



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, FF

### Introduction

On December 14, 2018, the Landlord submitted an Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss; for unpaid rent; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence 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.

### Preliminary and Procedural Matters

The Tenants provided the Residential Tenancy Branch with seven documents in response to receiving the Landlord's Notice of Dispute Resolution Proceeding. The Tenants testified that they put a copy of their evidence in the Landlord's mailbox.

The Landlord testified that she never received any documentary evidence from the Tenants. The Landlord testified that it is not possible to drop mail in their mailbox because it is locked and only the mailman has a key.

The Tenants testified that they have provided the Residential Tenancy Branch a video recording showing the delivery of their documents to the Landlord.

The Residential Tenancy Branch Rules of Procedure #12 Service Provisions provides the following information:

The Legislation permits a tenant to serve a document on a landlord at the address at which the landlord carries on business as a landlord, in one of the following ways:

- by mail;
- by leaving a copy of the document in a mailbox or mail slot;
- by attaching a copy of the document to a door or other conspicuous place
- by leaving a copy of the document with an agent of the landlord.

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

After reviewing the evidence received from both parties, a video recording file was not located in the Tenants evidence. There is insufficient evidence before me from the Tenants to prove that they served the Landlord with a copy of their documentary evidence. For this reason it would be unfair to the Landlord for me to consider evidence that she has not received and had an opportunity to consider. The Tenants' documentary evidence will not be considered. The Tenants were informed that they are at liberty to provide direct testimony of their evidence.

#### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit

#### Background and Evidence

The parties testified that the tenancy began on September 29, 2018 as a one month fixed term tenancy.

The tenancy agreement provides that at the end of the fixed term tenancy the Landlord and Tenant may agree to enter a new tenancy agreement. If the Landlord and Tenant did not enter into a new tenancy agreement, the tenancy continues on a month to month basis on the same terms unless the Tenant gives legal written notice to end the tenancy.

The tenancy continued on a month to month basis when the Tenants remained in the rental unit at the end of October 2018.

The tenancy agreement provides that the Tenant is to pay the Landlord monthly rent in the amount of \$1,950.00. The Tenant paid the Landlord a security deposit of \$975.00. Electricity is not included in the rent.

### Loss of Rent

The Landlord is seeking compensation in the amount of \$1,950.00 for a loss of December 2018, rent. The Landlord testified that the Tenants moved out on November 30, 2018, and failed to give proper written notice to end the tenancy. The Landlord was not able to rent the unit out for the month of December 2018, and suffered a loss of rent.

The Landlord testified that she advertised the rental unit on local websites before the Tenants moved out and she also advertised the unit as an air bed and breakfast ("BnB"); however, she was unable to find a new Tenant until January 15, 2019. The Landlord testified that she did not receive any rental income for the unit for the month of December 2018.

The Landlord testified that the Tenants sent the Landlord a text message on November 4, 2018, stating they will be ending the tenancy on December 1, 2018. The Landlord testified that after she received the text message she responded to the Tenants informing them that they need to give her proper notice to end the tenancy.

In reply, the Tenants testified that they sent the text message to the Landlord; however, they had reached a verbal agreement with the Landlord permitting them to give short notice to end the tenancy. The Tenants submitted that the Landlord expressly waived her right to receive the proper notice to end tenancy as provided in the Act. The Tenants testified that they do not have any documentary evidence to support that there was a verbal agreement reached by the parties.

The Tenants submitted that the Landlord said she would list the rental unit to mitigate against the loss of rent and they testified that she posted the unit on an Air BnB site. The Tenants do not believe the unit remained empty.

### Cleaning Costs and Repairs

The Landlord is seeking compensation in the amount of \$100.00 for the cost to clean the rental unit at the end of the tenancy. The Landlord testified that the Tenants agreed

to sign over \$100.00 from the security deposit at the end of the tenancy for the cost of cleaning.

In reply, the Tenants confirmed that they signed over the amount of \$100.00 for the cost of cleaning.

#### Hydro Bill

The Landlord is seeking compensation in the amount of \$35.00 for October 2018 and November 2018 hydro bill.

In reply, the Tenants testified that the hydro bill was not ready when they moved out and they agreed to pay the amount of \$35.00.

#### Security Deposit

The Landlord applied for dispute resolution on December 14, 2018, and requested to keep the security deposit in partial satisfaction of her claims.

#### Analysis

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

Section 45 of the Act provides that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

#### Loss of Rent

I find that the parties did not enter into a new tenancy agreement at the end of the fixed term and therefore the tenancy agreement automatically continued on a month to month basis.

I have considered the Tenants' submission that the parties reached a verbal agreement that the Tenants did not have to provide the Landlord with proper legal notice to end the tenancy. The undisputed evidence before me is that the Tenants sent the Landlord a text message on November 4, 2018, stating they will be ending the tenancy on

December 1, 2018. I also note that section 5 of the Act provides that Landlords and Tenants may not avoid or contract out of the Act or the Regulations. I find that there is insufficient evidence from the Tenants to prove there was a verbal agreement that they did not have to give proper notice to end the tenancy.

I also find that there is insufficient evidence from the Tenants to prove their suggestion that the rental unit was not empty for the month of December 2018. I accept the Landlord's testimony that she did not receive any rental income for the rental unit for the month of December 2018.

I find that the Tenants failed to give the Landlord a proper legal notice to end the tenancy pursuant to section 45 of the Act. As a result, the Tenants are responsible to pay the rent until December 31, 2018; the date that the tenancy could legally end.

I accept the Landlord's testimony that she was unable to rent the unit out for the month of December 2018, and I find that the Landlord suffered a loss of rent in the amount of \$1,950.00.

I grant the Landlord the amount of \$1,950.00 for a loss of December 2018, rent.

#### Cleaning

I find that the Tenants agreed at the end of the tenancy that the Landlord could keep the amount of \$100.00 for the cost of cleaning the rental unit.

I grant the Landlord the amount of \$100.00.

#### Hydro Bill

The Tenants agreed at the hearing to pay the amount of \$35.00 for the hydro costs.

I grant the Landlord the amount of \$35.00.

#### Security Deposit

The Landlord applied to keep the security deposit within 15 days of the end of the tenancy. The security deposit of \$975.00 will be used to set off any successful claims awarded to the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with her application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$2,185.00. After setting off the security deposit of \$975.00, I grant the Landlord a monetary order for the balance of \$1,210.00. The monetary order must be served on the Tenants and may be enforced in the Provincial Court.

### Conclusion

The Landlord was successful with her claims to be compensated for a loss of rent; cleaning costs, and hydro costs.

The Landlord is authorized to keep the security deposit of \$975.00 in partial satisfaction of her awards.

I find that the Tenants owe the Landlord the amount of \$1,210.00. I grant the Landlord a monetary order in the amount of \$1,210.00.

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: April 08, 2019

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Residential Tenancy Branch