



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

The tenants and the landlord convened this hearing in response to applications.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit and pet damage deposit (the "Deposits"); and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid utilities;
2. For a monetary order for money loss or other money owed;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the Deposits in partial satisfaction of the claim?

Are the tenants entitled to double the return of their Deposits?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on July 28, 2017 and was to expire on July 31, 2018. Rent in the amount of \$2,875.00 was payable on the first of each month. The tenants paid a security deposit of \$1,437.60 and a pet damage deposit of \$700.00. The tenancy ended on August 1, 2018.

The parties agreed a move-in and move-out condition inspection report was completed.

Tenants' application

The tenants claim as follows:

a.	Double the Deposits	\$4,200.00
b.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$4,300.00</b>

The tenants submit they are entitled to double the return of their Deposit. The tenants stated that they provided the landlord with their forwarding address on July 9, 2018 and again on August 1, 2018, when they vacated the rental unit.

The landlord's agent testified that they filed their application on August 15, 2018, which was within the statutory time limit.

Landlord's application

The landlord claims as follows:

a.	Unpaid utilities	\$ 167.23
b.	Loss of August rent	\$2,875.00
c.	Damages	\$1,113.91
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$4,156.14</b>

Unpaid utilities

The tenants agreed that they owe the outstanding utilities in the amount of \$167.23.

### Loss of August rent

The landlord's agent testified that the tenants gave notice on July 9, 2018, to end their tenancy on August 10, 2018. The landlord stated that due to the short notice they were unable to find a new renter, until September 1, 2018. The landlord seeks to recover loss of rent in the amount of \$2,875.00. Filed in evidence is a copy of the tenants email dated July 9, 2018, ending their tenancy for August 10, 2018.

The tenants testified that they gave the landlord thirty days' notice as required. The tenants stated that they also felt on the first of the month so the landlord could rent it easier.

### Damages

The landlord's agent testified that the tenants were given a new stainless steel refrigerator during their tenancy. The agent stated the tenants caused damage to the door panels by scratching, which are not normal wear and tear. The agent stated that they are able to replace the panels. The landlord seeks to recover the estimated cost of the panels in the amount of \$770.00. Filed in evidence is an estimate for repair.

The landlord's agent testified that the rental unit was freshly painted when the tenants moved into the rental unit. The agent stated that the tenants caused damage to the drywall as there was damage to the drywall which had to be repaired

The tenants acknowledged that they were provided a new stainless steel refrigerator during the tenancy. The tenants stated that the surface of the refrigerator is magnetic and their child had magnets on the door which caused scratching. The tenants stated they the landlord should be able to have the scratches buffed out at a lesser amount.

The tenants deny causing any damage to the walls.

The landlord's agent argued that you cannot buff out the scratches are they are deep. Filed in evidence are photographs of the refrigerator.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Tenants' application

#### **Return of security deposit and pet damage deposit**

38 (1) 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.

In this case, I am satisfied that the landlord has complied with section 38 of the Act, as the landlord filed their application within 15 days of the tenancy ending. I find the tenants have not proven a violation of the Act, by the landlord. Therefore, I find the tenants are not entitled to double their Deposits.

Since the tenants were unsuccessful with their application for double the Deposits, I find the tenants are not entitled to recover the filing fee from the landlord.

The tenants' Deposits will be dealt with later in the decision.

#### Landlord's application

#### Unpaid utilities

The tenants agree that they are responsible for the utilities. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$167.23**.

#### Loss of August rent

#### **Tenant's notice**

- 45** (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.

...

In this case, I am satisfied that the tenants gave notice to end their tenancy on July 9, 2018, which an effective date of August 10, 2018. While I accept the tenants vacated on August 1, 2018, I find that the tenants have breached the Act, as they did not give the landlord proper notice as the earliest date they legally could have ended the tenant was August 31, 2018, as their tenancy is based from the first to the last of each month.

In this case, the landlord advertised the premises for rent; however, were unable to find a new renter until September 1, 2018, I find the landlord made reasonable efforts to mitigate the loss. Therefore, I find the landlord is entitled to recover loss of rent in the amount of **\$2,875.00**.

## Damage

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The tenants received a new refrigerator during their tenancy. I have reviewed the photographs of the refrigerator doors filed in evidence. The photographs show the refrigerator doors severely scratched. I find this is not normal wear and tear. This was clearly caused by their actions and neglect of the tenants. Therefore, I find the landlord is entitled to recover the estimated cost of the repair in the amount of **\$770.00**.

In this case, the landlord is claiming for damages to the drywall; however, I am not satisfied that the tenants are responsible for the amount claimed. The invoice for repair also shows that this was also to fill nail holes. Nail holes are normal wear and tear. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$3,912.23** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits of **\$2,137.60** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,774.63**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: December 18, 2018

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Residential Tenancy Branch