



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL  
                              MNSD, MNDCT, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on October 15, 2018. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee. The Tenants’ Application for Dispute Resolution was made on November 14, 2018. The Tenants applied for the return of their security deposit, a monetary order for losses due to the tenancy and the return of their filing fee.

Both the Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

- Are the Tenants entitled to the return of her security deposit?
- Are the Tenants entitled to monetary compensation for damages under the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee?

### Background and Evidence

The parties agreed that the tenancy began on October 1, 2018; however, the Landlord had allowed the Tenants to start moving in as of September 29, 2018. The Tenants testified that they had not signed a tenancy agreement and that they had agreed to a month to month tenancy with the Landlord. The Landlord testified that this tenancy was to be a one-year fixed term tenancy, but he had misplaced the signed tenancy agreement. The Landlord submitted an unsigned tenancy agreement into documentary evidence.

Both parties agreed that the rent was \$1,600.00 and was to be paid by the first day of each month and that the Tenants had paid an \$800.00 security deposit. The parties also agreed that no move-in or move-out inspection had been completed for this tenancy.

The parties agreed that on September 30, 2018, the Tenants advised the Landlord that they were not happy with the amount of noise transfer from the upstairs unit to their unit and that there was inadequate heating in their rental unit. Both parties agreed that the Tenants had provided notice to the Landlord, on September 30, 2018, that they would be ending their tenancy. The Tenants testified that they moved out of the rental unit on October 2, 2018, and that the rent of October 2018, had not been paid for this tenancy.

The Landlord testified that he began advertising for new renters as soon as he received the Tenants' notice that they would be moving out. The Landlord testified that due to the short notice from the Tenants, them not moving out until October 2, 2018, and the time needed to complete background check on the new rental applications, he was able to secure a new renter until November 1, 2018. The Landlord is seeking to recover the unpaid rent for October 2018, from the Tenants, as well as his costs to advertise the rental unit, in the amount of \$7.30 and his cost to do background checks on the new applicants, in the amount of \$67.98.

The Tenants testified that they had provided notice to end their tenancy, to the Landlord, before their tenancy was to official start and therefore they should not be responsible for the rent for October 2018. As well, the Tenants testified that they had never signed a fixed term tenancy agreement and therefore, could leave whenever they

wanted and were not responsible to the Landlord's costs to secure a new renter for the rental unit.

The Tenants testified that the Landlord had misrepresented the conditions of the rental unit to them. The Tenants testified that they had communicated to the Landlord that they only want to rent a rental unit if the place was adequately heated and that there was not too much noise transference between the upstairs unit. The Tenants testified that the Landlord had assured them that the place was quiet and warm.

The Tenant testified that they spent their first night in the rental unit on September 29, 2018, and that the place was extremely cold, that the electric heaters did not work, and that there was an excessive level of noise that could be heard coming from the upstairs unit. The Tenants testified that they immediately informed the Landlord that they were not happy with the rental unit and would be ending their tenancy. The Tenants are claiming to recover their moving costs in the amount of \$294.82, as the Landlord misrepresented the rental unit to them, and had they known the truth they would never have agreed to rent the place.

The Landlord testified that the rental unit is adequately heated and is a quiet unit. The Landlord also testified that none of his previous or current renters have complained about the heat or the noise levels in the rental unit.

Both parties are claiming the security deposit for this tenancy.

### Analysis

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

I find that the parties to this dispute entered into a month to month, periodic tenancy, verbal tenancy agreement. I also find that no move-in or move-out inspection report was completed for this tenancy, as required by the *Act*.

### **Condition inspection: start of tenancy or new pet**

**23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
  - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.

**Condition inspection: end of tenancy**

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

I find that the Landlord was in breach of sections 23 and 35 of the *Act* by not completing the move-in and move-out inspection in accordance with the *Act*. Section 36(2) of the *Act* specifies the consequences for a landlord's non-compliance with the inspection requirements.

**Consequences for tenant and landlord if report requirements not met**

- 36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
  - (b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Pursuant to section 36 of the *Act*, I find that the Landlord has extinguished his right to make a claim for damages to the rental unit, against the security deposit held of this tenancy. I have reviewed the Landlord's application, and I find that in addition to claiming for losses, the Landlord has also applied for unpaid rent for October 2018. As the Landlord has applied to recover unpaid rent, I find that the Landlord was justified in retaining the security deposit for this tenancy pending the results of this hearing.

Section 45(2) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

**Tenant's notice**

**45 (1)** *A tenant may end a periodic 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, and*

*(b) 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 find that the Landlord received the Tenants' notice to end the tenancy on September 30, 2018. Based on when the Landlord received the Tenants' notice, I find that this tenancy could not have ended, in accordance with the *Act*, before October 31, 2018.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenants breached section 45 of the *Act* when they did not provide sufficient notice to end their tenancy and that this breach resulted in a loss of rental income, in the amount of \$1,600.00, to the Landlord. I also accept the Landlord's testimony that he attempted to rent the unit as soon as possible, after he received the Tenants' notice, and that he was unable to find a new renter for the rental unit until November 1, 2018. Therefore, I award the Landlord **\$1,600.00**, for the recovery of the lost rental income for October 2018.

Regarding the Landlord's claim for the recovery of his costs associated with securing the new renter for the rental unit, in the amount of \$67.98 for credit checks and \$7.30 advertising costs. The Landlord had claimed that he is entitled to these cost as the Tenants ended their tenancy early; however, I have already established that this was a month to month tenancy agreement, with no signed agreement for a fixed term. Consequently, the Tenants had the right to end this tenancy at any point, by providing one rental period's notice. In the absence of a written, and signed tenancy agreement, showing that these parties had agreed to a set fixed term for this tenancy, I find that these Tenants did not end their tenancy early and that they are not responsible for the cost to the Landlord for having to secure new renter for the rental unit. Therefore, I dismiss the Landlord's claim for \$67.98 for credit checks and \$7.30 advertising costs for replacement renters.

As for the Tenant's claim for moving costs, in the amount of \$294.82. The Tenants have claimed that the Landlord had misled them about the noise and heating conditions in the rental unit and that due that misrepresentation they had to move out right away. However, in the absence of a formal written agreement for this tenancy showing what material terms these parties had agreed to, regarding heat and noise levels I find that I must rely on the verbal testimony of the parties as to what was included in their verbal agreement.

However, the parties to this dispute offered conflicting verbal testimony regarding the heating and noise levels in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As the claim for the recovery of moving costs has been made by the Tenants, I find that the burden of proof falls on the Tenants to show that the noise levels in the rental unit were excessive and that the rental unit had been insufficiently heated in accordance with their tenancy agreement or the *Act*.

I have reviewed the documentary evidence submitted by the Tenants, and I find that the Tenants have not provided sufficient evidence to show that the Landlord had breached the requirements of their tenancy agreement or the *Act*, regarding the heat provided to the rental unit or the level of noise. In the absence of sufficient evidence to prove their claim, I dismiss the Tenants claim the recovery of their moving costs.

Additionally, the Tenants have also claimed for the replacement costs of paint they had left behind at the rental unit. Again, the parties to this dispute offered conflicting verbal testimony regarding whether or not the Tenants had left personal property, paint, behind in the rental unit after they moved out. I have reviewed the documentary evidence submitted by the Tenants, and I find that the Tenants have not provided sufficient evidence to show that they had left personal property in the rental unit after they moved out. Therefore, I dismiss the Tenants claim the recovery of their costs for replacement paint.

Finally, with respect to the Tenants' claim for the recovery of sending registered mail for this hearing, the Tenants were advised in the hearing that there are no provisions in the *Act* which would provide compensation for the requested costs. As such, I dismiss this portion of the Tenants' claim.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in his application, I find that the Landlord is entitled to recover the **\$100.00** filing fee paid for his application.

I grant the Landlord a Monetary Order in the amount of \$900.00; consisting of \$1,600.00 in rent for October 2018, \$100.00 in the recovery of the filing fee for this application, less the \$800.00 security deposit the Landlord is holding for this tenancy.

Conclusion

The Tenants' application is dismissed, without leave to reapply.

I grant the Landlord a **Monetary Order** in the amount of **\$900.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: February 14, 2019

---

Residential Tenancy Branch