



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities, an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

One of the landlords and the tenant attended the hearing and each gave affirmed testimony. The landlord also represented the other named landlord. The parties were also given the opportunity to question each other.

The Landlord's Application for Dispute Resolution claims unpaid rent, the filing fee and an order permitting the landlords to keep the security deposit, however the landlords have also provided a Monetary Order Worksheet setting out a claim for damage or loss. I find that the tenant is well aware of the nature of the landlords' application, and therefore, I amend the application to include a claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for items removed from the rental unit at the end of the tenancy?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on April 1, 2016 and ended on May 31, 2017. Rent in the amount of \$1,200.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant failed to pay any rent for the months of April and May, 2017, and the landlords claim unpaid rent for April, 2017 in the amount of \$1,200.00. The landlords had served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property and compensation was provided to the tenants by not claiming rent for May, 2017.

The landlords have also provided a Monetary Order Worksheet setting out the following claims:

- \$200.00 for a deep freeze;
- \$100.00 for paint;
- \$125.00 to replace a gas lawn mower; and
- \$50.00 to replace a weed wacker.

The landlord testified that they are estimated amounts and no receipts for replacing any of the items have been provided as evidence for this hearing.

The deep freeze was working at the beginning of the tenancy and had food in it, but was not replaced by the landlord because the house was selling. The rental home sold and possession date for the purchasers was on June 1, 2017.

The landlords had left a large pail of paint in the rental unit, which was never used and missing at the end of the tenancy.

The landlords had also left a gas lawn mower and weed wacker at the rental unit for the tenant's use during the tenancy, both of which were missing at the end of the tenancy.

No move-in or move-out condition inspection reports were completed.

The landlord sent a text message to the tenant on June 7, 2017 asking for a forwarding address, which the tenant provided by return text message the same day.

**The tenant** testified that the landlords had left a sea-can at the rental unit for the tenants to fill with belongings from the previous tenant, and other material from the property.

The tenant also testified that rent for April, 2017 wasn't paid because of the horrendous hydro bill, but a copy has not been provided for this hearing. There were 3 cold snaps and no heat. The landlords provided ceramic heaters, but the first time one was plugged in a fuse blew.

As a result of the landlords' failure to provide heat and an empty, clean rental unit, the tenant felt justified in not paying rent for April, 2017.

One June 1, 2017 the tenant sent a message to the landlord about returning the security deposit, but the landlords didn't reply.

### Analysis

Firstly, a tenant is required to pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. There is no provision for a tenant to withhold rent without the landlord's written approval, and the recourse for the tenant if the landlord fails to comply with the *Act* or the tenancy agreement is to make an application for dispute resolution. The tenant has not done so, and I find that the landlord has established a monetary claim for unpaid rent in the amount of \$1,200.00.

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlords failed to comply with the *Act* by failing to ensure that the move-in and move-out condition inspection reports were completed. Further, the landlords have provided no evidence that the large pail of paint or the lawn mower or the weed wacker existed, or the amount of the cost to replace them. The tenant agrees that the deep freeze existed, and the parties agree it had food in it at the beginning of the tenancy, also contrary to the *Act*. Since the landlords have not provided any evidence of the cost, I find that the landlords have not established element 3 in the test for damages.

In the circumstances, I am satisfied that the landlords are owed \$1,200.00 for April's rent, but have not established any of the damage claim. However, since the landlords have been partially successful with the application the landlords are entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$600.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords as against the tenant for the difference in the amount of \$700.00.

Conclusion

For the reasons set out above, the landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby order the landlords to keep the \$600.00 security deposit in partial satisfaction of the claim for unpaid rent, and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$700.00.

This order is final and binding and may be enforced.

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: November 14, 2017

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Residential Tenancy Branch