



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND MNSD MNDC FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- authorization to retain the tenants’ security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation damage to the unit, site, or property, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

KW appeared and testified on behalf of both landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with each other’s Applications and evidence.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the tenants entitled to the return of all or a portion of their security deposit?

Are either of the parties entitled to recover the filing fee for their applications?

### **Background and Evidence**

The landlords testified regarding the following facts. This month-to-month tenancy began in February of 2016, and ended on February 26, 2017. Monthly rent was set at \$2,800.00, and the landlords collected a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00, which the landlords still hold.

The landlords testified that the tenants gave less than 30 day days' notice to end the tenancy. The tenants gave verbal notice on February 2, 2017, followed by written notice on February 5, 2017. A copy of the signed letter was included in the tenant's evidence, dated February 1, 2017, stating that "you will find I am giving you 28 days' notice, in accordance with my rental agreement. My last day of my tenancy will be February 28, 2017. The landlords showed the suite to prospective tenants starting February 19, 2017, before this tenancy had ended, but did not find a new tenant until April 23, 2017, and at \$200.00 less in monthly rent.

The landlords requested monetary compensation as follows:

Item	Amount
Compensation for Landlords' Loss of March 2017 Rent	\$2,800.00
Damaged Refrigerator Shelves	80.00
Portion of cost to replace refrigerator	400.00
Portion of cost for replacement of air conditioning unit	200.00
Portion of cost for replacement of carpet	200.00
Less Security & Pet Damage Deposits	-2,800.00
Recovery of Filing Fee	100.00
<b>Total Monetary Award Requested</b>	<b>\$980.00</b>

During the hearing the landlords withdrew their monetary claim for the air conditioning unit and carpet, reducing the claim by \$400.00.

The landlord testified that they had difficulty finding new tenants as the tenants requested an unfurnished suite, and normally the luxury suite is rented furnished. The landlord testified that the tenants had damaged the shelving in the refrigerator, and as the apartment was a high end one, the landlords had to purchase a new refrigerator and pay for removal of the old one. In selecting \$400.00 as the figure for the tenant's portion of the landlords' costs in replacing the refrigerator, the landlords took into consideration that the refrigerator was at least 13-15 years old, and only made a partial monetary claim towards the purchase of a new one.

The landlords provided, in evidence, some black and white photos of the broken refrigerator shelves, as well as the condition inspection report and a receipt for \$1,485.40. The landlord testified that the refrigerator was a special model that fit the size of the apartment.

The tenants dispute the entire monetary claim, stating that the apartment was in fact 21 years old. The tenants provided, in their evidence, a description of the building which stated it was built in 1996.

The tenants also responded that they were not responsible for the landlords' inability to rent out the suite because, although they admit to giving less than 30 days' notice, the landlords had agreed to rent the suite unfurnished to them.

### **Analysis**

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 45(1) deals with a Tenant's notice in the case of a periodic tenancy:

(1) A tenant may end a periodic 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, and

(b) 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 landlord provided undisputed evidence at this hearing that the tenants ended this tenancy in a manner that does not comply with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy.

The evidence is clear that the tenants did not comply with the *Act* in ending this tenancy, and I therefore find that the tenants vacated the rental unit contrary to section 45 of the *Act*.

The landlords made a monetary claim equivalent to one month of rent as they were unable to find a new tenant for March 2017, as well as a large portion of April 2017. I have taken in consideration that the unit was not furnished as the suite normally was by the landlords, and that the rental unit was considered a “luxury condo”, and therefore may require more time to re-rent in comparison to a typical unit of the same size.

I am satisfied that the landlords had made efforts to mitigate the tenants’ exposure to the landlords’ monetary loss of rent for March 2017, as is required by section 7(2) of the *Act*.

It is undisputed that the tenants failed to comply with section 45 of the *Act* by giving only 28 days’ notice, which reduced the amount of time the landlords had to find a new tenant by March 1, 2017. Despite the landlords’ efforts to show the suite as soon as possible, the lack of proper notice contributed to a rental loss of almost two month’s rent. Accordingly, I find the landlords’ claim for a monetary order for rental differential loss equivalent to one month of lost rental income due to the tenants’ failure to give proper notice as required by section 45 of the *Act*, to be a reasonable one. The landlords are granted a monetary claim of \$2,800.00 for the tenants’ failure to comply with section 45 of the *Act*.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. It was undisputed by the tenants that the refrigerator shelves were damaged. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the refrigerator. As per this policy, the useful life of a refrigerator is 15 years. The rental unit was about 21 years old, and the landlords acknowledged that the refrigerator was there when they had purchased the apartment in 2005, and could be at least 13-15 years old. As the refrigerator has most likely reached the end of its useful life at the end of this tenancy, I dismiss this portion of the landlords' monetary claim.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security and pet damage deposits plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As both parties were at least partially successful in their respective applications, I make no order with respect to the recovery of their filing fees.

### **Conclusion**

I allow the landlords' application to recover \$2,800.00 in lost rent for March 2017. In order to implement this monetary award, I order the landlords to retain the tenants' pet damage and security deposits.

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 15, 2017

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Residential Tenancy Branch