



# 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* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of a portion of the pet damage deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 31 minutes in order to allow both parties to fully present their submissions.

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

Both parties agreed that the landlord attempted to have her parents serve the tenants in person on July 9, 2018, with the landlord's written evidence package at the female tenant's workplace but it was refused by the female tenant. The female tenant stated that she could have been fired from her workplace because there was an argument over the package and that the landlord could have served her by mail at her forwarding address instead. I notified both parties that I could not consider the landlord's written evidence package because the service attempt was made late, less than 7 days prior to this hearing date, contrary to Rule 3.15 of the Residential Tenancy Branch *Rules of*

*Procedure.* The landlord said that she thought the hearing date was on July 18, 2018, not July 16, which I do not find to be a valid reason.

### Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to a return of a portion of their pet damage deposit?

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

### Background and Evidence

Both parties agreed to the following facts. This tenancy began on September 15, 2015. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid by the tenants and the landlord returned the full security deposit of \$750.00 to the tenants and continues to retain the full pet damage deposit of \$750.00. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. A written forwarding address was provided by the tenants to the landlord by way of the move-out condition inspection report on October 6, 2017.

The landlord testified that tenancy ended on October 1, 2017, while the tenants did not provide a date. The landlord stated that she had permission to keep the tenants' full pet damage deposit of \$750.00 and \$200.00 from the security deposit. She said that she did not keep the \$200.00 from the security deposit because she retained the entire pet damage deposit for the damages and repairs to the rental unit. The male tenant explained that the landlord did not have written permission to keep the full pet damage deposit, only \$200.00 from the security deposit. He said that he did not realize that indicating that his pet damage deposit was "waived" on the move-out condition inspection meant that he allowed the landlord to keep that whole deposit, as claimed by the landlord, he thought was only agreeing to her keeping \$200.00 from the security deposit. The landlord confirmed she did not file an application for dispute resolution to retain any amount from the security or pet damage deposits.

The tenants seek a return of their pet damage deposit minus the \$200.00 deduction, totalling \$550.00, plus the \$100.00 application filing fee.

The tenants also seek compensation under section 51(2) of the *Act* for double the monthly rent of \$1,500.00, totalling \$3,000.00. The tenants claimed that the landlord asked the tenants to move from the rental unit, as per a letter, which provided the tenants with one month's free rent compensation. They explained that they did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") from the landlord in the approved form, which is a specific Residential Tenancy Branch form. They said that they received a letter with three options to move out so that the landlord or a close family member could move in. The tenants provided a copy of this letter. They said that because the landlord did not use the rental unit for the stated purpose on the letter, the tenants are entitled to compensation. The landlord confirmed that she just sold the property as of June 30, 2018.

### Analysis

#### Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security and pet damage deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended on October 1, 2017. The tenants provided a written forwarding address to the landlord by way of the move-out condition inspection report on October 6, 2017. The landlord did not make an application for dispute resolution to claim against the deposits. The landlord returned the tenants' full security deposit of \$750.00, despite the fact that the tenants gave the landlord written permission to retain \$200.00 from their security deposit.

I find that the tenants gave the landlord written permission to keep their entire pet damage deposit of \$750.00 by indicating "waived" on the move-out condition inspection report and the male tenant signing directly below that comment. The male tenant did not sign simply for the \$200.00 deduction from the security deposit, as the pet damage

deduction was indicated in the same portion of the form, where he signed. The male tenant also signed in a separate section indicating that he agreed with the move-out condition inspection report. If he disagreed with any deductions from the pet damage deposit, he could have crossed out the section indicating “waived” or included a comment saying “0 deductions” or other such language to indicate his disagreement. Therefore, I dismiss the tenants’ application for a return of a portion of their pet damage deposit of \$550.00, without leave to reapply.

Section 51 Compensation

Sections 49, 51 and 52 of the Act, state in part (my emphasis added):

- 49     (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

*(a) not earlier than 2 months after the date the tenant receives the notice,*

...

**(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].**

- 51     **(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to** *receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

*(2) In addition to the amount payable under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

- 52     **In order to be effective, a notice to end a tenancy must be in writing and must**

**(e) when given by a landlord, be in the approved form.**

Since the tenants did not receive a 2 Month Notice in the RTB approved form, as required by sections 49 and 52 of the *Act*, I find that the tenants are not entitled to any monetary compensation under section 51 of the *Act*. The tenants only received a letter from the landlord asking them to move and they chose to move out pursuant to the letter. Accordingly, the tenants' application for \$3,000.00 for double the monthly rent compensation under section 51 of the *Act*, is dismissed without leave to reapply.

Since the tenants were wholly unsuccessful in this application, I find that they are not entitled to recover the \$100.00 application filing fee from the landlord.

**Conclusion**

The tenants' entire 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: July 16, 2018

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Residential Tenancy Branch