



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FFL

### Introduction

On March 12, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent and money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement. On March 12, 2019, the Landlord amended their application to include a request to keep all or part of a security deposit and/or pet damage deposit.

The matter was set for a conference call hearing. The Landlord and Tenants attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The parties testified that they have exchanged the documentary evidence that I have before me. 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 Landlord asked if the Landlord's documentary evidence was read and considered prior to the start of the hearing. The Landlord was informed that the evidence provided by the Landlord and Tenant was not read or considered prior to the hearing. The parties were informed that the evidence submitted by the parties may only be considered when it has been established that both parties have exchanged the evidence in accordance with the rules of procedure. The Landlord was informed that

the documentary evidence provided will be reviewed during the hearing and after the hearing has concluded.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to other compensation for damage or loss?
- Can the Landlord keep the security deposit and pet damage deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on August 15, 2018, as a one year fixed term tenancy to continue until August 15, 2019. Rent in the amount of \$2,450.00 was to be paid by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,225.00 and a pet damage deposit of \$1,225.00. The Landlord provided a copy of the tenancy agreement.

The parties testified that the Tenants moved out of the rental unit on February 23, 2019, following a move out condition inspection of the rental unit.

The Landlord is seeking compensation as follows:

Loss of March 2019 Rent	\$2,450.00
Unpaid Water Bill	\$257.16
Use of Second Garage for 4 months	\$800.00
Filing Fee	\$100.00

#### Mutual Agreement to End the Tenancy

The parties testified that they entered into a mutual agreement to end the tenancy effective February 28, 2019. The Landlord provided a copy of a mutual agreement to end tenancy dated January 6, 2019, with an effective date of February 28, 2019.

The Landlord testified that he was forced by the Tenants to sign the mutual agreement. He testified that they threatened to fight any process of eviction if he did not enter into the mutual agreement.

#### Loss of Rent for March 2019

The Landlord is seeking compensation for loss of March 2019, rent in the amount of \$2,450.00. The Landlord testified that the rental unit was vacant for the month of March

2019, and was re-rented for April 1, 2019. The Landlord testified that rent is owing because the rental unit needed to be cleaned after the Tenants moved out.

In reply, the Tenant testified that the rental unit was left spotless and the Tenant referred to the condition inspection report that was completed by the parties at the end of the tenancy. A copy of the condition inspection report was provided in the documentary evidence.

The Tenants' also testified that the Landlord was not entitled to compensation for a loss of rent for the month of February 2019, because he entered into a mutual agreement on January 6, 2019, that the tenancy will end on February 28, 2019.

#### Unpaid Water Bill

The Landlord testified that the Tenants failed to pay a water bill in the amount of \$257.16. The Landlord testified that he has paid the bill.

In reply, the Tenant, Mr. S.M. provided testimony acknowledging that the cost of water was not included in the rent and agreed to reimburse the Landlord the amount of \$257.16.

#### Use of Second Garage for 4 Months

The Landlord is seeking compensation for the Tenants' use of a second garage on the rental property. The Landlord testified that an agreement was reached where the Tenants could use the garage in exchange for letting the Landlord use the water utility that the Tenants' pay for. The Landlord testified that he does not want to follow the agreement that they reached.

The Landlord testified that it would cost \$200.00 per month to rent a garage and therefore he is seeking compensation of \$800.00 for four months of use.

#### Security Deposit and Pet Damage Deposit

The Landlord testified that the Tenants returned the keys to the rental unit and provided her with their forwarding address in writing on February 23, 2019.

The Landlord testified that there was no agreement reached that the Landlord could retain any amount of the security deposit or pet damage deposit.

The Landlord applied for dispute resolution and made a claim against the deposits on March 12, 2019. The Landlord testified that the Tenants' left possessions on the property after February 23, 2019. The Landlord submits that the tenancy ended on February 28, 2019, the date agreed upon in the mutual agreement to end tenancy.

In reply, the Tenants' testified that the Landlord signed off on the condition inspection report with no deductions. The Tenants' testified that they paid the rent for the tenancy to end on February 28, 2019; however, they feel the tenancy ended on February 23, 2019. The Tenants' submitted that the Landlord must return the deposits within 15 days.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

### Mutual Agreement to End Tenancy

Section 44 of the Act provides that a tenancy ends if the Landlord and Tenant agree in writing to end the tenancy; and if the Tenant vacates or abandons the rental unit.

I have reviewed the mutual agreement to end tenancy document and have considered its validity. I do not accept the Landlord's submission that he was forced to agree to sign the mutual agreement to end tenancy. I find that the Landlord's submission that the Tenants would fight an eviction does not constitute a threat. Tenants have a right to dispute any notice of eviction that they do not agree with. The mutual agreement was signed on January 6, 2019, and the Landlord took no steps to raise a concern about the validity of the agreement for the seven weeks preceding the effective date of the agreement. It appears to me that the Landlord considered the agreement to be binding and is relying on it in this hearing to establish that the tenancy ended on February 28, 2019.

I find that the mutual agreement to end tenancy is a valid written agreement that the tenancy was to end on February 28, 2019.

I find that the Tenants paid the rent for February 2019, and were entitled to occupy the rental unit February 28, 2019. The Tenants voluntarily chose to move out of the unit on February 23, 2019. I find that parties had already entered into a written agreement that the tenancy ends on February 28, 2019.

I find that the tenancy ended on February 28, 2019, the effective date of the mutual agreement to end tenancy.

#### Loss of March 2019 Rent

There is insufficient evidence from the Landlord that the rental unit was unable to be rented due to it being left unclean. I have reviewed the condition inspection report completed on February 23, 2019. The condition inspection report indicates that the rental unit was left in "ok" or good condition at the end of the tenancy.

I also find that the parties entered into a mutual agreement to end the tenancy on February 28, 2019, and the Tenants' are not responsible for paying the rent beyond the end of February 2019.

The Landlord's claim for a loss of March 2019, rent is dismissed.

### Unpaid Water Bill

The Tenants accepted responsibility to pay the Landlord the amount of \$257.16 for an unpaid water bill. I award the Landlord the amount of \$257.16.

### Use of Second Garage for 4 Months

The Landlord's claim is dismissed in its entirety. I find that the parties entered into an agreement for use of the garage in exchange for use of water. The Landlord benefitted from this agreement and now wants to unilaterally change the agreement. Terms of tenancy agreements can only be changes when there is agreement by both parties. I find that the Landlord's claim is unreasonable and unenforceable.

### Security Deposit and Pet Damage Deposit

The Landlord is holding a security deposit of \$1,225.00 and a pet damage deposit of \$1,225.00.

I find that there was no written agreement at the end of tenancy that permitted the Landlord to keep any amount of the deposits.

I find that the tenancy ended on February 28, 2019, and the Landlord applied for dispute resolution making a claim against the deposits on March 12, 2019.

Pursuant to section 72(2) of the Act, I find that the security deposit of \$1,225.00 and the pet damage deposit of \$1,225.00 will apply towards any monetary awards granted to the Landlord.

I find that the Landlord has established a monetary award of \$257.16 for a water utility bill.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord had some success, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I authorize the Landlord to retain the amount of \$357.16 from the security deposit of \$1,225.00. I order the Landlord to return the balance of \$867.84 from the security deposit, and return the amount of \$1,225.00 from the pet damage deposit to the Tenants. The Tenants are entitled to a monetary order in the amount of \$2,092.84.

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

### Conclusion

The Landlord established a claim in the amount of \$257.16 for an unpaid water bill. The Landlord is also awarded the cost of the filing fee in the amount of \$100.00.

I authorize the Landlord to retain the amount of \$357.16 from the security deposit of \$1,225.00. I order the Landlord to return the balance of \$867.84 from the security deposit, and return the amount of \$1,225.00 from the pet damage deposit to the Tenants.

I grant the Tenants a monetary order in the amount of \$2,092.84.

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 17, 2019

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Residential Tenancy Branch