



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: MNDCL-S, FFT  
Tenant: MNDCT, MNSD, FFL

### Introduction

This was a cross application hearing that dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed that they were each served with the other's application for dispute resolution via registered mail. I find that both parties were served with the other's application for dispute resolution in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?
4. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
5. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
6. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2018 and ended on October 31, 2019. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$500.00 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenants provided the landlord with their forwarding address in writing on October 31, 2019. The landlords returned the tenants' pet damage deposit in the amount of \$500.00 on November 15, 2019.

Both parties agree that on October 29, 2019 the parties attended a Residential Tenancy Branch hearing at which the following settlement was reached:

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties entered into a mutual agreement that this tenancy will end on October 31, 2019 at 1:00 p.m., by which date the tenants and any other occupants will have vacated the rental unit.
2. The landlords withdrew all the 1 Month Notices issued to tenants as of the hearing date.
3. The parties agreed that this tenancy ends by way of their mutual agreement to end this tenancy and not on the basis of the landlords' 1 Month Notices that have been issued to the tenants as of the hearing date.
4. Both parties agreed to attend a move-out inspection at 1:00 p.m. on October 31, 2019, unless otherwise mutually agreed to by both parties.
5. The security deposit will be dealt with at the end of the tenancy, and in accordance with the *Act* and tenancy agreement.
6. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

The file number for the previous hearing is located on the cover page of this decision.

The landlords filed this application for dispute resolution on November 12, 2019.

Both parties agree that the landlords issued the tenants three notices to end tenancy dated August 27, 2019, August 31, 2019 and September 30, 2019.

### Landlord's Claim

Landlord D.G. testified that she is seeking a monetary award in the amount of \$2,100.00 for loss of rental income for the month of November 2019 because the tenants gave less than one month's notice to end the tenancy and she was unable to rent out the subject rental property for November 2019. Landlord D.G. testified that she did not know the tenants were moving out until the October 29, 2019 hearing.

The tenants testified that the parties mutually agreed to end the tenancy in the October 29, 2019 hearing and so the landlord is not entitled to one month's notice or loss of rental income.

*Tenant's Claim*

Tenant S.H. testified that she and tenant P.L. are seeking the following monetary damages:

- Breach of quiet enjoyment: \$6,300.00;
- Cost of moving expenses: \$101.00; and
- Cost of cleaning: \$147.00.

Tenant S.H. testified that she and tenant P.L. are seeking a monetary award in the amount of \$6,300.00 for loss of quiet enjoyment for the months of August, September and October 2019. The \$6,300.00 claim is based on rent paid from August to October 2019.

Tenant S.H. testified that the problems with the landlords started when the landlord's adult children moved into the lower suite of the subject rental property in August of 2019 and complained to the landlords about the tenants.

Tenant S.H. testified that they are seeking the entire sum of their rent returned from August to October 2019 because the landlords harassed them with three One Month Notices to End Tenancy for Cause between August and September 2019 and because in that time, the landlords were rude and confrontational.

Both parties agree that the landlords provided the tenants with 24 hours' notice to inspect the subject rental property on August 27, 2019. Tenant S.H. testified that landlord D.G. became confrontational in the walk through and so on August 29, 2019 she sent the landlords a letter asking for "no contact unless given 24 hours notice". Tenant S.H. testified that the landlords did not abide by her no contact request and the landlords' daughter personally served her with the landlords' evidence for the previous hearing.

Landlord D.G. testified to the following facts. When her adult children moved into the subject rental property, they informed the landlords that the tenants smoke marijuana at the subject rental property contrary to the tenancy agreement. The tenants were asked to cease smoking marijuana at the property but did not comply, so the landlords served

them with the first One Month Notice to End Tenancy for Cause, dated August 27, 2019. The second One Month Notice to End Tenancy for Cause dated August 31, 2019 was served on the tenants because the tenants informed the landlords that their dog might be violent to people or animals entering the back yard. The third One Month Notice was served on the tenants for repeatedly paying rent late.

Tenant S.H. testified that she and tenant P.L. only smoke outside the subject rental property occasionally. Tenant S.H. confirmed that she informed the landlord that it was possible her dog could harm a person or other dog if they entered the back yard. Tenant S.H. made no submissions on late payment of rent.

Landlord D.G. did not dispute having heated discussions with the tenants about the above listed issues.

Tenant S.H. testified that she did not want to move out of the subject rental property and that the landlord's actions forced her to move, so she is seeking the cost of her moving expenses totalling \$101.00 and the cost of her cleaning expenses totalling \$147.00.

Tenant S.H. testified that she is also seeking the return of the security deposit.

### Analysis

#### *Landlord's Claim for Loss of Rental Income and Tenant's Claim for Moving and Cleaning Expenses*

In this case, the parties mutually agreed to end their tenancy in a settlement agreement dated October 29, 2019. This end to tenancy was agreed to in accordance with section 44(1)(c) of the *Act* which states: "a tenancy ends if the landlord and tenant agree in writing to end the tenancy". Because the parties mutually agreed to end the tenancy, neither party is entitled to seek damages from the other arising out of the end of the tenancy. Therefore, I dismiss the landlord's claim and the tenant's claim for moving and cleaning expenses.

#### *Tenant's Claim for Loss of Quiet Enjoyment*

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I find that the landlords were entitled to serve the tenants with the three One Month Notices to End Tenancy for Cause and that the reasons the notices to end tenancy were served were based on real issues existing between the parties and were not served in an attempt to harass the tenants. I find that it would be unreasonable to penalize the landlords for exercising their rights as landlords under the *Act*. I find that while the confrontations which occurred between the parties likely caused the tenants discomfort and anxiety, I find that these confrontations were not substantial enough to warrant damages. I therefore dismiss the tenant's claim for loss of quiet enjoyment.

### Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlords made an application for dispute resolution claiming against the security and deposit pursuant to section 38(a) and 38(b) of the *Act* and was therefore permitted to retain the tenants' security deposit until this hearing. However, since I have dismissed the landlords' claim for damages and the tenants' have provided the landlords with their forwarding address in writing, I order the landlords to return the tenants' security deposit in the amount of \$1,050.00.

As the tenants were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

As the landlords were not successful in their application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Security deposit	\$1,050.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$1,150.00</b>

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 03, 2020

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Residential Tenancy Branch