



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

LANDLORD: MNDC, O, FF  
TENANT: MNSD, MNDC, FF

### Preliminary matters

During the hearing the Tenant was made aware that part of her application is for administrative penalties. The Tenant request \$16,050.0 in administrative penalties be awarded to her. It was explained that administrative penalties are sought by the Executive Director of the Residential Tenancy Branch against parties that severely breach the Act or Orders served upon them. Further administrative penalties are not awarded to applicants or respondents in a dispute. The Tenant said she understood and withdrew these claims.

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for loss of damage under the Act, regulations and tenancy agreement, for other considerations and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security and pet deposits, for compensation under the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on September 6, 2017, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on March 2, 2018, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

### Issues to be Decided

Landlord:

1. Is the Landlord entitled to compensation for loss or damage and if so how much?
2. What other considerations are there?

Tenant:

1. Are the Tenants entitled to recover double the security and pet deposits?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?

### Background and Evidence

This tenancy started on April 6, 2014 as 1 year fixed term tenancy and then was renewed each year on a fixed term for another year. The last tenancy agreement was for a fixed term starting on April 1, 2017 and ending on March 31, 2018. Rent was \$1,000.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$475.00 and a pet deposit of \$475.00 at the start of the tenancy. The Tenant said a move in condition inspection report was completed at the start of the tenancy, but no move out condition inspection was completed and signed at the end of the tenancy. The Landlord's agent said they did a walk through at the end of the tenancy but she did not have a form with her so she completed it later and sent it to the Tenant when she sent out the hearing package in September 2017.

The Landlord's agent said the Tenant gave written notice on June 14, 2017 to end the tenancy on July 15, 2017. The Landlord's agent continued to say that the Landlord did not enter into a written Mutual Agreement to End Tenancy as the Act requires so the Tenant should be responsible for the rent from July 15, 2017, the day the Tenants moved out, to September 11, 2017 the day the property sold. The Agent said the amount of rent owing from July 15, 2017 to September 11, 2017 is \$1,867.00. The Landlord's agents said as this was a fixed term tenancy and there was no written Mutual Agreement to End Tenancy the Tenants are responsible for the rent.

The Tenant said when they signed the last tenancy agreement the Landlord and the Tenants verbally agreed that because the Landlord was putting the house up for sale either party could give one month written notice to end the tenancy. The Tenant continued to say they knew the house was up for sale so they found a new rental. The Tenant said this is why they gave the Landlord written notice on June 14, 2017 that they were ending the tenancy on July 15, 2017. The Tenant said she was surprised the Landlord made this application. Further the Tenant said on June 21, 2017 the Landlord's daughter text the Tenants saying "My mom told me that you were moving out on next month. When should we cash the July's cheque?" The Tenant said this was written conformation that the Landlord knew they were moving out and there was no objection in the text message. In addition the Tenant said the Landlord's agent said nothing about problems with ending the tenancy early when they did the move out walk through on July 16, 2017. Further the Tenant said there is nothing about deducting the \$300.00 from the security deposit or ending the tenancy early on the move out reports that the Landlord completed. The Tenant said the Landlord gave no indication that there was an issue with ending the tenancy early.

Further the Tenant said the Landlord did not return their full deposit within the 15 days of the tenancy ending and receiving the Tenants' forwarding address in writing. The Tenant said she gave the Landlord her forwarding address in writing on July 16, 2017 in a note at the move out walk through. The Tenant submitted the note in her evidence package. The Tenant said the Landlord did not do a move out condition inspection report and she only received the report

made out by the Landlord alone in the hearing package. As a result the Tenant said she is applying for double the security and pet deposits in the amount of \$950.00 X 2 = \$1,900.00. The Tenant continued to say that she did agree that the Landlord could keep \$300.00 of the security deposit for unpaid rent and the Landlord did return \$650.00 of the deposits in late August 2017. The Tenant thought she received and cashed the cheque for \$650.00 on August 28, 2017.

The Landlord's agent said the Landlord was out of the country in July 2017 so she was late in returning the Tenants' deposits. The Landlord's agent said they submitted a copy of the cheque for \$650.00 dated August 1, 2017 and the agent said she sent it out in the mail on August 3, 2017. It should be noted the copy of the cheque does not have a name in the space for "pay to the order of" The Landlord's agent said the Tenants had agreed to the \$300.00 deduction and the return of the deposits was late only because the Landlord was out of the country.

The Tenant said in closing that she was surprised that the Landlord made her application as she thinks the Landlord is just trying to get additional money of the Tenants. The Tenant said the house was up for sale and the verbal agreement was they could end the tenancy early if the house sold or if the Tenants found another rental.

The Landlord was asked if she tried to rent the house after the Tenants moved out.

The Landlord's agent said no attempts were made to rent the house after the Tenants moved out as it was up for sale during the tenancy and the property sold on September 11, 2017.

The Landlord's agent said in closing the Tenants' agreed to the \$300.00 deposit reduction for unpaid rent and the Landlord was only late returning the deposits as she was out of the country. Further the Act says if a fixed term tenancy ends early and there is no written Mutual Agreement to End the Tenancy the Tenants are responsible for the rent to the end of the fixed term or until the unit is rented or in this case when the house was sold.

### Analysis

Section 45 (2) of the Act says:

(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.

I accept the Landlord's testimony and evidence that a fixed term tenancy existed between the Landlord and the Tenants with an expiry date of March 31, 2018. The Tenants gave the Landlord written notice on June 14, 2017 to end the tenancy on July 15, 2017. This is an early end to the tenancy. There is no written Mutual Agreement to End Tenancy between the parties but the Tenant said there was a verbal agreement that the parties could end the tenancy early if

the Tenants found another rental or if the property sold. The Tenant provided a text message dated June 21, 2017 that confirms the Landlord was aware of the Tenants moving out but this text neither indicates the Landlord was opposed to the tenancy ending or the Landlord was in agreement to ending the tenancy. As a result it is unclear what the parties agreed to about ending the tenancy.

In addition to proving the Tenants broke the fixed term tenancy agreement the Landlord must prove the following in order to be successful in a monetary claim.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In the situation of a tenant ending a fixed term tenancy early the landlord must prove that they tried to mitigate or minimize the lost of rental income. This means the landlord must try to rent the property again and if unsuccessful to rent it in a reasonable time then the landlord's claim will most likely be successful. In this situation the Landlord did not try to rent the property after the Tenants moved out because the property was for sale. The Landlord knew the Tenants were moving out on July 15, 2017 as indicated in the Tenants' notice dated June 14, 2017 and the Landlord made no attempts to advertise or rent the property. In fact the property stopped being a rental property and became a property for sale after the Tenants moved out. Therefore I find the Landlord has not proven an actual loss occurred. Further, I find the Landlord did not try to mitigate or minimize her rental loss after the Tenants moved out. The Landlord chose not to rent the property again therefore the Landlord cannot prove a rental loss. Consequently I dismiss the Landlord's application due to lack of evidence to prove an actual loss and to mitigate or minimize the loss.

As the Landlord has been unsuccessful I order the Landlord to bear the cost of the \$100.00 filing fee that has already been paid.

With respect to the Tenants' application for double their security and pet deposits in the amount of \$1,900.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenants' testimony and written evidence that they did give the Landlord a forwarding address in writing on July 16, 2017. The Landlord did not repay the full security and pet deposits to the Tenants within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenants, nor did the Landlord apply for dispute resolution by August 1, 2017. Consequently I find for the Tenants and award the Tenants double the security and pet deposits of \$950.00 in the amount of \$1,900.00. Further as the Tenant testified and as evidence was submitted that the Tenants agree to a deduction from the security deposit of \$300.00 and the Landlord returned \$650.00 I award the Tenants a monetary order as follows:

Double the security and pet deposits	\$1,900.00
Less	
Agreed to deduction	\$300.00
Returned deposit funds	\$650.00
Subtotal	<u>\$ 950.00</u>
Amount owing	<u>\$ 950.00</u>

As the Tenants have been successful in this matter I order the Tenants to recover the \$100.00 filing fee for this proceeding from the Landlord. A monetary order has been issued to the Tenants for the following:

Double deposits	\$ 950.00
Filing fee	<u>\$ 100.00</u>
Total	<u>\$ 1,050.00</u>

### Conclusion

A monetary order has been issued to the Tenants' for \$1,050.00.

The Landlord's application is dismissed without leave to reapply.

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: March 19, 2018

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Residential Tenancy Branch