



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on July 20, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. The Landlord applied for an order for substituted service on March 3, 2021, and was granted permission to serve the Tenants at their respective email addresses in a substituted service decision issued on March 9, 2021.

Subsequently, the Landlord stated that he sent all his evidence and the Notice of Dispute Resolution Proceeding to each of the Tenants to the email addresses listed on the substituted service order on March 17, 2021. Pursuant to the Orders made in the substituted decision, the Tenants are deemed served with the documents 3 days after they were emailed, on March 20, 2021. I find the Landlord sufficiently served the Tenants each with the required documents, and his evidence.

The Tenants failed to attend the hearing to present their evidence, and to demonstrate that any evidence they uploaded was served on the Landlord. Rule 7.4 states the following:

#### **7.4 Evidence must be presented**

*Evidence must be presented by the party who submitted it, or by the party's agent.*

*If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.*

I find the Tenants' documentary evidence is not admissible and will not be considered, as it was not presented, and there is no evidence it was sufficiently served to the applicant. That being said, I note the Tenants uploaded a written submission, asking for an adjournment. I find this written submission is not evidence, and I will consider the Tenant's request for adjournment via their attached written submission. This request will be addressed below.

#### *Preliminary Matters - Adjournment*

The Tenants wrote a letter stating that they want an adjournment in order to have a fair opportunity to be heard, given the complexity of the case. One of the Tenants stated that she has a "significant medical condition" and although they have paperwork to support it, they do not trust the Landlord with this documentation, which is why it wasn't submitted to the RTB. The other Tenant also stated that he has a medical appointment on the day of this hearing, which he has been waiting for since January of this year. This Tenant stated that his wife will be attending the medical appointment with him because he is having a procedure done.

The Tenants also stated that they need extra time to find a lawyer to help them.

Rule of Procedure 7.9 provides guidance when considering applications to adjourn a hearing. It states:

*Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*

- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

[Reproduced as written.]

The Landlord stated that the Tenants owe him a significant amount of money, which is causing him financial distress the longer it goes on for. As such, the Landlord wished to have the matter heard today, rather than adjourn the matter. I have considered the positions of both parties, and I note the Landlord filed this application in early March 2021, and he served the Tenants both with this Notice of Dispute Resolution 4 months ago. Although the Tenants stated they wanted an adjournment to find legal counsel, I am not satisfied they took sufficient steps and measures to obtain representation, either by an agent, a friend, or legal counsel. It is not clear what the Tenants did to try to remedy this issue, given they have known about this hearing for 4 months. It appears this issue is largely exacerbated due to poor planning.

Furthermore, one of the Tenants stated she has a medical condition. However, it is not sufficiently clear how this medical condition would have been such that she was unable to attend the hearing and proceed today, or why it would make it impossible for her to have someone attend on her behalf. The other Tenant also speaks of a medical procedure he has on the day of this hearing, and both he and his wife will be at that appointment, and unable to attend the hearing. I have considered this submission, and the different components of the request. However, if the Tenant had known about the medical appointment and procedure since January, and had known about the hearing since March, I am unclear as to why either of the Tenants would have been unable to appoint an agent, or hire legal counsel, to assist with this hearing, many months ago. There is no evidence that the Tenant's did any proactive planning. The Tenants only uploaded this request for an adjournment 6 days before the hearing, with little to no supporting evidence.

I declined to adjourn the hearing, given the potential prejudice to the Landlord, and the fact that there appears to be an element of poor planning and neglect on the Tenants' part. The hearing proceeded on July 20, 2021 at 1:30 pm.

### **7.3 Consequences of not attending the hearing**

*If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

The Tenants also requested that this proceeding be joined and heard with their application for monetary compensation. However, this request was not submitted in time, and any such request must be made at least 2 weeks before the hearing. That matter has not been crossed with this proceeding, and will not be addressed further. It is a separate matter, with a separate application, and a separate hearing date (yet to be determined as of the time of this decision).

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

#### Background and Evidence

The Landlord stated that the Tenants moved into the rental unit around December 6, 2019, and monthly rent was set at \$1,800.00, due on the 6<sup>th</sup> day of each month. The Landlord stated that he holds a security deposit in the amount of \$450.00.

The Landlord stated that the Tenants had difficulty paying rent during 2020, and ultimately had to move back to Ontario for financial reasons. The Landlord stated that the Tenants provided written notice that they would be vacating the suite on December 7, 2020, and this Notice was to take effect January 6, 2021. The Landlord stated that the Tenants provided a supplemental Notice to End Tenancy on December 18, 2020, whereby they said they wanted to extend their notice and end the tenancy on February 6, 2021, rather than January to give extra time to move out. A copy of these letters/emails were provided into evidence.

The Landlord stated that the Tenants subsequently moved out, without telling him, sometime between January 6 - 11, 2021. The Landlord stated he became aware that

the Tenants had moved out when the strata sent him an infraction notice and fine for an unscheduled move-out. The Landlord stated that he panicked at this point because the Tenants owed thousands of dollars in unpaid rent.

The Landlord provided a worksheet which specifies that he is seeking the following numbered items on this application. I have re-ordered them for efficiency:

- 1) \$131.25 – Replacement Lock and Key for front door to unit
- 4) \$200.00 – Key Fob for lobby door

The Landlord stated that the Tenants left in early January 2021, and took the mechanical front door keys, and both key fobs (to enter the building) with them. The Landlord stated that he paid \$131.25 to hire a locksmith to come and re-key the deadbolt on the front door of the rental unit. A receipt was provided into evidence. The Landlord also stated that he had to pay strata \$100.00 x 2, plus tax for the two key fobs the Tenants failed to return when they vacated. The Landlord stated that all these keys were provided to them at the start of the tenancy, and were never sent back.

- 2) \$100.00 – Unscheduled move-out fee – Strata Fine

The Landlord stated that the Tenants knew they had to book a move-out time with the strata, but they failed to do so and incurred a \$100.00 fine. The Landlord provided a copy of the strata letter, which specifies this fine, and why it was issued. The Landlord stated that he has paid this fine, and wants the Tenants to be liable for it.

- 3) \$6,100.00 – Unpaid Rent

The Landlord explained that the Tenants had difficulty paying rent for several months in 2020, and some months the Tenants only made partial payments. The Landlord provided a detailed spreadsheet speaking to the relevant rent payments and accruals.

Date	Total Owed	Total Paid	Description	Reason
Dec. 6/2019	\$1,750.00	\$1,750.00	Rent Payment	\$50 Discount given for replacements
Jan. 8/2020	\$1,800.00	\$1,800.00	Rent Payment	
Feb. 8/2020	\$1,800.00	\$1,800.00	Rent Payment	
Mar.8/2020	\$1,200.00	\$1,200.00	Rent Payment	\$600 Discount given as compensation for dealing with a difficult neighbour
April.8/2020	\$1,300.00	\$0.00	Rent Payment	Landlord credited renters \$200.00, rent subsidy of \$300 (Covid)

May.8/2020	\$1,300.00	\$0.00	Rent Payment	Landlord credited renters \$200.00, rent subsidy of \$300 (Covid)
June. 8/2020	\$1,300.00	\$0.00	Rent Payment	Landlord credited renters \$200.00, rent subsidy of \$300 (Covid)
July.8/2020	\$1,500.00	\$1,000.00	Rent Payment	Rent Subsidy received of \$300 (Covid)
Aug.8/2020	\$1,500.00	\$1,600.00	Rent Payment	Rent Subsidy received of \$300 (Covid)
Sept. 8/2020	\$1,800.00	\$1,800.00	Rent Payment	
Oct. 8/2020	\$1,800.00	\$1,800.00	Rent Payment	
Nov. 8/2020	\$1,800.00	\$1,800.00	Rent Payment	
Dec. 8/2020	\$1,800.00	\$1,800.00	Rent Payment	
Jan. 8/2021	\$1,800.00	\$0.00	Rent Payment	Tenants had agreed to stay until Feb. 6th but abandoned unit on Jan. 6th
	\$22,900.00	\$16,800.00		
	<b>Amount Outstanding</b>	<b>\$6,100.00</b>		

The Landlord explained that he tried numerous times to negotiate with the Tenants about what was a reasonable amount for them to pay, but no agreement was ever reached, in writing. The Landlord stated that without an agreement, signed by both parties, with respect to the overall rent owing being different than above, the Tenants should have to pay this amount in full. The Landlord stated that since he found out part way through January, through his strata, that the Tenants vacated the unit, he was unable to re-rent the unit for January, which is why he is seeking that month as well.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on all of the above, the undisputed evidence and testimony presented by the Landlord, and on a balance of probabilities, I find the evidence before me sufficiently demonstrates that the Tenants are liable for the Landlord's costs to replace the front door lock/key, and the replacement cost for the two fobs. I accept the undisputed

testimony and evidence that the Tenants were given these keys at the start of the tenancy, and failed to return them at the end of the tenancy. The key and fob replacement costs are reasonable, and supported by the evidence.

Further, I accept that the Tenants failed to sufficiently schedule the move-out, and caused the Landlord to incur a \$100.00 fine for moving, without notice. I find the Tenants are liable for this item, in full.

With respect to the unpaid rent, I accept the Landlord's undisputed evidence and testimony, including the detailed spreadsheet provided into evidence. I acknowledge there have been discussions between the parties about what amount of rent would be accepted by the Landlord as a settlement for what is owed. However, there is insufficient evidence that any formal agreement was reached, and signed by the parties. I find the detailed spreadsheet and explanation from the Landlord was compelling and clear. I find it more likely than not that the Tenants owe \$6,100.00 in unpaid rent, as claimed by the Landlord. I accept that the payments were as specified by the Landlord, and that with the Tenants' sudden departure in January, that they should be liable for January rent, in full, particularly without a formal signed agreement showing otherwise.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

<b>Item</b>	<b>Amount</b>
Lock Re-keying	\$131.25
Bylaw move-out fine	\$100.00
Unpaid Rent	\$6,100.00
Key Fob	\$200.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$6,631.25
LESS: Security Deposit	\$450.00
<b>Total Amount</b>	<b>\$6,181.25</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$6,181.25**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: July 21, 2021

---

Residential Tenancy Branch