



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlords’ application filed April 22, 2017 for unpaid rent, authorization to retain the tenant’s security deposit, and recovery of the application filing fee.

Both of the landlords attended the hearing. The tenant attended with her youth worker. Both parties were given a full opportunity to be heard, to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the landlords’ application and notice of hearing was not at issue.

The landlords testified that they sent their evidence by registered mail to the tenant at the forwarding address that she had provided them. A copy of the envelope with a registered mail sticker indicating that the addressee had moved was included in the landlords’ evidence. One of the landlords also testified that he also handed the landlords’ evidence package to the tenant at her place of work. The tenant stated that she had not received the evidence at all. Section 90 of the Act deems a party to have been served five days after the registered mail was sent. I accept that the tenant was served with the landlords’ evidence by registered mail. I also find that she was served personally at work.

The tenant stated that she serve the landlord with her evidence by registered mail. The landlords said that they had not received that evidence, and the tenant did not submit a registered mail receipt or provide a tracking number. I find the landlords were not served with the tenant’s evidence and as a result I will not consider it. However, I note that the tenant’s evidence included written submissions, and the tenant’s advocate was able to make the same submissions at the hearing.

The tenant also submitted photographs of the condition of the rental unit when she vacated to the Residential Tenancy Branch. However, she advised that she did not

serve the photographs on the landlords in advance of the hearing. As a result I will not consider the tenant's photographs either. I note they were not necessary in any event.

Issue(s) to be Decided

Are the landlords entitled to unpaid rent?

Are the landlords entitled to retain the security deposit?

Are the landlords entitled to recover the application filing fee?

Background and Evidence

A copy of the written tenancy agreement was in evidence. This tenancy began on August 1, 2016 for a fixed term expiring August 1, 2017. Rent of \$800.00 was payable on the first day of each month. A security deposit of \$400.00 was paid at the beginning of the tenancy and remains with the landlords.

It was agreed that the tenant gave the landlords notice of her intention to move on February 27. She paid rent for March and left the rental unit on March 31.

The landlords testified that they posted an advertisement on two different internet sites on February 28th and renewed it on March 1 and March 11. They further testified that they showed the unit several times in late February and early March but that all the prospective applicants asked for a start date of May 1.

The landlord provided text correspondence between themselves and the tenant advising of their showings. Based on that correspondence the unit was shown at least seven times between February 28 and March 15.

The landlords also provided copies of the advertisements they posted, one of which states that the rental is available for April 1 (posted February 28 and March 4) and one of which says it is available for May 1 (posted March 5). They say that the prospective renters were asking to start their leases May 1 in light of their having to give notice to their own landlords.

The landlord rented the unit in mid-March for May 1 and claim against the tenant for April.

The landlords also claim \$100.00 for carpet cleaning. They point to a handwritten addition to the tenancy agreement that requires the tenant to clean the carpets upon vacancy, initialed by both the landlord and the tenant. The landlords also provided photographs of the carpet and an estimate for carpet cleaning.

The landlords also claim for cleaning and provided an invoice in support. They also provided some photographs of the unit which they say establish that the rental unit required four hours of cleaning.

The landlords acknowledged that they did not complete a condition inspection report on move in or move out.

The tenant submitted that she broke the fixed term lease because the landlords were entering her unit illegally and because they had taken a key away from her that she needed to be able to use a certain exit, which left her feeling unsafe. The tenant's youth worker said that a letter raising these concerns was sent by registered mail to the landlords in late April. That letter was not in evidence. There were texts in evidence in which the tenant tells the landlords that she is vacating because she has had an accident and found a less expensive rental.

The tenant also submitted that the landlords did not do their due diligence in securing another renter because they should have continued to look for a renter who could occupy the unit beginning April 1 rather than accepting a renter for May 1, 2017.

The tenant acknowledged that she did not clean the carpets professionally and said that she did not understand is that this was necessary given that she did not occupy the unit for a year. She also stated that she had not received a copy of the tenancy agreement from landlords and did not recall having initialed the language around having the carpets cleaned.

Lastly, the tenant said that she cleaned and vacuumed the unit comprehensively before she left and that the cleaning claimed by the landlords was not required.

### Analysis

Sections 23 and 35 of the Act require a landlord to complete a condition inspection report at move in and move out. Sections 24 and 36 provide that a landlord who does not comply with this requirement extinguishes her right to claim for damages against the security deposit. The landlords did not complete written condition inspection reports

and have therefore extinguished their right to claim against the security deposit for cleaning and the carpet cleaning. However, the landlords are entitled to make a separate claim for these issues, outside of the security deposit.

I find that the tenancy agreement required professional carpet cleaning. I also find, based on the landlord's photos, that the carpets required professional cleaning. I award the landlord the \$100.00 claimed.

I do not accept that the unit required four hours of cleaning. The landlords' photos do not establish this. I also note that the landlords did not establish that they paid for this cleaning. They submitted only an email estimate and did not confirm the amount had actually been spent. I do not award any amount for cleaning.

A tenant who breaches a fixed-term tenancy is responsible for payments until the end of the term, subject to the landlord's obligation to do her best to mitigate, or minimize, her losses.

The landlords provided evidence that they began advertising the rental unit the day after this tenant gave notice. They also provided evidence, in the form of texts between the parties, indicating that they showed the unit about seven times. They testified that most applicants were not able to begin a tenancy as early as April 1, with the result that they secured a tenant in mid-March for May 1.

The respondent tenant says that the landlords should not have accepted this tenant, and should have instead kept advertising for a tenant who could move in earlier. I do not believe that would have been reasonable. The landlords could have accepted a new tenant for May 1 in mid-March, or they could have continued to advertise and show the suite through the last two weeks of March, in hopes of securing a tenant who could take the suite immediately. I accept the landlords' submissions that most tenants will not be able to take over a suite without at least one month's notice to end their pre-existing tenancy, and that accepting a tenant for May 1 was reasonable in the circumstances.

Based on the above, I award the landlords \$800.00 for April's rent.

As the landlords have been partially successful in their application, I also grant them \$50.00 of the \$100.00 filing fee.

The landlords continue to hold the tenant's security deposit of \$400.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of s. 72 of the Act, I authorize the landlords to retain the tenant's security deposit of \$400.00 in partial satisfaction of the monetary claim for unpaid rent (as opposed to damages, as the landlords extinguished their right to claim against the security deposit for damages).

### Conclusion

I issue a monetary order for the landlords on the following terms, which allows the landlords to obtain a monetary award for unpaid rent, carpet cleaning, and half of the application filing fee, and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
April rent	\$800.00
Carpet cleaning	\$100.00
Filing Fee	\$50.00
Less Security Deposit	-\$400.00
<b>Total Monetary Order</b>	<b>\$550.00</b>

The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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 Act and is final and binding unless otherwise provided in the Act.

Dated: September 18, 2017

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Residential Tenancy Branch