



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

The landlords and the tenants convened this hearing in response to applications.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent and utilities;
2. For a monetary order for damages to the rental unit;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. For a monetary order for compensation pursuant to section 49, 51 of the Act;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

This matter commenced on June 20, 2019 and was adjourned to September 9, 2019.  
The interim decisions should be read in conjunction with this decision.

### Preliminary and procedural issues

At the outset of the hearing the tenant requested an adjournment because the female tenant was in the hospital. The landlords did not consent to an adjournment.

In this case, I do not find an adjournment is appropriate in this matter. The male tenant has been present over the course of the hearing and is able to provide testimony on the remaining issues, I do not find this is prejudicial to the tenants. Further, I find any further delay would be unfair and prejudicial to the landlords. Therefore, I decline to grant the tenants request for an adjournment.

On September 9, 2019, I made Orders at the hearing that both parties were required to follow. Both parties confirmed at the hearing that they understood the Orders and deadlines that were made. The interim decision should be read in conjunction with this decision. An amendment was made on December 18, 2019, to the interim decision. As I made typographical error of the dates on the cover page and date signed. I had incorrectly typed the wrong month of July, which should have been September. I have underlined the correction in the amended interim decision. The amendment does not have any impact on the Orders that were made in the interim decision.

The landlords complied with my Order on September 10, 2019, by providing a copy of the evidence they received from the tenants, which supported their testimony given on September 9, 2019. The landlord testified they did not receive any additional evidence that was Ordered from the tenants.

The landlords stated that they attended the Ministry office and were informed they cannot receive any information on the tenants file, due to privacy issues. The landlords stated the Ministry would not discuss any issues that was raised in the interim decision. The landlord stated the Ministry stated they would not attend the hearing if requested.

The tenants did not submit the documents that were Ordered on September 9, 2019, to the Residential Tenancy Branch.

The male tenant could not provide any reason why they failed to comply with my Orders. I find the tenants failed to comply with the Orders made in my interim decision.

As the Orders I made were necessary to determine the validity of government documents, the "Cheque History (Query) for the benefit months of July and August 2018. I find I must rely upon the documentary evidence of the landlords that was provided to them from the tenants, as the accurate documents for the benefit months of July and August 2018.

### Issues to be Decided

Are the tenants entitled to compensation pursuant to section 49, 51 of the Act?  
Are the landlords entitled to a monetary order for unpaid rent and utilities?  
Are the landlords entitled to a monetary order for damages to the unit?  
Are either party entitled to the security deposit?

### Background and Evidence

The parties agreed that the tenancy began on September 21, 2017. Rent in the amount of \$1,595.00 was payable on the first of each month. The tenants paid a security deposit of \$737.50.

The parties agreed a move-in condition inspection report was completed.

### Tenants' application – heard on June 20, 2019

The tenants claim as follows:

a.	Compensation under section 51 of the Act	\$19,140.00
b.	Return of security deposit	\$ 1,475.00
	<b>Total claimed</b>	<b>\$20,615.00</b>

The parties agreed that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which indicated that the tenants were required to vacate the rental unit on November 30, 2018.

The reason stated in the Notice was that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

### Compensation

The tenants testified that the landlord did not use the property for the intended purpose, as the property remained empty. The tenants stated they were informed by the landlord's agent that the landlord was just going to put a bed in the premise.

The tenants testified that they saw another person moving into the premises on August 2, 2019.

The landlords testified that they would come and go across on the ferry and spend time residing in the premises as this is their retirement property. The landlord stated they did not re-rent the premise.

Double the security deposit

The tenants testified that they gave the landlords their forwarding address in a text message on October 10, 2018 and the landlords acknowledge receipt. Filed in evidence are copy of text messages.

The landlords testified that they did not receive the tenants forwarding address in any text messages.

On cross-examination of the landlords by the tenants advocate on the issue of the text messages.

The landlords respond that the text messages submitted are not from them. The landlords stated that they received the tenants' forwarding address when they received the tenants' application for dispute resolution.

Landlords' application heard on September 9, 2019 and December 3, 2019

The landlords claim as follows:

a.	Unpaid rent and July, August, October 2018	\$ 5,120.57
b.	Unpaid utilities	\$ 1,576.00
c.	Cleaning and garbage removal	\$ 1,922.95
d.	Damages	\$13,020.00
e.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$21,801.52</b>

Evidence heard on September 9, 2019

Unpaid rent

The landlords testified that the tenant's failed to pay rent for July, August and October 2018; however, they did receive a cheque from the Ministry for September 2018, rent in the amount of \$1,259.43, leaving a shortage of rent for September 2018, in the amount of \$335.57. The landlords seek to recover the full amount of rent owed in the amount of \$5,120.57.

The female tenant acknowledged they did not pay rent for October 2018, as that was their compensation for receiving the notice to end tenancy. The female tenant stated that they moved from the rental unit on October 27, 2018 and they are not responsible for November 2018 rent.

The female tenant testified that rent was always paid by the Ministry. The tenant stated that they have provided copies of the Ministry payments for July and August 2018, which show the landlords received rent for those two months. Filed in evidence on August 14, 2019, are copies of the above documents, which support the tenant's version.

The landlords testified that the Ministry copies they received from the tenants are not the same as the ones the tenants have presented at the hearing. The landlords stated their copies show that the tenants received the full benefits of \$1,501.73 for August 2018, and the full benefits of \$1,321.12 for July 2018. The landlords stated that the rents were not sent to them as the tenants had cancelled the direct payment with the Ministry. Filed in evidence on September 10, 2019, are copies of documents from the Ministry, which supports the landlords' version.

The landlords testified that the tenants may have vacated the unit at the end of October 2018; however, they were not informed they were leaving, and they discovered that the tenants had allowed someone else to stay in the rental unit until their tenancy was ending on November 30, 2018. The landlords stated they contacted the male tenant and they were informed that they were family members and would be staying until the end of November 2018.

The witness statement of AS, filed by the landlords' states in part as follows:

"the previous tenants had already moved to their new place however they had a couple of people staying below until their final end of the month(moving truck was being filled up with all items and a conversation.. that they would be gone and there may be a couple people staying below until their final end of the month. ..."

[Reproduced as written]

The landlords testified that the tenants were required to pay rent for October 2018, as the notice to end tenancy was not effective until November 30, 2018, and they were not entitled to withhold rent until November 2018. The landlords stated they are not seeking

rent for November 2018, as this was the month, the tenants were entitled to compensation for receiving the notice to end tenancy.

The tenants argued that the landlords were aware they were moving on October 27, 2018, and they were told to put the key under the door mat. The tenants stated they are not responsible for someone squatting in the rental unit. Filed in evidence are copies of text messages, and a u-haul receipt.

The landlords testified that they never received any text messages from the tenants that they were vacating the premises and that the text message telling them to leave the keys outside were not sent by them. The landlords stated they would never agree to allow the keys to be left outside and would have had their property manager attend to pick the keys up and conduct the move-out condition inspection report.

#### Unpaid Utilities

The landlords testified that the tenants always had problems paying the utilities during their tenancy. The landlords stated that they receive the amount of \$668.00 from the Ministry as an emergency grant to the tenants.

The landlords testified that the tenants have not paid anything since that amount was received. The landlords seek to recover unpaid utilities in the amount of \$1,576.00.

The female tenant testified that they were having difficulties paying the utilities and they received funding from the Ministry in the amount of \$680.00. The female tenant stated that they made two e-transfers to the landlords for the balance due of the utilities. Filed in evidence are copy of email transfers. Filed in evidence is a copy of a Ministry document showing \$680.00 was sent to the landlords.

The landlords argued the amount the tenant has indicated of \$680.00 does not match the copy they received from the tenants. The landlords stated that their copy of the Ministry document shows the amount of \$668.00, which they acknowledged that amount was received, not \$680.00. Filed in evidence is a copy of a Ministry document showing \$668.000, was sent to the landlords.

The landlords argued they have not received any e-transfers from the tenants as alleged.

Evidence heard on December 3, 2019

Damages

The landlords testified that the rental unit was left in horrible condition. The landlord stated there was trash, needles all over the property. The deck had approximately 15 to 20 bags of garbage and there was heaps of furniture left behind. The landlords stated that they had to pay to have the garbage and trash cleaned up and dispose. The landlords seek to recover the cost in the amount of \$1,522.98. Filed in evidence are photographs and receipts.

The landlords testified that the entire rental unit was left dirty and everything had to be cleaned after the garbage was removed. The landlords stated that there was 16 hours of labour required to clean the premises. The landlords seek to recover the cost of the cleaning in the amount of \$400.00. Filed in evidence are photographs and a cleaning receipt.

The landlords testified that the occupants were smoking cigarettes and marihuana in the rental unit and they needed to paint the rental unit with a special sealant. The landlord stated this was a non-smoking premise. The landlords seek to recover the cost of the paint sealant in the amount of \$1,000.00 and GST.

The landlords testified that the walls were damage as the tenants had place mirrors on the walls with adhesive causing damage to the walls when removed. The landlords stated that there were also large screw holes in the walls and there was also a large hole in the wall. The landlords stated that due the damage walls and the smoking they had to have the rental unit walls repaired and painted. The landlords seek to recover the cost of the repair in the amount of \$6,650.00 and GST. Filed in evidence are photographs of the walls and an estimate for repair, which the landlords stated was paid.

The landlords testified that the washer and dryer were taken from the rental premise. The landlords seek to recover the cost of the washer (\$949.94) and dryer (\$949.94) for a total of \$1,899.98, plus GST.

The landlords testified that the dishwasher soap dispenser was broken, and the appliance was damaged and not functioning. The landlords' seek to recover the cost of the dishwasher in the amount of \$500.00, plus GST.

The landlords testified that the refrigerator was left in horrible condition. The shelving and crispers were broken. The landlords seek to recover the cost of the refrigerator in the amount of \$499.99, plus GST.

The landlords testified that the tenants damaged the master bedroom carpets, as it was badly stained, with either food or something that looked like blood. The landlords stated that they did use a carpet cleaner; however, the stains would not come out. The landlords stated that the carpet was approximately ten years old at the time. The landlords seek to recover the cost of the carpet in the amount of \$700.00, plus GST.

The landlord testified that the tenant caused damage to the baseboards and trim. The landlord stated that there was a lot of holes in the window casing and trim as the tenants had in stalled curtain rods and had used large screws causing damage. The landlords testified that they were also large gauges in the baseboard. Filed in evidence are photographs. The landlords seek to recover the cost of \$500.00, plus GST.

The male tenant testified that they left the rental unit in good condition on October 27, 2018. The tenant stated it makes no sense that the landlord would allow squatters to remain in the rental unit after they vacated, and they are not responsible for their actions or damage.

The tenant testified that if they remember correctly, they did hang four little mirrors on the walls.

The tenant testified that the landlords have provided duplicate receipts for the appliances and those receipts also show the landlords purchased two appliance packages. The tenant acknowledged the landlords are not claiming the full amount of the invoice.

The tenant testified that they took photographs of the rental unit on February 19, 2019 and the photographs show there was no garbage or damage to the rental unit. Filed in evidence are photographs; however, I note they were taken months after the tenancy ended.



Filed in evidence of the tenants is a sworn affidavit of DO, which confirms the tenants vacated on October 27, 2018 and the rental unit was left clean. I note the affidavit was sworn on June 3, 2019; however, the commissioner that swore the document shows their commission expired on April 30, 2019. A commissioner cannot swear documents when their commission has expired, or the document has been created using the signature of the commissioner.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Tenants' application

#### Compensation

In this case, I find the tenants have failed to prove the landlords did not use the property for the intended purpose for at least six months. The evidence of the landlords was that they come and go to the premise and use it for their own purpose. There is no requirement under the Act that the landlords cannot use the premise as a secondary accommodation.

While the tenants allege the property was re-rented in August of 2019, that is after the statutory requirement of six month expired.

I find the tenants have failed to prove the landlord did not use the property for their own use. Therefore, I dismiss this portion of the tenants' claim.

### Double the security deposit

The evidence of the tenants was that they gave the landlords their forwarding address by text messages. The landlords denied receiving the text messages or sending the text messages that were submitted as evidence by the tenants. The evidence of the landlords was that they received the tenants' forwarding address when they received the tenants' application for dispute resolution.

Text messages are not an approved method of service and it was the tenants' responsibility to provide their forwarding address in the approved method of service under section 88 of the Act.

Further, the validity of the text messages has been questioned. Since text messages can be falsely created, such as spoofing. I put no weight on such messages when the other party denies these were received or written by them.

Furthermore, I question the text messages that was sent by the tenants on October 10, 2018, which the tenants stated in the text message that they had paid a security deposit under their new tenancy agreement, which would be reasonable when entering into a contract to rent.

However, the new tenancy agreement the tenants submitted in their evidences shows the security deposit was not paid by the tenants to their new landlord until October 26, 2018 and the agreement was signed on October 27, 2018. This support the text messages are not accurate, as it was not paid on October 10, 2018, as stated in the text message. This leads me to believe they were written sometime after October 26, 2018.

Based on the above, I dismiss the tenants' application for double the security deposit.

### Landlords' application

#### Unpaid rent

I have previously found that the tenants failed to comply with my interim decision, and I have accepted that the Ministry "Cheque History (Query)" for the benefit months of July

and August 2018, which were submitted by the landlords on September 10, 2019, as the original documents and they were provided to the landlords by the tenants.

I find the "Cheque History (Query)" for the benefit months of July and August 2018, show the tenants did not pay the rent to the landlords. I find the tenants have breached section 26 of the Act, when they failed to pay rent for July and August 2018, and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$3,190.00**.

In this case, I accept the tenants' evidence that they vacated the premises on October 27, 2018, as this is supported by the u-haul receipt.

However, I am not satisfied that the landlords knew the tenants were vacating, as the text messages have been identified as false. I accept the landlords' version over the tenants that the tenants allowed a third party to take over the premises.

I find it is unreasonable to believe that right after the tenants vacate the property, that someone unknown to them would start residing in the premises. This does not have the ring of truth.

Furthermore, I accept the landlords' evidence that the male tenant told the landlord that they were family members and staying to the end of the tenancy. This is also supported by the witness statement of SD, that they were told by the tenants that they were letting people stay in the rental unit, until the tenancy was to end on November 30, 2018. This has the ring of truth.

I find it more likely than not the tenants gave the unit to a third party to use until their tenancy legally ended on November 30, 2018. I find the tenants are responsible for October 2018, rent as they were not entitled to compensation until November 30, 2018, the date set in the notice to end the tenancy. Therefore, I find the landlords are entitled to recover unpaid rent for October 2018, in the amount of **\$1,595.00**.

#### Unpaid utilities

The evidence of the tenants was that they sent the unpaid utilities by etranfer. The landlords denied they received any etranfers from the tenants for the outstanding utilities.

The tenants have provided copies of two email transfers showing the funds were received. However, I must question the authenticity of these documents, as they can be easily created. The tenants provided no bank statements to show that the money was actually taken from their account or that the email address used to send the etransfers was that of the landlords.

Also, the tenants copy of the Ministry documents are not consistent with the copy the tenants provided to the landlords. The tenants did not comply with my interim decision. Therefore, I must accept the copy the landlords provided which show they received the amount of \$668.00 is accurate.

Based on the above, I am not satisfied the tenants have shown that their utilities were paid. I find the tenants have breached the Act, when they failed to pay utilities. Therefore, I grant the landlords unpaid utilities in the amount of **\$1,576.00**.

### Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

#### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the evidence of the tenants that they left the rental unit on October 27, 2018; however, as I had previously found that I do not accept the tenants' evidence that the rental unit was taken over by squatters as this is not logical. I find the tenants are responsible for the damage that was caused by their action of allowing the rental unit to be used by a third party, such as a family member or friend.

In this case, I accept the evidence of the landlords and witness statements that the rental unit was left, with large amounts of garbage. This is supported by the

photographic evidence. While the tenants have submitted photographs dated February 19, 2019, showing the rental unit cleaned months after the tenancy ended.

However, they do not contradict the evidence of the landlords. It is reasonable that the landlords would have the garbage removed at the end of the tenancy.

I do not find the cost of the labour and cost of garbage removal unreasonable based on the photographs. Therefore, I find the landlords are entitled to recover the cost for garbage removal and disposal in the amount of **\$1,522.98**.

Further, I accept the rental unit was left dirty and required cleaning after the garbage was removed. I find the tenants breached the Act and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover cleaning costs of **\$400.00**.

I accept the evidence of the landlords and the landlord's witness AS, that there was smoking in the rental unit in the month of November 2018, contrary to the tenancy agreement. This required the rental unit to be painted to seal in the smell of smoke. I find the tenants breached the Act, and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of painting the sealant in the amount of \$1,000.00, plus GST of \$50.00 in the total amount of **\$1,050.00**.

I accept the evidence of the landlord that the tenant's or the guest damaged the walls. The tenant did not deny that had used adhesive to fasten mirrors to the walls. The photograph evidence filed by the landlords show large screw holes in the walls, this is not normal wear and tear and there is also a hole in the wall that looks like it was punched. I find the tenants breached the Act and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of the repair and painting in the amount of \$6,650.00, plus GST of \$332.50 in the total amount of **\$6,932.50**.

While I accept the tenants provided photographs of the rental unit on February 19, 2019 and the painting had not been done at that point. The photographs cannot possible show smoke damage from smoking. Further, they do not show the entire premise as they were taken through a window.

I accept the evidence of the landlords that the washer and dryer were taken from the rental unit during the month of November 2018. I find the tenants breached the Act, when they or their guest took property that they did not own. Therefore, I find the

landlords are entitled to recover the cost of the appliances in the amount of \$1,899.98, plus GST of \$227.99 for the total amount of **\$2,127.97**.

I am not satisfied that the tenants caused damage to the dishwasher, other than the soap dispenser being broken. While I accept the landlords have provided a photograph of the dishwasher showing damage on the side of the appliance, I cannot determine if that damaged was there when the tenancy started. I find it highly unlikely that the appliance was pulled out of the cabinets for inspection when the tenancy started. Therefore, I dismiss this portion of the landlords claim.

While I accept the refrigerator shelves may have been broken at the end of the tenancy. However, I am not satisfied that this alone required the refrigerator to be replaced as the shelving could have been simply replaced. Therefore, I dismiss this portion of the landlords claim.

The landlords are claiming for the replacement carpet in the master bedroom. However, the carpets were approximately ten years old at the time. I find the carpets useful life span had expired as determined by the Residential Tenancy Policy Guideline 40, which sets out the useful life span of building elements. Therefore, I dismiss the landlords' claim for carpet replacement.

I find that the landlords have established a total monetary claim of **\$18,494.45** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$737.50** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$17,756.95**.

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

**I am concerned by the evidence presented at this hearing by the tenants.**

**The Cheque History (Query) the tenants have provided to the Residential Branch on August 14, 2019 and the landlords copies filed on September 10, 2019 are significantly different for the same benefit months of July 2018 and August 2018. Leading me to believe they may have been altered.**

**The text messages of October 10, 2018 stating they paid their security deposit is inconstant with their new tenancy agreement that shows it was paid on October 26, 2018 and signed on October 27, 2018. Leading me to believe they may have been falsely created.**

**The affidavit of DO sworn on June 3, 2019, shows the commissioner commission expired on April 30, 2019. While this could have been a mistake made by the commissioner; however, as I have questioned the above documents, this also may have been altered or falsely created, using the signature of the commissioner.**

**The tenants provided affirmed testimony at the hearing. Providing false, misleading, or altered document is a serious matter under the Criminal Code of Canada.**

#### Conclusion

The tenants' application is dismissed. The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 18, 2019

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Residential Tenancy Branch