



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants, which have been joined to be heard together.

The landlord has applied for:

- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenants for the cost of the application.

The tenants have applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- a monetary order for return of all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the landlord.

The landlord and one of the tenants attended the hearing and the tenant also represented the other named tenant. The parties each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided by the parties has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for advertising costs?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

#### Background and Evidence

**The tenant** testified that this fixed term tenancy agreement was entered into by the parties for a tenancy commencing on June 1, 2019 until May 31, 2020. The tenancy agreement, a copy of which has been provided as evidence for this hearing is signed by the landlord and 2 tenants on May 18, 2019 and specifies rent in the amount of \$1,200.00 per month payable on the 1<sup>st</sup> day of each month, however the tenants did not move into the rental unit.

The landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord does not reside on the rental property.

After signing the tenancy agreement the tenants learned that some of the terms of the tenancy agreement were not lawful. Those paragraphs state:

- 3. Tenants agreed to pay \$500 pet deposit. \$250 of the \$500 will not be refundable for fumigation expenses and the other \$300 will be deducted daily if the tenants moved out before the last day of occupancy on the moving out notice. If tenants move out on the last day of occupancy on the moving out notice, no pet damage deposit can be refunded as the \$300 will cover the rental loss for fumigation before new tenants are able to move in.

- 7. Tenants have to keep a quiet environment at all times especially from 9:00 pm to 9:00 am each day. Absolutely no party inside or around the rental unit or on the property of the house.
- 11. If the tenants' guests stay at the rental unit more than five nights, the tenants will have to pay the extra utilities for the period the guests live in the rental unit and written consent is required from the landlord.
- Tenants will repair any out of order appliances and fixtures being damaged by the tenants regardless intentional or accidental. Tenants will also repair the out of order appliances and fixtures due to normal wear and tear if the breakdown is within the tenants' ability, otherwise they will notify the landlord immediately to avoid further damage.

The tenant clarified that the pet damage deposit was not paid to the landlord, and the tenants did not pay any rent to the landlord.

The tenants had also asked the landlord for certain repairs before moving into the rental unit but the landlord refused. The flooring wasn't real flooring, just puzzle piece mats, and there were holes in the walls and exposed pipes and electrical, as well as visible water damage. The tenants also offered to putty and paint. Numerous photographs have been provided for this hearing.

On May 27, 2019 the tenant sent an email to the landlord explaining that the landlord had breached the Act and the tenants would not be moving in. The landlord had refused to complete the repairs and the tenancy agreement was flawed. The tenants provided the landlord with a forwarding address in an email, and the landlord served the tenants at that address, so obviously has a forwarding address.

The tenants seek return of the security deposit.

**The landlord** testified that when the tenancy agreement was signed the landlord did not know that some of the terms were illegal.

The tenants wanted to re-paint and started the puttying. Now the landlord has to re-paint before re-renting.

The appliances, electrical and plumbing were not dysfunctional, but an electrical thing needed to be tightened.

The rental unit was re-rented for July 1, 2019. The landlord retained the services of the tenant in the upper level of the rental home for advertising and showing the rental unit, for which the landlord paid \$150.00. A copy of the e-transfer has been provided as

evidence for this hearing. The rental unit was shown in June and new tenants moved in on July 1, 2019. A copy of the move-in condition inspection report for the new tenant has been provided for this hearing which shows no issues, so for the tenants to say they could not move in due to the condition of the rental unit is an excuse. The landlord attended the rental unit and made minor repairs that only took minutes, and no substantial issues.

**The landlord's witness** testified that he has been living in the rental unit since July, 2019 and has not found any major flooring, piping or electrical problems, nor any damage caused by water in the rental unit. The flooring in the entry is made of foam mats.

The witness also testified that there is a drywall crack that's not quite finished and does not recall ever seeing a pipe sticking out of the wall in the living room.

### Analysis

The most important piece of evidence is the tenancy agreement. Although I agree with the tenants that some of the terms in the Addendum are not legal, the *Act* specifies that if a term is unconscionable, the term is unenforceable. However the *Act* also states:

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the parties entered into a tenancy agreement that is a contract. The unconscionable terms only are unenforceable, and the parties are bound by the other terms, including the fixed term.

The tenants feel they were also justified in ending the tenancy because of the condition of the rental unit. I have reviewed the photographs and other evidence and I am not satisfied that the tenants have established any lawful reason for ending the tenancy.

I also find that the landlord has established that the landlord did what was reasonable in mitigating any potential loss of rental revenue by retaining the services of another individual to advertise and show the rental unit, which was re-rented within a month after this tenancy was to begin.

I find that the landlord has established a claim of 1 month's rent, or \$1,200.00 as well as \$150.00 for costs to re-rent.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I dismiss the tenants' application for return of the security deposit.

I order the landlord to keep the \$600.00 security deposit in partial satisfaction of the landlord's claim and I grant a monetary order in favour of the landlord as against the tenants for the difference in the amount of \$850.00 ( $\$1,200.00 + \$150.00 + \$100.00 = \$1,450.00 - \$600.00 = \$850.00$ ).

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety.

I hereby order the landlord to keep the \$600.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$850.00.

This order is final and binding and may be enforced.

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 20, 2019

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Residential Tenancy Branch