



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL-S, FFL**  
                             **MNSDB-DR, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the "Act").

The landlord applied for:

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- An order for the return of a security deposit or pet damage deposit by direct request pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented at the hearing by an agent, TP ("landlord"). Both of the tenants attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenants' Application for Dispute Resolution and the tenants acknowledged service of the landlord's Application for Dispute Resolution. Neither party raised any issues with timely service of documents.

### Preliminary Issue

The tenants named a party who does not appear on the tenancy agreement as the landlord. The landlord's agent confirmed the landlord named on the tenancy agreement is his mother and she also uses the anglicized name as used by the tenants in their

Application for Dispute Resolution. Pursuant to section 64(3) of the Act, I amended the tenants' application to reflect both versions of the landlord's name.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Should the tenants' security deposit and pet damage deposit be returned?

Whose filing fee should be recovered?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement signed August 20, 2020 was provided as evidence by the landlord. This fixed one-year tenancy began on September 1, 2020, set to end on August 31, 2021. Rent was set at \$1,400.00 per month payable on the first day of the month. A security deposit and a pet damage deposit of \$700.00 each was collected by the landlord which he continues to hold.

The tenant SD testified that no condition inspection report was done with the tenants at the commencement of the tenancy. The tenant testified that the landlord advertised the rental unit as a 2 bedroom unit, but upon arrival she discovered it was actually a one bedroom plus den. No copy of the advertisement was provided as evidence by the tenant. After moving in, the tenant described the basement unit as not in great condition and not located in a great part of town. The upstairs tenants were also noisy. She is a student and the basement suite was not a good environment for her to study. Some time around the middle of September, she sent the landlord's translator a text telling the translator that she wanted to be out by the end of the month. Included in the text is the tenant SD's forwarding address. The landlord acknowledges receiving the text.

The tenant testified that she took the basement unit because she had no other option at the time. She would have been left homeless otherwise. She would take the rental unit and figure out a more suitable one later on.

The co-tenant JT testified that she moved out on September 27<sup>th</sup>. She provided her forwarding address to the landlord by text on October 21<sup>st</sup>, to the landlord's translator. The landlord does not dispute receiving JT's forwarding address.

The tenants submit that the rental unit was left in better shape than it was when they moved in. They were only in the unit for a couple of weeks and submit that their deposits should be returned to them.

The landlord gave the following testimony. Originally, he was going to return the tenant's pet damage deposit and keep the security deposit but when the tenant SD sent a text saying she's entitled to have both returned, he disagreed. He states he understands if the tenants were not comfortable in breaking the lease but there should be a penalty for them breaking it. The tenants need to give him a full month's notice.

The landlord does not allege any damage done to the rental unit caused by these tenants. Since the tenants moved out, the landlord has not rented the basement suite out. He finds it difficult to be a landlord and researched the cost to hire a property management company to assist. It is hard for him to manage this property which is located in a different city from him.

### Analysis

Section 45(2) of the *Act* says

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenancy agreement shows the parties contracted into a fixed term tenancy on September 1, 2020, set to end on August 31, 2021. The tenant SD ended the tenancy by giving the landlord a notice to end tenancy by text message approximately 2 weeks into the start of the one-year fixed term tenancy, in mid-September 2020.

The tenants breached section 45(2)(b) of the *Act* by giving a notice to end tenancy that was earlier than the date specified in the tenancy agreement as the end of the tenancy. The legislation is clear and unambiguous. Neither party may end a fixed term tenancy before the end date specified in the tenancy agreement.

The parties signed the tenancy agreement on August 20<sup>th</sup>, at least 10 days before the tenancy was to begin. During this period, the tenants had the opportunity to inspect the unit and determine whether it would suit their needs. I find any reasonable person would do so before entering into a legally binding year long contract with a landlord. I am not convinced that the tenant's discovery that it didn't suit her needs to be a satisfactory reason for ending the tenancy. The tenants' breach of section 45(2)(b) of the *Act* has consequences.

Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] states:

*Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:*

- 1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;*
- 2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.*

....

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

Although the *Act* allows the landlord to claim for damages for loss of rent for the remainder of the term of the tenancy, the landlord only seeks compensation of one month's rent. I find fundamental breach of the tenancy agreement by the tenants justifies the single month's rent the landlord seeks. In accordance with section 67 of the *Act*, I award the landlord a monetary order for \$1,400.00.

The landlord also seeks compensation of \$700.00 for a property management company to take over management of the rental unit. The landlord testified he has not rented out the property subsequent to the tenants vacating it and as such the landlord has not suffered any financial loss in hiring a property manager. This portion of the landlord's claim is dismissed without leave to reapply.

The tenancy ended on September 30, 2020 and the landlord filed his Application for Dispute Resolution seeking to retain the deposits on October 14, 2020. Section 38 of the *Act* states that a landlord must either make an Application for Dispute Resolution claiming against the security deposit or return the security deposit within 15 days after the date the tenancy ends or the date the landlord receives the tenant's forwarding address. I find that the landlord filed his Application for Dispute Resolution within the required timelines.

The landlord continues to hold the tenants' security deposit and pet damage deposit totalling \$1,400.00. In accordance with the offsetting provisions set out in section 72 of the *Act*, I order the landlord to retain the tenants' security deposit and pet damage deposit in the sum of \$1,400.00.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, the filing fee will not be recovered by either party.

### Conclusion

The landlord is awarded a monetary order in the amount of \$1,400.00. However, in accordance with the offsetting provisions of section 72 of the *Act*, the tenants' security deposit and pet damage deposit are to be retained in full satisfaction of the monetary order.

The tenants' application for a return of the deposits is dismissed without leave to reapply.

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: February 08, 2021

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Residential Tenancy Branch