



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to return of the security deposit?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on May 1, 2019 and ended on July 31, 2019. Rent of \$1,500.00 was payable on the first day of each month. In a previous decision dated December 10, 2019, the security deposit was dealt with and the Landlord was granted an entitlement to lost rental income for August 2019. The Landlord received the Tenants’ forwarding address on August 3, 2019.

The Tenant states that on July 22, 2019 the Landlord was informed of rodents being heard in the walls with droppings found in the bedroom and living room. The Tenant states that on the evening of July 24, 2019 the pest control company made its first visit to the unit and at this time informed the Tenant that four generations of rats were found inside and outside of the unit. The Tenant states that the pest company found juvenile rats in the traps and that between July 24 and 26, 2019 the furnace vents were all covered with plywood and rocks to prevent the smell. The Tenant states that on July 30, 2019 a pest control company attended the unit and informed the Tenants that there was severe rat activity and that as rats were found in the vents and furnace the unit was unsafe for breathing. The Tenant states that the rats were described as multiple generations of roof rats. The Tenant argues that this is evidence that the rats were present at the onset of the tenancy.

The Tenant states that on July 25, 2019 the Landlord was asked by email to deal with the vents and furnace and to make repairs to ensure no entries by the rats. The Tenant states that the Landlord replied that duct cleaning was arranged but made no response to the request for repairs. The Tenant states that on July 28, 2019 the Landlord was again asked to make the repairs. The Tenant states that the Landlord complained about the repair costs and threatened the Tenants by informing them that the Landlord could end the tenancy with the service of a two month notice to end tenancy. The Tenant states that it believed this notice was to end the tenancy for cause. The Tenant states that they offered to enter into a mutual agreement to end the tenancy and the Landlord simply laughed and said no. The Tenant states that on July 30, 2019 the Landlord was informed through their advocate that they would be moving out and that no rent for August 2019 would be paid. The Tenant states that they have applied for a judicial review of the previous decision that awarded the Landlord August 2019 rent.

The Tenant states that at move-in the unit smelled musty and the master bedroom had what was later determined to be rat holes. The Tenant states that the smell was also later determined to be caused by rat feces and urine. The Tenant argues that they had

to move out of the unit immediately due to potential health problems caused by the infestation. The Tenant claims \$2,2500.00 calculated as half the rent paid during the tenancy. The Tenant states that this amount was based on the Landlord's initial offer to refund all the rents to the Tenants and that this amount reflects a fair approach. The Tenant states that on July 29, 2019 the Parties held a conference call where the Landlord agreed to an immediate end to the tenancy, the return of the security and pet deposits and the return of half the rent paid during the tenancy. The Tenant states that on this day the Landlord also provided the Tenants with a reference. The Tenant states that the Landlord refused to sign the mutual agreement until after the move-out inspection. The Tenant states that at this point the Landlord changed its mind. The Tenant submits that the presence of the rodents caused medical complications in the Tenants' pets.

The Tenant argues that the Landlord knew by July 28, 2019 and before the mutual agreement that the Tenants wanted to leave because of the rats.

The Landlord states that the unit never had rats before being reported in July 25, 2019. The Landlord states that during a previous tenancy of two years the Tenants never reported any rodents. The Landlord states that on July 26, 2019 a pest control company attended the unit and set traps under the crawl space and that rats were found in the furnace in the underground space. The Landlord states that no rats were found inside the unit and that none of the pest company reports indicates that rats were inside the unit. The Tenant states that the pest report of July 30, 2019 states that rats were in the unit. The Landlord states that no agreement at all was ever made with the Tenants. The Landlord states that it had no idea that the Tenants were moving out of the unit because of the rats as the Tenants never told the Landlord this was the reason. The Landlord states that it believes the Tenants moved out of the unit because their cats had made so much damage. The Landlord states that there is nothing in the July 25, 2019 email from the Tenants about repairs and that the Tenants never sought anything

further than the pest control. The Landlord states that the furnace ducts were cleaned on August 12, 2019 and that no rats were found.

### Analysis

Section 77(3) of the Act provides that except as otherwise provided in this Part, a decision or an order of the director under this Part is final and binding on the parties. As the security deposit was already dealt with in the previous decision, I find that this decision is final and binding and I dismiss the Tenants' claim for return of the security deposit. Although a fair amount of evidence was offered in relation to the end of the tenancy, I do not consider this evidence relevant to the Tenants' claim for compensation due to the presence of rats. As the previous decision is final and binding on the matter of how the tenancy ended and on the Landlord's entitlement to rents, this decision may only deal with the Tenants claim for compensation.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(5) of the Act provides that a landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement. Given the pest control evidence dated July 30, 2020 that sets out the presence of a large amount of rats under the unit, of rats having entered the furnace system, that the unit does not restrict the entry of rats into the unit, along with the Tenant's evidence of rats inside the unit and considering the Landlord's unsupported evidence of no rats at the onset of the tenancy, I find on a balance of probabilities that the Tenants have substantiated that a rat infestation existed at the onset of the tenancy. I also find on a balance of probabilities that the Landlord therefore breached its obligation to provide a unit suitable for occupation by the Tenants

at the onset of the tenancy. Although the Landlord responded immediately to the reports of rats by the Tenants on July 25, 2029, this does not relieve the Landlord of its obligations to provide suitable occupation from the outset of the tenancy. For these reasons I find that the Tenants are entitled to the compensation claimed of **\$2,250.00** as a reasonable sum for having paid full rent for unsuitable occupation from the onset of the tenancy to July 25, 2019. As the Landlord responded immediately upon the report by the Tenants of rats in the unit, I find on a balance of probabilities that the Tenants have not substantiated that the Landlord failed to act to remedy the problem causing the Tenants to move out of the unit. I therefore dismiss the claim for moving costs. As the Tenants' application has met with substantial success, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,350.00**.

#### Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$2,350.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: June 25, 2020

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Residential Tenancy Branch