



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing dealt with monetary cross applications. The landlords applied for compensation for unpaid or loss of rent and cleaning costs; and, authorization to retain the tenant's security deposit. The tenants applied for return of double the security deposit and compensation for damages or loss under the Act, regulations or tenancy agreement.

The hearing commenced on October 9, 2020 to deal with the landlord's Application for Dispute Resolution only. The parties' respective applications were ordered to be joined together and set to be heard at the same time on January 19, 2021. An Interim Decision was issued and should be read in conjunction with this decision.

At the reconvened hearing, all parties appeared. All parties were given the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

As reflected in the Interim Decision, I had authorized the landlords to submit further relevant evidence during the period of adjournment. I had not received any additional evidence from the landlords during the period of adjournment. At the reconvened hearing, the landlords confirmed that they had already submitted all of the evidence they intended to rely upon.

### **Issue(s) to be Decided**

1. Have the landlords established an entitlement to compensation for unpaid and/or loss of rent for September 2020 and cleaning costs, as claimed?
2. Have the tenants established an entitlement to return of a portion of rent they paid for August 2020?

3. Should the security deposit be doubled?
4. Disposition of the security deposit?
5. Award of filing fees.

### Background and Evidence

Pursuant to a written tenancy agreement, the tenants paid a security deposit of \$550.00 and were given possession of the rental unit starting on August 16, 2020 in exchange for payment of \$575.00 for the period of August 16 through 31, 2020. The tenants were required to start paying rent of \$1100.00 on September 1, 2020.

On August 18, 2020 the tenants informed the landlord that they had found another place to move to in September 2020 and requested an early release from the tenancy agreement. The tenant's new rental unit was available after the first week of September 2020 and the tenants were hoping for pro-rating of rent for September 2020. The landlords were not agreeable and required the tenants give them proper notice. The tenants complied and gave the landlords a written notice to end tenancy on August 18, 2020 with an effective date of September 30, 2020.

The landlord commenced advertising efforts for the rental unit right away. On August 19, 2020 the landlord sent a text message at 2:17 p.m. stating, in part:

Just letting you know I will showing the suite tomorrow at 2:30 and again on Saturday at 11:00. Let me know if either of these times don't work but if I sit here back then this is your 24hours notice for showing starting tomorrow. Thanks!!

The tenant responded stating the Act requires the notice be in writing on a piece of paper.

The landlord responded:

Actually a text message is just fine. But sure I will write it down and text a picture to you and leave a copy at the door 😊

The landlord wrote a notice of entry on a piece of paper and sent the tenant an image of it along with the following message:

This will be at your door as well.

Unfortunately you can't restrict showings and notice has been given to you by text without a response. Proof of text is all that's required. We have the right to enter after 24 hours for a showing from that point on.

I've been a landlord for over 15 years. This is really pretty straight forward. The sooner we rent it for oct 1 then sooner we don't need to disturb you. Thanks

Also just information as well that if you restrict access to the suite with reasonable notice for showings then you can be charged for rent for Oct 1st for not allowing us to show and rent the place. Thanks!

It's easier to just allow access when we need to show as we are giving plenty of notice. However this again is your choice. Thanks

Just needed it in writing 'tis

'Tis

Thanks

The landlords also testified that they had orally told the tenants about the showing; however, the landlords acknowledged that they did not get oral consent to enter from the tenant.

The landlord testified that the tenants were not sleeping at the rental unit although they had other possessions in the rental unit. The landlord testified that the tenant's parents came to the rental unit the tenant's parents said the landlord should not be entering.

On August 20, 2020 the landlord proceeded to enter the rental unit and was performing a virtual showing with a prospective tenant. The tenant came to the rental unit and an altercation took place, resulting in the police being called.

The landlord testified that the tenant became irate when he came in the rental unit while she was performing the virtual showing and he began to yell and swear at her for being in the rental unit. The tenant testified that he told the landlord she could not be in the rental unit and the landlord became mad at him.

The landlord called her husband while he was working and he called the police. The landlord returned to her living unit upstairs and her husband came home. When the police attended the police spoke to the landlords and tenant separately. The landlord told the police that the tenant was no longer welcome on the property. The police officer conveyed this message to the tenant.

In an audio recording provided by the tenants as evidence, when the tenant's parents came to the property after the altercation the landlords instructed them to have the tenant's possessions removed from the property as they were going to change the locks. The tenants' possessions were removed from the property on the same day and the keys to the rental unit were left for the landlords outside their door on August 20, 2020. A letter was left providing the tenant's forwarding address dated August 20, 2020. The tenants did not authorize the landlords to retain their security deposit tin writing.

The landlords testified that despite their efforts to re-rent the property immediately after the tenants left they did not rent it until October 1, 2020 and that was on a short term basis. The landlords seek to hold the tenants responsible for unpaid and/or loss of rent for September 2020. The landlords did not provide documentation showing their advertising efforts or the start of the subsequent tenancy.

The tenants were not agreeable to compensating the landlord for the unpaid and/or loss of rent for September 2020 as they were of the position the landlords unlawfully evicted them and the tenants seek a refund of \$550.00 of the \$575.00 in rent they paid for August 2020. However, during the hearing, the tenant stated that a fair resolution to

this dispute would be for return of the security deposit to the tenants. The landlords maintained they are entitled to recover unpaid rent for September 2020.

In addition to recovery of unpaid rent, the landlords claimed \$75.00 for cleaning. The landlords provided a condition inspection report indicating further cleaning was required but they did not provide any photographs or a cleaning invoice. The landlord testified that they charged the industry standard of a “flat fee” of \$75.00 for cleaning because the landlord did clean in the bathroom and the tenants left garbage and recycling outside.

The tenants had provided numerous photographs of the rental unit purportedly taken upon moving out. The tenants also provided a text message from the landlord that included the following statement by the landlord on August 20, 2020:

I got the keys and letter you left at the door.  
I took a quick look in the suite and all looks good. Thank you  
I will complete the move out report to reflect the condition of the suite with no damage or deductions to be made.

The landlords proceeded to file an Application for Dispute Resolution make a claim against the security deposit for unpaid rent on September 2, 2020. The tenants requested return of double security deposit.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the claims before me.

### **Landlord’s claim for unpaid rent and tenant’s claim for refund of rent**

Section 44 of the Act lists the different ways a tenancy ends, as provided below:

**44** (1)A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant’s notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

It would appear that on August 18, 2020 there was an attempt by the tenants to end the tenancy early by seeking mutual agreement but that was rejected by the landlords. As such, I find there was not mutual agreement to end tenancy reached on August 18, 2020.

The tenants gave the landlords a written notice to end tenancy, in writing, on August 18, 2020 with an effective date of September 30, 2020 and I find that notice meets the requirements of section 45(1) of the Act. As such, I find the tenants complied with the notice to end tenancy requirements of the Act.

The crux of the dispute arose when the landlords failed to give the tenants proper notice to enter the rental unit and the landlord proceeded to enter the unit and then an altercation occurred on August 20, 2020. I find the landlords failed to give proper notice to enter the rental unit for the following reasons.

Section 29 of the Act provides for the ways a landlord may legal enter a rental unit. The landlord may obtain the tenant's consent to enter, orally, at the time of entry. Consent must be given by the tenant and silence does not constitute to consent. If a landlord does not obtain the tenant's oral consent the landlord's recourse is to give the tenant a

proper written notice to enter with 24 hours of advance notice. Text messaging is not one of the permissible ways to serve a notice under section 88 of the Act. As such, I find the landlord's belief that it is "fine" to give notice by text message is incorrect. I also find it ironic that the landlords required proper written notice to end tenancy from the tenants but when the tenants requested proper written notice of entry the landlord's response was rather resistant and indignant. Nevertheless, the landlord did post a written notice of entry on the rental unit door on August 19, 2020; however, she did not allow sufficient time for the tenants to receive the notice of entry, especially considering the landlord was of the position the tenants were not even sleeping at the rental unit yet. Section 90 of the Act deems a person to have received a document posted to the door three days after posting. Accordingly, to comply with the 24 hours of advance written notice requirement and allow for three days for the tenants to receive the notice, the landlords should have ensured the showing was four days after posting the notice of entry. Therefore, I find the landlords provided insufficient notice of entry and were not in a legal position to enter the rental unit.

In entering the rental unit, the landlords breached section 28 of the Act which provides that a tenant is entitled to quiet enjoyment of the rental unit, including reasonable privacy and exclusive possession of the rental unit subject only to the landlord's restricted right to enter under section 29. Section 28 provides as follows:

**Protection of tenant's right to quiet enjoyment**

**28** 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.

[My emphasis underlined]

When the tenant found the landlord in the rental unit on August 20, 2020, I heard the tenant was mad at the landlord for entering and the landlord was mad at the tenant for trying to deny her entry. I find it likely that both parties were mad at each other considering the landlord called the police and the landlord had the belief, albeit

mistaken, that she had a right to enter the rental unit. Therefore, I find it likely both parties acted badly and out of anger.

When the police attended the property, it was undisputed that the landlord told the police the tenant was no longer welcome on the property and this was conveyed to the tenant. The landlords also conveyed this same message to the tenant's parents and the landlords informed the tenant's parents that they would be changing the locks, which is not permissible under the Act. I also heard in the audio recording that the landlords told the tenant's parents to leave the property as well as they were not welcome, which is a violation of the tenant's right to have guests under section 30(1) of the Act.

For the landlords to legally end the tenancy due to tenant's conduct, the landlords would have to serve the tenants with the appropriate notice to end tenancy or make an Application for Dispute Resolution seeking an early end of tenancy and upon conclusion of a hearing the landlords may obtain an Order of Possession; however, they did not go this route because they did not have to since the tenants vacated the rental unit on August 20, 2020 in keeping with the landlords' wishes. Therefore, I find the tenancy ended on August 20, 2020 when the rental unit was vacated, in keeping with section 44(1)(d) of the Act.

I find the landlord's position, of intending to lock the tenants out of the rental unit but also require the tenants to pay rent for September 2020, which would entitle the tenants to occupancy of the rental unit until the end of September 2020, to be conflicting and contradictory. Since the tenants vacated the rental unit in keeping with the landlords' wishes to have them removed from the property immediately and without having to evict the tenants and file for an Order of Possession, I find the landlords not entitled to compensation for loss of rent for September 2020. Therefore, I dismiss the landlord's claim for unpaid and/or loss of rent for September 2020.

As for the tenant's request for recovery of the rent they paid for August 20 – 31, 2020, I deny that request as well. I am of the view that the parties were in conflict and the tenant was partly responsible for the conflict by his yelling and swearing at the landlord on August 20, 2020 that resulted in the police being called. As I informed the tenants during the hearing, a tenant cannot be evicted by a police officer and the landlord's statements to the tenant's parents to leave are not in themselves enough to legally end a tenancy. As such, I am of the view the tenants vacated the rental unit on their own volition. I am also of the view that to award the tenants recovery of rent they paid for



the latter days in August 2020 would reward the tenant for his bad behaviour. Therefore, I dismiss the tenants' claim for recovery of rent paid for August 2020.

In light of the above, I deny the requests of each party for recovery of rent from the other and I find it more appropriate that each party absorb their own losses given their poor conduct and breaches of the Act.

### **Landlord's claim for cleaning**

Section 37 of the Act requires that a tenant leave the rental unit "reasonably clean" at the end of the tenancy. I was provided opposing evidence as to the condition of the rental unit at the end of the tenancy. The landlord testified that additional cleaning was required and the condition inspection report, prepared without the tenants present, supports that; however, the landlord's text message of August 20, 2020 contradicts the landlords' position, as do the tenant's photographs. I find that in the absence of further evidence, such as photographs from the landlord, I am unsatisfied that the landlords incurred a loss of \$75.00 for cleaning and I dismiss this claim.

### **Tenant's claim for return of double security deposit**

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, I have found that the tenancy ended on August 20, 2020. This is also the date the tenants provided their forwarding address in writing. As such, I find the landlords had until September 4, 2020 to either refund the security deposit, get the tenant's written consent to retain it, or file an Application for Dispute Resolution to make a claim against it. The landlord's made a claim against the tenant's security deposit in filing an Application for Dispute Resolution on September 2, 2020. As such, I find the landlords complied with the requirements of section 38(1) and I find the tenants are not entitled to doubling of the security deposit.

As for disposition of the single amount of the security deposit, since I have dismissed the landlords' claims, I order its return to the tenants, in the single amount of \$550.00.

### **Filing fees**

I make no award for recovery of filing fees to either party as I am of the view that both parties contributed to these disputes and I have dismissed both parties' claims for compensation.

### **Monetary Order**

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit & Set-Off*, I provide the tenants with a Monetary Order in the amount of \$550.00 to ensure the landlords refund the security deposit to the tenants.

### Conclusion

The parties' respective claims for compensation against the other party are dismissed without leave to reapply.

The landlords are ordered to return the tenants' security deposit to them, in the single amount of \$550.00 without delay. The tenants are provided a Monetary Order in the amount of \$550.00 to ensure payment is made.

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: January 21, 2021

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Residential Tenancy Branch