 1, 2016 to August 31, 2017.

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

*A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlords. In this case, the tenants ended the tenancy on February 28, 2017, prior to the end of the fixed term on August 31, 2017. I find that the tenants breached the fixed term tenancy agreement.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence presented, I find that the landlords failed to mitigate their losses in efforts to re-rent the unit to prospective tenants.

The tenants provided 60 days' notice, at the end of December 2016, that they were vacating at the end of February 2017. They claimed that they advised the landlord that if he was able to re-rent the unit earlier than the end of February 2017, they would leave at any time. I accept the tenants' evidence that they offered to assist the landlord for free in finding prospective tenants to rent the unit, yet the landlord claimed that he did not interpret the tenants' offer in that manner. The female tenant claimed that she was a landlord herself and understood the market and could have assisted the landlord.

The landlords did not provide a copy of any advertisements for re-rental. The landlords delayed in posting rental advertisements for at least three weeks after they were given notice by the tenants to vacate. The landlord said that he posted advertisements around January 20, 2017. He said that his life was busy during that time because he had vacancies in his other properties to deal with, he was renovating a townhouse, his wife was pregnant and he was exhausted. These are personal reasons for a delay in advertising and a failure to mitigate and are not the burden of the tenants to bear. The tenants claimed that the landlord advised them that no tenants look for places to rent in January. The landlord testified during the hearing that December was the worst time to advertise places for rent.

Further, the landlord initially posted advertisements for a much higher rent of \$1,995.00 rather than the \$1,852.00 that the tenants were paying during their tenancy. He finally reduced this price, according to the tenants, three weeks later, to \$1,895.00, which is still higher than what the tenants were paying for rent. This may have detracted potential tenants from making inquiries or renting the unit.

Moreover, the landlord claimed that there were between 25 and 26 showings of the rental unit. Yet, the landlords were unable to re-rent the unit to new tenants until April 15, 2017, 1.5 months after the tenants had vacated the rental unit. The landlord said that prospective tenants backed out of renting the unit for different reasons, including that they had found another place, the unit was too big, there was smoking next door, they did not like the place, and other reasons. He said that despite him doing credit checks of tenants and offering the place to prospective tenants who applied, they suddenly backed out and did not want the unit. I find it improbable that the landlord was unable re-rent the unit for March 1, 2017, when he had 25 to 26 showings of the unit, he had professional agents searching for tenants on his behalf, and he completed credit checks of prospective tenants after receiving suitable applications from them.

Accordingly, for the reasons stated above, I dismiss the landlords' application for a rental loss of \$1,852.00 for March 2017 rent, on the basis that I find that the landlords failed to mitigate their losses and could have re-rented the unit for March 1, 2017.

I also dismiss the landlords' application for agent fees of \$947.50 and \$775.00. The landlords could have performed this work themselves; it was their choice to hire agents. The landlord claimed that he lives far away in a different province so he could not do it himself and it would have been too expensive. Yet, it is not the tenants' issue that the landlords purchased a unit and decided to rent it to tenants, when it is far from their own residence. I find that it is the cost of doing business for landlords, particularly where

these landlords have not only failed to mitigate expenses but also increased these expenses by having two agents involved, continuing to show the unit when numerous applications were placed by prospective tenants and by delaying ads and increasing the advertised rental price.

I award the landlords \$209.21 for January and February 2017 hydro and gas utilities because the tenants agreed to pay this amount during the hearing and they were residing in the rental unit during this time. I dismiss the remainder of the hydro and gas utilities in the total amount of \$116.27 for March 2017, because the tenants did not reside in the rental unit during that month. Further, as noted above, since I found that the landlords could have re-rented the unit by March 1, 2017 and failed to do so for many reasons, I find that the landlords are not entitled to any loss for that month.

Section 15 of the *Act* states the following:

*Application and processing fees prohibited*

*15 A landlord must not charge a person anything for*

- (a) accepting an application for a tenancy,*
- (b) processing the application,*
- (c) investigating the applicant's suitability as a tenant, or*
- (d) accepting the person as a tenant.*

I dismiss the landlords' application for credit check fees of \$67.98 and \$75.00 in one of the agent's total fees of \$775.00. These are fees for investigating an applicant's suitability as a tenant and are not allowed under section 15 of the *Act*.

The landlords continue to hold the tenants' security deposit of \$900.00. Over the period of this tenancy, no interest is payable. I order the landlords to retain \$209.21 from the tenants' security deposit of \$900.00 in full satisfaction of the monetary award issued to the landlords at this hearing.

I order the landlords to return the remainder of the tenants' security deposit in the amount of \$690.79 to the tenants within 15 days of receiving this decision. I find that the tenants are entitled to the return of the remainder of their deposit from the landlords, as per Residential Tenancy Policy Guideline 17, which requires me to deal with the deposit when the landlords have applied to keep it, including the return of it to the tenants without the tenants' application.

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

Conclusion

I order the landlords to retain \$209.21 from the tenants' security deposit of \$900.00. I order the landlords to return the remainder of the tenants' security deposit in the amount of \$690.79 to the tenants within 15 days of receiving this decision.

I issue a monetary order in the tenants' favour in the amount of \$690.79 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(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 remainder of the landlords' 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: August 04, 2017

---

Residential Tenancy Branch