



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the tenant: MNSD, MNDC, FF  
For the landlord: MND-S, MNR-S, FF

### **Introduction**

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenant applied on September 11, 2020, for:

- a return of her security deposit;
- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

The landlords applied on September 25, 2020, for:

- compensation for alleged damage to the rental unit by the tenant;
- a monetary order for unpaid rent;
- authority to apply the tenant's security deposit to any monetary award; and
- to recover the cost of the filing fee.

The listed parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

1. Is the tenant entitled to a return of her security deposit, other monetary compensation from the landlord and to recovery of the filing fee paid for this application?
2. Are the landlords entitled to permanently retain the tenant's security deposit, other monetary compensation, and to recovery of the filing fee paid for this application?

#### Background and Evidence

There was no written tenancy agreement. The undisputed evidence was that this tenancy began on or about August 1, 2020, monthly rent was \$1,100, and that the tenant paid a security deposit of \$600, which has been retained by the landlords.

The tenant submitted that the tenancy ended on September 5, 2020, the date she left the rental unit and never returned to live, and the landlord submitted she was not sure when the tenancy ended.

The parties indicated that the rental unit was a suite underneath the deck of the landlords' home, attached, but separated and not connected. The tenant described the rental unit as a micro suite, and testimony indicated it was a one room unit. The landlord said that the rental unit was furnished.

The testimony indicated that there was another rental unit next to this rental unit, rented to separate tenants, both sharing the backyard.

### **Tenant's application-**

The tenant's monetary claim is in the amount of \$2,027, comprised of her security deposit of \$600, the monthly rent for September 2020 of \$1,100, pet cremation costs of \$227, and the filing fee for her application of \$100.

### ***Security deposit –***

The tenant submitted that she provided the landlords with her written forwarding address on September 11, 2020, in an email to the landlord. The landlord has not returned any portion of her security deposit, according to the tenant. The tenant submitted a copy of the email.

The tenant submitted that there was not a move-in or move-out inspection of the rental unit nor a condition inspection report (CIR). The tenant submitted additionally that all her belongings were removed from the rental unit by September 10, 2020.

### ***Landlord's response –***

The landlord confirmed receiving the tenant's forwarding address by email on that date and that there was no move-in or move-out inspection or CIR.

### ***Monthly rent refund, September –***

The tenant submitted that on September 5, 2020, she and her boyfriend went out, and upon their return, discovered the landlords' dog inside the rental unit, door closed.

The tenant submitted that she then discovered her pet rabbit had been killed by the landlord's dog, who had been left unsupervised by the landlord, as she was out-of-town at that time.

The tenant submitted that her door was closed when she left, although not locked, and that the landlord's dog forced her way into the rental unit after seeing her rabbit through the window sitting on his perch. The tenant submitted that she started screaming when she saw her dead pet, which caused other people to come check on her.

The tenant submitted that she was unable to stay in the rental unit from that date forward, due to the trauma of seeing the remains of her pet rabbit, who was described as an emotional support animal.

The tenant submitted that the landlord's son most likely did not lock the gate leading to the yard, which allowed the landlord's dog to come into the rental unit.

The tenant described the rabbit as having been violently killed, with his neck snapped and head nearly decapitated.

The tenant submitted that she was unable to live in, or return to, the rental unit from September 5, 2020, due to the trauma of seeing her pet's body.

The tenant claimed that she is entitled to a refund of her monthly rent for September, as a result.

The tenant submitted that the landlord at first agreed to provide her three months' rent, then changed it to an agreement for one month's rent. The tenant submitted copies of emails from the landlord with this agreement.

*Landlord's response-*

The landlord submitted that she had been unsure of having a rabbit live on the premises and only allowed the tenant's pet if it was always supervised.

The landlord submitted that she was not sure if her dog killed the tenant's rabbit, as there are coyotes and raccoons known to be in the area.

The landlord submitted that she agreed to refund the September rent, until the tenant went door-to-door in the neighbourhood. The landlord said that she felt like the tenant was trying to extort money from her.

The landlord submitted she began to believe it was unfair to give the tenant back her monthly rent as the rabbit was left uncaged and the door was left open.

*Tenant's rebuttal –*

The tenant submitted that it is unrealistic to never leave the rental unit and denied that her pet was left unsupervised, as he was in his home.

The tenant said that the door had a problem and it was closed when she left. The tenant said that there was no proof that coyotes or raccoons had been in the rental unit and all she knew was that the landlord's dog was looking up at her when she returned.

***Cremation costs –***

The tenant submitted that the landlord should be responsible for the costs to cremate her pet rabbit, as it was her dog who killed her pet.

The tenant's additional relevant evidence included, but was not limited to, email and text message communication between the parties, incident photos, a cremation invoice, an animal control statement made regarding the pet rabbit's death, a signed witness statement from the tenant's boyfriend who was with the tenant at the time of the incident, and incident photos.

***Landlords' application -***

The landlords' total monetary claim listed in their application was \$1,580. The first claim was \$380, for alleged damages to the rental unit by the tenant and her pet, \$1,100 for loss of rent revenue for October 2020, and the filing fee of \$100.

***Damage claim –***

As the landlords did not submit a separate, detailed calculation of their monetary claim, I asked the landlord to provide that breakdown at the hearing. The landlord explained this claim was \$120 for two hours for a handyman's time to mud, sand, paint and replace baseboards, \$100 for an electrician, \$60 for curtains, mud and paint supplies for \$40, and a stove top replacement for \$60.

The landlord confirmed that she has not had a handyman or electrician do any work yet, due to the costs, but that she is entitled to these sums due to the damage by the tenant and her pet.

The landlord submitted that the tenant's rabbit chewed the baseboards, causing damage, and chewed and stained the curtains.

The landlord submitted that the tenant caused a crack in the stove top, which she noticed when a new tenant moved in, November 2020.

The landlord submitted that the tenant should be responsible for the electrician costs, due to the damage to the dimmer.

*Tenant's response –*

The tenant submitted that she agreed there was damage to the drywall and baseboard, but not sure if her rabbit caused the damage to those areas.

The tenant submitted that the landlord never contacted her about any damage after she vacated and denied that she damaged the stove top.

The tenant submitted that the light dimmer was working fine when she lived there, although she bought her own light bulbs for the socket.

*Loss of rent revenue, October –*

In support of this claim, the landlord submitted that the tenant left mid-month without any notice. The landlord submitted that the tenant never returned to clean the rental unit and was unsure of when the tenant actually vacated the rental unit, causing her to delay advertising for new tenants.

The landlord further submitted that it was difficult to find other tenants at this time of the year.

The landlord confirmed advertising the rental unit on Craigslist and on AirBnB, ultimately finding short term tenants for November and other tenants for December, on AirBnB.

*Tenant's response-*

The tenant submitted that she had all her belongings out by September 10, and that she and her mother hired cleaners to clean the rental unit.

The tenant submitted that the landlord had 20 days to find a new tenant for October and that she left the rental unit due to the breach of a material term by the landlord, which was depriving her of quiet enjoyment of the rental unit.

The tenant submitted that her pet was killed in a violent way, and she could no longer stay there.

The landlords' additional relevant documentary evidence included, but was not limited to, text message and email communication between the parties, character reference letters for her dog, and photographs of the rental unit.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### ***Tenants' application-***

#### *Security deposit -*

Under section 38(1) of the Act, within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either return a tenant's security deposit or file an application for dispute resolution claiming against the security deposit.

In the case before me, I find the evidence was that the tenancy ended on or about September 5, 2020, the last date the tenant lived in the rental unit and that the tenant provided the landlord with her forwarding address on September 11, 2020, by email. The landlord confirmed receipt of the email with the tenant's forwarding address, on that date. Therefore, the landlord had until September 26, 2020, to file an application for dispute resolution claiming against the tenant's security deposit. I find the landlords complied with their obligation by filing their application on September 25, 2020.

As the landlords have made an application claiming against the tenant's security deposit, I will reserve a decision on the return of the security deposit within this Decision.

*Monthly rent refund, September –*

Section 44 of the Act sets out how a tenancy ends. Under section 44(1)(f), a tenancy ends when the director orders that the tenancy is ended.

I have considered the evidence of the parties, and upon a balance of probabilities, I find the landlord's dog killed the tenant's pet rabbit. I find the landlord's assertion that a raccoon or coyote could have been responsible lacks credibility or believability, in light of the fact that her dog was in the rental unit when the tenant returned that day, with the door closed. This point was not in dispute. The landlord, in the written evidence, initially accepted responsibility at the time, and I saw no other evidence that the landlord mentioned raccoons or coyotes.

I also accept the fact the tenant was too emotionally traumatized by the sight of her nearly decapitated pet to resume living in the rental unit, from that day onward, as she would be reminded of that event by the continued presence of the landlord's dog.

Additionally, the evidence shows the landlord promised to provide the tenant with the monthly rent for September in acknowledgement of the pet rabbit's death and that the landlord failed to have her dog supervised that day.

Under section 44(1)(f) and 62(3), I therefore order that the tenancy ended on September 5, 2020, the day the tenant's pet rabbit was killed inside her rental unit.

I therefore find the tenant is entitled to the prorated rent from September 5<sup>th</sup> through September 30<sup>th</sup>, in the amount of **\$901.75** ( $\$1,100 \text{ monthly rent} \times 12 \text{ months} = \$13,200$  yearly rent  $\div$  by 366 leap year (2020) days = \$36.07 daily rate  $\times$  25 days = \$901.75).

The tenant is granted a monetary award in that amount.

*Cremation costs –*

The tenant has claimed costs for disposing of the remains of her pet rabbit. Although I have found that the landlord's dog was responsible for the death of the pet rabbit, an applicant can only recover damages for the direct costs of breaches of the Act, the



Residential Tenancy Regulations (Regulation) or the tenancy agreement in claims under Section 67 of the Act. Cremating an animal is a choice made by the tenant at the time.

I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for a choice made by the tenant.

I **dismiss** the tenant's claim for cremation costs.

### ***Landlords' application-***

#### *Damage claim –*

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

As to the landlord's claims against the tenant for damage to flooring, I find a critical component in establishing a claim for damage, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports.

Under sections 23(3) and 35(3) of the Act, a landlord **must** complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties **must** sign the report.

In the case before me, the landlord confirmed there was no move-in or move-out inspection or a condition inspection report.

I find the clear evidence is that the landlord failed in her requirement under the Act of conducting an inspection of the rental unit with the tenant and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged

damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the landlord's photographs taken at the end of the tenancy did not prove the tenant caused damage to the rental unit, as there were no corresponding photographs from the beginning of the tenancy.

Due to the above findings, I find the landlord submitted insufficient evidence to support their monetary claim against the tenant for damage and costs of repairing, and I **dismiss this claim, without leave to reapply.**

*Loss of rent revenue, October –*

As I have ordered that the tenancy ended on September 5, 2020, I find the landlord is not entitled to a loss of rent revenue for October 2020. **I therefore dismiss the landlord's claim for \$1,100, without leave to reapply.**

I likewise dismiss the landlords' request to recover the filing fee for their application.

### ***Both applications-***

As I have dismissed the landlords' application, which included a claim against the tenant's security deposit of \$600, I order the landlord to return the security deposit, forthwith.

I also grant the tenant recovery of her filing fee of \$100, as her application was successful.

### **Conclusion**

I issue a monetary order of \$1,601.75 in favour of the tenant as follows:

ITEM	AMOUNT
1. Security deposit	\$600.00
2. Prorated rent for September 2020	\$901.75
3. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,601.75</b>

The tenant is provided with a Monetary Order in the above terms and the landlords are ordered to pay the tenant this amount without delay. Should the landlords fail to comply

with the monetary order, it must be served on the landlords for enforcement. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlords are cautioned that costs of enforcement are subject to recovery from the landlords.

The landlords' application has been dismissed.

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 30, 2020

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Residential Tenancy Branch