



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDCT, MNSD, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security and FOB deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant ZR" did not attend this hearing, which lasted approximately 33 minutes. Tenant MO ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had permission to speak on tenant ZR's behalf as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenant was duly served with the landlords' written evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the tenant's first name. Both parties consented to this amendment during the hearing.

At the outset of the hearing, both parties agreed that they attended a previous Residential Tenancy Branch ("RTB") hearing before a different Arbitrator on November 2, 2017, after which a decision, dated November 29, 2017, was issued ("previous hearing" and "previous decision"). The file number for that hearing appears on the front page of this decision.

Both parties agreed that the previous decision allowed the landlord to retain the tenants' security deposit of \$1,875.00 and FOB deposit of \$200.00 against the landlord's monetary order. Therefore, I notified both parties that I could not deal with the tenants' application for the

return of their security and FOB deposits because it was *res judicata*, meaning it had already been decided by another Arbitrator previously so I could not alter that decision. Therefore, the hearing proceeded only on the tenants' application for \$3,750.00 for a loss of quiet enjoyment and recovery of the \$100.00 filing fee.

### Issues to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

Both parties agreed to the following facts. This fixed term tenancy began on August 31, 2016 and ended on August 29, 2017. Monthly rent in the amount of \$3,750.00 was payable at the end of each month.

The tenants seek a monetary order of \$3,750.00 plus the \$100.00 filing fee. The tenant testified that the tenants are entitled to one month's rent of \$3,750.00 for a loss of quiet enjoyment during the last two months of their tenancy at the rental unit. He claimed that the landlord requested twice to make repairs at the rental unit, including power washing the deck and concrete wall. He explained that both times, the landlord stayed longer than expected on the property so the tenants' religious and other activities were interrupted. He stated that the landlord stayed for five hours instead of three hours in order to water the plants, clean, and perform other unrelated tasks aside from the repairs. The tenant claimed that the landlord also showed the rental unit approximately fourteen to fifteen times to potential tenants and it was disruptive to the tenants.

The landlord disputed the tenants' application and claims. He stated that he gave proper notice to enter the rental unit each time, the tenants supplied copies of these notices to enter with their application, and he followed all of the legal requirements before entering the rental unit.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act, Regulation* or tenancy agreement;

- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenants did not provide sufficient evidence to substantiate their claim and failed to satisfy the four-part test. They were unable to justify the \$3,750.00 amount being claimed. They failed to show that the landlord entered their rental unit without proper legal notice as per section 29 of the *Act*. They failed to show how the landlord's efforts to repair and maintain the property, which are the landlord's obligations under section 32 of the *Act*, caused them a loss. Therefore, on a balance of probabilities and for the reasons stated above, I dismiss the tenants' claim of \$3,750.00 for a loss of quiet enjoyment, without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application.

#### Conclusion

The tenants' application to obtain a return of the security and FOB deposits is *res judicata*.

The remainder of the tenants' 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: June 22, 2018

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Residential Tenancy Branch