



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR CNC FF

### Introduction

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

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47;
- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72.

Tenant M.D., along with both landlords appeared at the hearing. All parties present were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant explained he served the landlords with his application for dispute and evidentiary package by way of Canada Post Registered Mail on November 20, 2018. The tenant provided a copy of the Canada Post tracking number for the package. The landlords acknowledged having received the application for dispute and evidence package. Pursuant to sections 88 & 89 of the *Act*, the landlords are found to have been duly served with the tenants' application for dispute and evidentiary package.

Following opening remarks, the tenant stated he was no longer pursuing the portion of his application related to a cancellation of the 1 Month Notice to End Tenancy for Cause because he had vacated the rental unit on December 1, 2018.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Can the tenants recover the filing fee?

### Background and Evidence

The tenant explained this tenancy began on July 1, 2018 and ended on December 1, 2018. Rent was \$1,800.00 per month and no pet or security deposits were collected.

On November 1, 2018 the landlord issued a 1 Month Notice to End Tenancy for Cause. The tenants disputed this notice but vacated the premises prior to a determination being made on the notice.

The tenants seek a monetary award of \$2,000.00. Tenant M.D. explained he had paid rent of \$10,800.00 in advance and at the outset of the tenancy. This amount was meant to cover rent until the end of December 2018. In addition, the tenant paid \$600.00 in advance to cover all utilities. The tenant said he wanted a return of the advance rent paid for December 2018 along with a return of \$100.00 paid in advance for December 2018 utilities.

The tenant explained that an e-transfer of \$1,200.00 was sent to him by the landlord on December 2, 2018. Both parties confirmed this amount remained un-deposited by the tenant.

The landlord acknowledged that he had withheld some funds from the advanced rent but explained the amounts withheld were meant to cover damage to the rental unit which purportedly occurred during the tenancy and at the move-out. The landlord explained he was unable to re-rent the suite until December 15, 2018 because of the late notice provided to him by the tenants. In addition, the landlord described items which were allegedly damaged in the unit by the tenants themselves and their dog, he explained a complicated move-out where the tenants allegedly caused damage to the lawn and branches, with the landlord noting other issues with the tenancy.

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### Analysis

As this tenancy ended following the tenants move out, the only issue for analysis is the tenants' application for a monetary award of \$2,000.00. The tenants seek a return of the

utilities (\$100.00) and rent (\$1,800.00) paid in advance, at the outset of the tenancy, along with a return of the \$100.00 filing fee.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to establish a claim for a monetary award.

This section must be read in conjunction with *Residential Tenancy Policy Guideline #16* which notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." I will therefore, as noted above, be examining whether the landlords failed to comply with the *Act*, regulations or tenancy agreement.

The landlords said rent for December 2018 was withheld because the tenant vacated the suite with short notice leaving them unable to re-rent the suite until December 15, caused damage to the property at move out and caused damage to the suite through the presence of a dog. I find these matters are all irrelevant to the application before me, as a landlord cannot simply decide to retain a monetary award for loss without first having applied to receive compensation through the *RTB*. I find the tenants have demonstrated loss stemming from a violation of the tenancy agreement and order the landlords to return the entire amount of rent paid in advance for December 2018. This decision does not preclude the landlords from applying for compensation at a later date.

As the tenants were successful in their application, they may recover the \$100.00 filing fee.

I note the parties confirmed the landlords had sent an email transfer of \$1,200.00 to the tenants. As I have no authority to direct the party's on any enforcement issues, I grant the tenants the entire amount of their monetary award. This monetary award must be read in conjunction with this decision to avoid the tenants benefitting from recovering more than the \$2,000.00 which he is due.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,000.00 against the landlords. This amount includes a return of December rent, utilities and return of the filing fee. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: December 19, 2018

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Residential Tenancy Branch