



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

On November 6, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, and for the return of a security deposit and or pet damage deposit.

The matter was set for a conference call hearing. The Tenant attended the teleconference hearing; however, the Landlord did not. The Landlord’s legal counsel attended the hearing and made submissions on behalf of the Landlord.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant asked to amend his application to include the unit number of the rental address. The application has been amended accordingly.

### Issues to be Decided

- Is the Tenant entitled to money owed or other compensation for damage or loss?
- Is the Tenant entitled to the return of a security deposit?

### Background and Evidence

The Tenant and Landlord's counsel agreed that the tenancy began on November 15, 2019 as a one-year fixed term tenancy. Rent in the amount of \$3,200.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,600.00 and a pet damage deposit of \$1,600.00. The tenancy ended on October 25, 2020 when the Tenant vacated the rental unit.

The Tenant is seeking compensation from the Landlord for the following items:

Move Out Compensation	\$1,600.00
Elevator Repair Charge	\$714.00
Pro rated Rent	\$270.94
Security Deposit / Pet Damage Deposit	\$3,200.00

### Move Out Compensation

The Tenant provided the following testimony: The Landlord approached him and informed him that she would be selling the rental property in late September. The Landlord's realtor told him it would be beneficial if he moved out of the rental unit. An agreement was reached were the Tenant would receive compensation of \$1,600.00 if he cooperated and moved out of the rental unit by November 15, 2020. The Tenant testified that the Landlord required him to leave the rental unit during the realtor showings, and that he did leave the unit on those occasions.

The Tenant stated that he gave up \$3,200.00 in compensation that he could have received if the Landlord ended the tenancy by issuing him a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant referred to an email from the Landlord dated September 19, 2020 stating that the Landlord is planning on listing the condo for sale. The Tenant replied to the Landlord on September 29, 2020 proposing that the Tenant move out of the rental unit in mid October or early November if the Landlord agreed to pay 1 month rent in compensation. The Landlord replied via email on September 30, 2020 with a counter proposal.

In an October 1, 2020 email to the Tenant, the Landlord writes they are inclined to continue the tenancy as is and provide the Tenant with the required notice if or when an interested buyer wants to purchase the home and reside in it. The Landlord writes if

you decide to leave on your own accord at any point prior to me providing you with the required two-month notice, I will not ask for any notice from you and will still pay you \$800.00. Should you be able to secure another agreement on or before November 15, I would consider paying \$1,600.00. These again are contingent on you leaving the condo in relatively the same condition as when you moved in and remaining cooperative with us and our realtor for the shoot and any future scheduled openings or showings.

The Tenant testified that he found a new place to live and entered into a new tenancy agreement on October 12, 2020.

On October 20, 2020 the Tenant sent the Landlord an email that he is moving out on October 25, 2020. The Tenant testified that the Landlord did not pay him compensation of \$1,600.00. On October 20, 2020 the Landlord replied: Thank you for your formal notice to vacate and the Landlord scheduled a move out inspection for October 25, 2020.

In reply, the Landlord's counsel submitted that the relationship between the Landlord and Tenant broke down. Counsel submitted that the Landlord informed the Tenant to remain in the unit unless he is leaving on his own volition. Landlord's counsel referred to paragraph 17 of their documentary evidence which references the October 1, 2020 email the Landlord sent to the Tenant.

The Landlord's counsel submitted that the Tenant was compensated for when he left the rental unit during showings. The Landlord's counsel referred to paragraph 27 of their documentary evidence which indicates the Landlord credited \$141.94 to the Tenant for vacating the unit.

The Landlord's counsel referred to exhibit K, a text message exchange between the Landlord and Tenant where the Landlord states the Tenant is not being cooperative and the \$1,600.00 offer is void. The Parties continued to exchange text messages on proposals for terms on a mutual agreement to end tenancy.

The Tenant replied that even after the Landlord said the agreement was void, she still said we were cooperative. The Tenant stated that the Landlord knew the Tenants had already paid a deposit for their new place on October 12, 2020.

#### Elevator Repair

The Tenant testified that the Landlord is attempting to hold him financially responsible for the cost of an elevator service call at the rental property.

The Tenant stated that the Landlord withheld compensation that he feels the Landlord is obligated to pay him.

#### Pro-Rated Rent

The Tenant is seeking compensation for leaving the rental unit to accommodate showings on October 6, 17 and 18. The Tenant testified that he left the rental unit for two hours on each occasion. The Tenant is seeking a full days pro-rated rent for each occasion.

When asked to explain why he is seeking a full days rent, the Tenant was not sure why he claimed that amount.

In response, the Landlord's counsel submitted that there is no requirement under the Act for the Tenant to leave the unit during a showing. Counsel submitted that the Tenants did not raise an objection when they were asked to leave for showings.

#### Security Deposit and Pet Damage Deposit

The Tenant testified that he provided his forwarding address in writing to the Landlord on October 25, 2020. He testified that the Landlord returned \$3,247.00 to him within 15 days of the end of tenancy; however, that the Landlord withheld \$714.00 from his security deposit and pet damage deposit.

The Landlord's counsel submitted that the security deposit and pet damage deposit was returned to the Tenant on November 6, 2020.

The Landlord's counsel provided a copy of a November 5, 2020 email sent to the Tenant which provides that the Landlord received an emergency elevator repair of \$714.00 which she is deducting from an amount of pro-rated rent and compensation for showings owing to the Tenant. The email indicates that Landlord is returning \$3,000.00 of the deposits in full via e-transfer and the remaining balance 24 hours later. In an email dated November 6, 2020 the Landlord again indicates the Tenant will receive the balance of the deposits and an additional \$47.32 remaining after deducting the cost of an elevator repair from an amount of pro-rated rent and compensation for showings owing to the Tenant.

### Analysis

Based on the evidence before me, the testimony of the Tenant and submissions by Landlord's counsel, and on a balance of probabilities, I make the following findings:

I have considered whether or not the Tenant is entitled to compensation from the Landlord for vacating the rental unit prior to the end of the fixed term agreement.

I find that the tenancy was for a one-year fixed term and could not legally end prior to November 15, 2021, unless by mutual agreement. I have considered whether or not the proposals made by the parties as provided in the emails exchanged on September 29, 2020 and October 1, 2020 meet the requirements of a binding agreement. I find that the proposal for compensation of 1 months' rent included terms which were conditional, and the terms were not conclusively agreed upon by both parties. This specific proposal was later stated to be void by the Landlord. I find that this was not a binding agreement. I find that the Landlord does not owe the Tenant compensation in the amount of \$1,600.00.

I find that on October 1, 2020 after the Landlord informed the Tenant that they are inclined to continue the tenancy as is and provide the Tenant with the required notice, the Landlord then stated if you decide to leave on your own accord at any point prior to me providing you with the required two-month notice, I will not ask for any notice from you and will still pay you \$800.00. I find this offer from the Landlord was not conditional, was not revoked by the Landlord, and is enforceable.

I find that the Tenant relied on the Landlord's offer, secured a new tenancy, and gave written notice to the Landlord that he was ending the fixed term tenancy early. I find that ending the tenancy early was of benefit to both the Landlord and Tenant as it gave both parties some certainty. I find that the tenancy ended on October 25, 2020 when the Tenant vacated the rental unit and I find this is not a breach of the fixed term tenancy agreement. I find that the Tenant is entitled to compensation of \$800.00 offered by the Landlord for leaving on his own accord, and I also find that the Tenant is entitled to \$619.32 which is six days of pro-rated rent for the remainder of October 2020. ( $\$3,200 / 31 = \$103.22 \times 6 \text{ days} = \$619.32$ ). I find that a prorated return of rent is required because the Landlord permitted the Tenant to end the tenancy at any point, without any notice.

I award the Tenant compensation in the amount of \$1,419.32.

### Pro-Rated Rent

The Tenant's request to recover three days of rent from the Landlord due to vacating the unit during showings is dismissed without leave to reapply. The Act does not require a Tenant to vacate for this reason and does not entitle a Tenant to compensation for this reason. The Landlord is under no legal obligation to compensate the Tenant for leaving the rental unit during showings.

#### Elevator Repair

The Tenant submitted that the Landlord has unilaterally withheld compensation that was due to him.

I find that the Landlord did not have the Tenant's agreement to withhold an amount for a service charge/ obligation of the Tenant and the Landlord did not apply for dispute resolution to have an Arbitrator determine whether or not she is legally entitled to recover an amount against the Tenant.

I note that the Landlord has submitted an application for dispute resolution and a hearing is scheduled for July 2, 2021. The Landlord is at liberty to amend her application to include a claim for costs surrounding a service call for an elevator repair.

#### Security Deposit and Pet Damage Deposit

I find that the Tenancy ended on October 25, 2020, and the Tenant provide his forwarding address to the Landlord on that date.

I accept the Landlord's evidence that the security deposit and pet damage deposit was returned to the Tenant in full within 15 days from the end of the tenancy. I find that the Tenant received payment of \$3,247.32 from the Landlord. I find that the Landlord returned the deposits in accordance with section 38 of the Act.

The Tenant's claim for the return of a security deposit and pet damage deposit is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was partly successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I find that the Tenant has established a total monetary claim of \$1,519.32 comprised of \$800.00 for vacating early; \$619.32 for prorated October 2020 rent; and the \$100.00 fee paid by the Tenant for this hearing. After setting off the extra payment of \$47.32 received by the Tenant towards the award of \$1,519.32. I find that the Tenant is entitled to a monetary order in the amount of \$1,472.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Tenant ended the fixed term tenancy early with the consent of the Landlord which also included an offer of monetary compensation to the Tenant. The Tenant has established a monetary award in the amount of \$1,472.00.

I grant the Tenant a monetary order in the amount of \$1,472.00.

The Landlord is at liberty to amend her application to include a claim for costs surrounding a service call for an elevator repair scheduled to be heard on July 2, 2021.

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: March 3, 2021

---

Residential Tenancy Branch