



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

**MNDCL-S**

### Introduction

This hearing dealt with an application by the landlords under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords attended. The tenants attended with the advocate CH ("the tenants"). Each party had the opportunity to call witnesses, and present affirmed testimony and written evidence. The tenants called witness CH to provide evidence. Each party acknowledged receipt of the other party's documents. No issues of service were raised. I find the landlords served the tenants in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Are the landlords entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The parties agreed upon the following. They began a 1-year fixed term tenancy on September 30, 2017 for rent of \$2,000.00 monthly payable on the 30<sup>th</sup> of the month. The unit is a house; the agreement stated that the tenants were not allowed to have pets and were responsible for payment of utilities. The tenants provided notice on February 13, 2018 that they were vacating the unit on April 1, 2018.

A copy of the agreement was submitted as evidence.

A condition inspection report was signed by both parties on moving in indicating that the unit was in good condition in most material aspects; a condition inspection was conducted by all parties on moving out, but the report was signed only by the landlords, the tenants having objected to the contents and refusing to sign.

At the beginning of the tenancy, the tenants provided a security deposit of \$1,000.00 which the landlords hold. The tenants provided their forwarding address to the landlords on March 12, 2019 and the landlords filed an application for damages and to retain the security deposit within fifteen days.

The landlord claimed the following:

ITEM	AMOUNT
Rent for April 2018	\$2,000.00
Cleaning	\$ 640.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$1,000.00)
<b>Total Monetary Award Claimed by Landlords</b>	<b>\$1,740.00</b>

Each claim is discussed separately.

#### *Rent for April 2018*

As stated, the tenancy was a 1-year fixed term and the tenants vacated the unit before the end of the term.

The tenants claimed that the unit was impossible and expensive to heat; the landlords stated that the house was older (built in the 80's) and the tenants were notified at the outset of the tenancy that it was costly to heat.

The landlords claimed rent of \$2,000.00 for the month of April 2019. They stated that as soon as they received the tenants' notice on February 13, 2018 that they were vacating March 31, 2019, they made all reasonable efforts to find a suitable replacement tenant by posting on websites and by notifying friends.

The landlords acknowledged that they did not want pets in the unit and accordingly advertised the unit as "no pets" after the tenants vacated. However, when they had difficulty finding a replacement tenant, the landlords testified they changed the ad to "pets allowed" and were able to find a new occupant. They stated they found a replacement tenant for a new tenancy commencing May 1, 2019 for \$2,000.00 monthly rent.

The landlords acknowledged that allowing pets in the unit was the factor that led to the selection of a replacement tenant. However, they also testified that late winter is a difficult time to find tenants and taking 2.5 months to find a replacement tenant is reasonable.

In summary, the landlords claimed that the agreement was for fixed term, the tenants vacated early, they made all reasonable efforts to find a replacement tenant, they mitigated their damages by eventually allowing pets, and they are entitled to compensation for rent for the month of April 2018 when the unit was vacant.

#### *Tenants' response*

The tenants stated that the landlords are not entitled to rent for the month of April 2018. They stated they gave the landlords 6 weeks notice that they were moving out and that the landlords should have rented the unit right away. The tenants claimed that it is unreasonable that the unit was vacant for 2.5 months.

They testified there is an extremely low vacancy rate in the area in which the unit is located. This was confirmed by the tenants' advocate and witness CH who stated that she is a property manager in the geographical area in which the unit is located. She stated that there is "almost zero vacancy rate" in the area, and, in her opinion, the landlords should have been able to find a suitable replacement tenant right away. The tenants' position is that they should not have to pay for the landlords' failure to find a suitable replacement tenant within six weeks.

Alternatively, the tenants stated that the 6 weeks notice they provided was enough time for the landlords to realize that, to find a replacement tenant in a timely manner, they had to change their ad to allow for pets; the landlords failed to properly mitigate their losses by not earlier changing their terms to allow prospective tenants to have pets.

### *Cleaning expenses*

The landlord claimed that the tenants left the unit dirty which required the landlords to each clean for 16 hours (total of 32 hours). The landlords claimed reimbursement at the rate of \$20.00 an hour for a total claim of \$640.00.

In support of their claim, the landlords submitted many photographs showing the unit needed cleaning. They testified that the photographs were taken on April 1, 2019.

The landlords submitted a signed condition inspection report on moving in; the report was disputed by the tenants on moving out and the report is signed by the landlords only.

### *Tenants' response*

The tenants denied that the unit needed cleaning when they vacated. The tenants stated that they cleaned the unit themselves and hired two people to clean for another 8 hours, each of whom they paid \$210.00 for a total cleaning expense of \$420.00.

The tenants submitted a copy of a receipt for March 30, 2018 for \$210.00 for cleaning. The tenants stated they overlooked uploading the second receipt in the same amount.

The tenants stated that they had an acrimonious meeting with the landlords when they vacated on April 1, 2018. The tenants acknowledged they were upset and angry at the landlords for renting them a house which could not be adequately and affordably heated. Nevertheless, the tenants stated that they took all reasonable care to see that the unit was in the same or better condition than when they started the tenancy.

The tenants denied that the pictures submitted by the landlords were taken the day they left the unit. They claimed the pictures, which were not date stamped, were taken at another time. In support of their argument, the tenants pointed out that there was more snow on the ground when they left than illustrated in the landlords' pictures. They also stated that the house and contents were old, well used, and any lack of cleanliness, staining or damage was there when they moved in or was from wear and tear only.

In support of their assertion that they left the unit reasonably clean, the advocate/witness CH stated that she managed a property previously rented by the tenants which ended with the tenants being refunded their entire security deposit as the unit had been left clean.

### Analysis

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

The existence of the damage or loss;

1. the actual monetary amount or value of the damage or loss; and
2. everything reasonable was done to reduce or minimize (mitigate)
3. the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the landlords to prove the landlords are entitled a claim for a monetary award.

Reference to each of the landlords' claims follows.

*Rent – April 2019*

The parties entered into a fixed term tenancy agreement set to expire on June 1, 2018. A tenant may not legally end a fixed term tenancy agreement except in a few limited and specific circumstances provided under the *Act* such as where the landlord has violated a material term of a tenancy agreement [Section 45(3)], a tenant is fleeing domestic violence or going into a care home (Section 45.1), or as authorized by the Director [Section 44(1)(f)].

The tenants' reasons for ending this tenancy do not constitute a legal basis for ending the fixed term early. I find it is undeniable that the tenants breached their tenancy agreement by ending the tenancy early.

Where a tenant breaches their fixed term tenancy agreement, the tenant may be held liable to compensate the landlord for loss of rent up to the end of the fixed term. Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent, the landlord has a burden to prove that the landlord took every reasonable effort to minimize the losses.

As noted above, I found the tenants violated the *Act* by not providing sufficient notice to end the fixed term tenancy. As result, I also find the landlord is entitled to compensation for the lost revenue subject only to their obligation to mitigate losses.

I have reviewed the documentary and oral evidence of the parties. I am unable to find the landlord made reasonable efforts to find a replacement tenant following the February 13, 2018 notice from the tenants.

I find the tenants provided a six-week notice of their intention to break a fixed term tenancy. I have considered the parties' evidence regarding why it took the landlords more than six weeks to find a replacement tenant. I have weighed the evidence and find that the tenants' version of events is the more likely as it was supported by the evidence of the witness CH; that is, if the landlords had made reasonable efforts, they would have located a suitable replacement tenant by April 1, 2019.

I find the landlords have failed to establish that they took the steps necessary to mitigate damages in an efficient and economic manner to assure the unit was rented again within the six week notice period.

Considering the evidence in the case, I find on a balance of probabilities that the landlords have *not* met the burden of establishing that the landlords did “whatever is reasonable to minimize the damage or loss”.

I accordingly dismiss the landlords’ claim for reimbursement for rent for the month of April 2018.

#### *Cleaning expenses*

The parties agreed that the condition inspection report on moving out was not signed by the tenants; the tenants disputed the contents of the report. As the parties disputed the condition inspection report on moving out, I find I cannot give any weight to the report which only contains the observations of the landlords.

The landlords’ evidence consisted primarily of undated photographs showing that the unit needed cleaning and their testimony that they spent 32 hours cleaning. The tenants stated that the photographs are unreliable and were not taken at the end of the tenancy.

The tenants testified they cleaned the unit themselves and it was reasonably clean when they left. They further stated that they spent \$420.00 to have the house cleaned, half of which is supported by a filed receipt.

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*. Policy Guideline 1: Landlord and Tenant, Responsibility for Premises states:

*The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.*

*The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).*

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.*

As the photographs submitted by the landlords were not dated, I find them unreliable and do not give them much weight. I further find that some of the photographs of the “before and after” kind, show the condition of parts of the unit which resulted from years of use, and not the actions of the tenants in an 8-month period. For example, the landlords submitted a picture of a parquet floor “before and after”; the floor was well used at the beginning of the tenancy and refinished after the tenants left. I accept the tenants’ evidence and find that the floor was in the similar condition when they left as when they moved in.

Taking into account the testimony, the receipt submitted by the tenants, the inconclusive dating of the photographs, and the lack of a signed condition inspection report, I find that the landlords failed to provide sufficient evidence to meet the burden of proof on a balance of probabilities for reimbursement of their time for cleaning.

Weighing the evidence of the parties, and considering the Guideline, I am satisfied and find that the tenants left the house in a condition meeting *reasonable health, cleanliness and sanitary standards*.

I therefore dismiss the landlords’ claim in this regard without leave to reapply.

#### *Filing Fee*

As I have dismissed the landlords’ application without leave to reapply, I do not award the landlords reimbursement of the filing fee.

#### *Security Deposit*

The *Act* contains comprehensive provisions regarding security and pet damage deposits in section 38 and the *Residential Tenancy Policy Guideline 17 – Security Deposit and Set Off*.

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, to do one of the following:

- return the security deposit to the tenant,
- reach written agreement with the tenant to keep some or all of the security deposit, or
- make an application for dispute resolution claiming against the deposit.

As indicated earlier, I find the landlords applied within 15 days, the tenants provided the tenants’ forwarding address in writing pursuant to section 38(1)(b) and the tenants did not provide consent to the landlords to keep any portion of the security deposit pursuant to section 38(4)(a).

As I have dismissed the landlords’ application without leave to reapply, I direct that the landlords return the security deposit of \$1,000.00 to the tenants by July 31, 2019.



I grant the tenants a monetary order in the amount of \$1,000.00 effective July 31, 2019.

Conclusion

The landlords' claims are dismissed without leave to reapply.

I grant the tenants a monetary order in the amount of \$1,000.00 for the return of the security deposit effective July 31, 2019.

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 15, 2019

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Residential Tenancy Branch