



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FF MNR MNDC MNSD MND

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for June 29, 2017. The Arbitrator had allowed the adjournment to allow all parties to properly serve each other with their evidence and have a fair opportunity to review and respond to that evidence.

The adjournment decision dated July 7, 2017 noted the requirements for service of the hearing package and evidence. The tenants confirmed receipt of the landlords' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the unit, site, or property, money owed or compensation for 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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

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

Are the landlords entitled to monetary compensation for unpaid rent?

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 landlords entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

The landlords testified regarding the following facts. This fixed-term tenancy began on July 1, 2016, and was to end on June 30, 2017. The tenants moved out six months early, on December 31, 2016. Monthly rent was set at \$2,175.00, and the landlords collected a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00, which the landlords still hold. A copy of the tenancy agreement was included in the landlord's evidence.

The tenants gave notice by way of a written letter, dated November 30, 2016, which stated that they were giving one month's notification that they "must terminate our tenancy effective 11:59pm, December 31, 2016". A copy of this letter was included in the tenant's evidence. The tenants provided a forwarding address to the landlords on January 6, 2017. The tenants testified in the hearing that they had moved out on December 21, 2016, and not December 31, 2016.

Both parties agreed in the hearing that no move in or move out inspections were completed.

The landlord requested monetary compensation for the losses incurred as follows:

<b>Item</b>	<b>Amount</b>
Washing machine door boot	\$289.45
Mandatory Clean Out Fee	150.00
Stainless Steel Door Fridge	795.00
Removal of dead plants & debris	35.00
Utility Bill for January – June 2017	360.00
Loss of Rent for January – June 2017	13,050.00
Light Bulbs	44.71
Recovery of Filing Fee	100.00
<b>Total Monetary Award Requested</b>	<b>\$14,824.16</b>

The landlords testified that the 3 year old washing machine required a replacement of the boot. The landlords included an email as well as attached photos of the damaged washing machine. The tenants dispute that they were responsible for this repair.

The landlords testified that the 3 year old refrigerator was damaged during this tenancy, which the tenants also dispute. The landlords testified that they attributed the damage to this tenancy since the "previous tenant was too fragile to cause these dents". The landlords confirmed that no repairs have been undertaken yet, but the \$795.00 was the replacement cost of the refrigerator since the cost to repair would be close at \$649.00.

The landlords testified that the \$150.00 mandatory cleaning fee was agreed to by the tenants as stated on the tenancy agreement.

The landlords testified that they had attempted to mitigate the costs due to the tenants ending this fixed term tenancy early by locating new tenant for April 1, 2017 for the same monthly rent. The landlords testified that they had posted an online advertisement immediately on December 1, 2017 on several websites, and even hired an agent. The landlords testified that they were only able to find a short-term tenant until July 1, 2017 when they finally were able to find a tenant who would sign a 1 year lease agreement.

The landlords testified that they paid the utilities while the unit was vacant, and was seeking the recovery of this cost. The tenants dispute this charge as they moved out in December 2016, and advised the hydro provider that they were no longer residing there. The tenants testified that they did not use the hydro after they had moved out, and should not be responsible for these charges.

It was undisputed by the tenants that they owed \$35.00 for plants and debris that was left behind on the patio. The landlords are seeking reimbursement for the cost of replacing the lightbulbs that were not replaced during the tenancy. The landlord supported this claim with receipts in their evidence package. The tenants testified that they did attempt to change the lightbulbs, but did not have access to a ladder to access the 15 feet ceilings. The tenants testified that they advised the landlords of this problem, and had made several attempts to remedy this situation. The landlords dispute that any requests were made.

### **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *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;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**45** (2) *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 landlords provided undisputed evidence at this hearing that the tenants had moved out prior to the end of this fixed term 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 fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out six months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

I find further that the evidence shows that as a result of the tenants' early termination of this tenancy, the landlords suffered a rental loss. The evidence of the landlords is that they listed the unit for rental immediately, and did not obtain a new tenant until three months later, April 1, 2017, for the same monthly rent. I am satisfied that the landlords had made some efforts to mitigate the tenants' exposure to the landlords' monetary loss as a result of the tenants' failure to comply with the *Act*, as is required by section 7(2) of the *Act*. I, therefore, allow a portion of the landlords' claim for a monetary order for rental differential loss in the sum of \$6,525.00 for the 3 months of lost rental income due to the early termination of this tenancy.

It was undisputed by both parties that the tenants were responsible for the disposal of the items left behind. Accordingly I find that the landlords are entitled to recover the \$35.00 in disposal fees.

I find that it was also undisputed that both parties agreed to a \$150.00 cleaning fee as part of the tenancy agreement. Accordingly, I find the landlords are entitled to \$150.00 for the cleaning fee.

It was also undisputed by the tenants that they failed to replace the lightbulbs for this tenancy. Accordingly I find that the landlords are entitled to recover \$44.71 for the cost of the replacing the light bulbs.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing

that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

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. Although it was undisputed that there was damage to the refrigerator and washing machine, I find that the landlords did not provide sufficient evidence to support that the tenants had caused this damage during this tenancy. I note that the landlords had failed to comply with sections 23 and 35 of the *Act* which requires the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. In the absence of a move-in and move-out inspection, I find that the landlords failed to provide sufficient evidence to support that the damage had taken place during this tenancy. Accordingly, this portion of the landlords' monetary claim is dismissed.

The landlords made a monetary claim for the cost of utilities for the period of January 2017 to June 2017. As the tenancy ended on December 31, 2016, and it was the decision of the landlords to maintain the use of the utilities after this period, I dismiss this portion of the landlords' monetary claim.

The landlords continue to hold the tenants' security deposit and pet damage deposits totalling \$2,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' deposits in partial satisfaction of the monetary claim.

As the landlords were not completely successful in their application, I am allowing partial recovery of the filing fee for this application in the amount of \$50.00.

### **Conclusion**

I issue a Monetary Order in the amount of \$320.25 in the landlords' favour under the following terms which allows a monetary award for losses suffered by the landlords due to the tenant's failure to comply with sections 44 and 45 of the *Act*. The landlords are also authorized to recover \$50.00 for the filing fee.

<b>Item</b>	<b>Amount</b>
Mandatory Clean Out Fee	150.00
Removal of dead plants & debris	35.00
Loss of Rent for January – March 2017	6,525.00
Light Bulbs	44.71
Recovery of Filing Fee	50.00
Less Security and Pet Damage Deposits	-2,000.00
<b>Total Monetary Award</b>	<b>\$4,804.71</b>

The landlords are provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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 landlord's monetary application is dismissed.

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: October 20, 2017

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Residential Tenancy Branch