



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for emergency repairs - Section 67; and
3. An Order for the return of the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Agent states that no photos and other evidence were received. The Tenant states that their evidence package was delivered to the Landlord’s residence on December 23, 2017. The Agent states that the Landlord left for out of country on December 4, 2017 and did not provide the Agent with any access to the Landlord’s mail. The Residential; Tenancy Branch provides Rules of procedure, many of which refer to evidence, and as a broad principle requires that any evidence that a party wishes to rely on must be given to the other party. As it is up to a party to ensure that their agent is provided with access to evidence that may be served in the period leading up to a hearing and as the Tenant served the Landlord as required I find that I may properly consider the Tenant’s evidence.

Issue(s) to be Decided

Are the Tenants entitled to return of the security deposit?

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy agreement was signed on September 14, 2017 for a tenancy start date of October 10, 2017. Rent of \$2,450.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,225.00 as a security deposit. The Tenants paid \$200.00 towards October 2017 rent and no further rent was paid for that month. No move-in condition inspection was conducted. On or about October 17, 2017 the Tenants informed the Landlord that they were moving out of the unit. The Tenants returned the keys to the Landlord on October 30, 2017. The Tenants did not provide a forwarding address to the Landlord apart from the address contained in the application. During the hearing the Tenants provided a forwarding address to the Landlord different from the address contained in the application.

The Tenant states that on October 11, 2017 rats were discovered in the unit and were reported immediately to the Landlord. The Tenant states that the Landlord arranged for an exterminator to attend the unit on October 12, 2017. The Tenant states that the Landlord asked the Tenants to pay the exterminator and that the Landlord would refund the Tenants. The Tenant states that they paid the exterminator and that although the receipt was given to the Landlord no refund was given to the Tenants. The Tenants claim \$309.75. The Agent states that the Landlord paid the Tenants for the exterminator in cash of \$310.00. Both Parties provide a copy of the receipt.

The Tenants state that there were several rats in the unit, which had multiple issues including a broken washing machine, exposed and chewed wiring, rat holes in the walls and cupboards. The Tenant states that the cupboards were also infested with moths.

The Tenant states that none of the stove elements worked and that the oven door seal was damaged allowing heat to escape making the oven hot to the touch.

The Tenant states that the exterminator did not close the holes and left traps that caught one rat. The Tenant states that they also bought and placed their own traps that caught several rats. The Tenants claim \$20.00 for the cost of the traps. The Tenants state that the exterminator informed them that the holes in the unit had been there for some time. The Tenant states that two previous tenants had experienced rats in the unit and that the Landlord knew of the presence of rats when the unit was rented to the Tenants. The Tenant provides an email and texts from the previous tenants noting that the Landlord knew that rats were present.

The Tenants state that they vacated the unit on October 16, 2017 and stayed with friends until November 1, 2017. The Tenant states that they paid this friend \$450.00 to stay there. The Tenant claims this amount but provides no receipts.

The Tenant claims \$1,500.00 for the trauma of having to live with rodents in the house, being unable to remain in the house and having to live in a shelter for a month. The Tenant states that the children were particularly affected and are under medical care. No medical or psychological reports were provided. The Tenant states that the rats attacked the children and that the children witnessed the other Tenant shooting the rats. The Tenant states that they moved out the night that the rats attacked the children and as given all the other problems the Tenants felt they had no other choice. The Tenants also claim return of the \$200.00 paid towards the rent for October 2017.

The Tenants claim moving expenses totalling \$398.40 for the costs of a U-Haul and gas to both move and to take the children to school. The Tenant states that after November 1, 2017 they then stayed in a shelter in a neighbouring community as they were unable to find accommodation in the same community where the children went to school and as a result incurred gas costs to take the children to school.

The Tenant claims \$209.00 for storage fees and provides the receipt.

The Tenant claims cost for utility transfer fees but does not indicate what those costs are in its monetary worksheet.

The Tenant states that the Landlord had originally agreed that the Tenants could paint two bedroom walls and the Landlord would refund the cost of the paint. The Tenant states that the walls were painted before they moved out and that the remaining paint was left in the unit. The Tenant claims \$50.00. The Agent agrees that the rooms were painted.

The Agent states that while Landlord never witnessed the presence of any rats the Landlord does not dispute the presence of rats during this tenancy. The Agent states that the Landlord was never informed of rats from the previous tenancies. The Agent states that the Landlords could not be present to provide direct evidence as they are out of country. The Agent argues that the Tenants are not entitled to return of the rent paid as they retained possession of the unit until the end of the month and never paid any rent for October 2017. The Agent argues that the Tenants did not have to move out of the unit as the Landlord acted as soon as the Tenants reported the presence of the rats. The Agent states that the prior tenants never said anything about rats and had this been reported the Landlord would have corrected the situation then. The Agent is not sure of the dates that the prior tenants occupied the unit. The Agent disputes that the rats would attack anyone as the Agent believes that rats hide. The Agent states that the prior tenants stole the fireplace inserts that were to be provided to the Tenants. The Agent states that the Tenants never reported any leaks or problems with the stove or furnace. The Tenant states that when the Tenants informed the Landlord that they were leaving the Landlord told them to hurry and get their stuff out. The Agent agrees that when the Tenants informed the Landlord they were leaving they were asked by the Landlord to leave within one week.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Tenants did not provide a forwarding address to the Landlord separate from the address provided in its application I dismiss the claim for return of the security deposit with leave to reapply. As the Tenant provided its forwarding address to the Landlord during the hearing I find that the Landlord now has the forwarding address and has 15 days from the date of this hearing to deal with the security deposit.

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and the landlord must complete a condition inspection report and provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. As the Landlord did not offer or conduct a move-in inspection, I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in. Should the Landlord fail to return the security deposit as set out above the Tenants may apply for return of double the security deposit.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Given the witness evidence of the Tenants, I find on a balance of probabilities that the Landlord was aware of the presence of rodents in the unit prior to entering into a tenancy agreement with the Tenants to take possession of the unit. As a result I find that the Landlord failed to provide a unit suitable for occupation. For these reasons and given the Landlord's direction to the Tenants to move out quickly after the Landlord was informed of the rats, I find that the Tenants were not required to pay any rent for October 2017. I therefore find that the Tenants are entitled to recovery of the **\$200.00** rent paid for that month.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Although both parties provide a copy of a receipt for the pest control company, given that the Tenant's copy appears to be an original receipt unlike the Landlord's apparent faxed copy of a receipt I find on a balance of probabilities that the Tenants have substantiated that the Landlord failed to repay the Tenants for the cost of pest control. The Tenants are therefore entitled to the **\$309.75** claimed.

As no receipts were provided for the costs of rat traps, the cost of paint or the costs of staying with a friend I find that the Tenants have not substantiated that the costs claimed were incurred and I dismiss the claims for \$20.00, \$50.00 and \$450.00.

As the unit was not suitable for occupation from the outset of the tenancy I find that the Tenants have substantiated that the Landlord caused the costs to move out of the unit

and to relocate with little time to find alternate accommodation. Given the receipts for the U-Haul, gas and storage costs I find that the Tenants are entitled to the claimed costs of **\$398.40** and **\$209.00**. As no amount was claimed or included in the total monetary amount for utility transfer fees I dismiss this claim.

The Tenants did not pay any rent for the unit and there are no psychological reports to substantiate trauma experienced from the presence of rats. Further I note that the Tenant shot the rats in front of the children and must therefore be considered as another cause of any trauma. For these reasons I find that the Tenants are not entitled to the total amount of \$1,500.00 claimed for rats being in the unit. However given that the Landlord breached the Act by providing a unit that was unsuitable for habitation I find that the Tenants are entitled to a nominal sum of **\$200.00** in compensation for having to live with rats for a brief period of time and the stress of having to repack and relocate to other accommodation. As the Tenants did not pay a filing fee I total the entitlement to the Tenants at **\$1,317.15**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,317.15**. If necessary, this order may be filed in the Small Claims 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 *Residential Tenancy Act*.

Dated: January 17, 2018

---

Residential Tenancy Branch