



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenants: CNR MNDCT RR FFT  
For the landlord: MNRL MNDCL FFL

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) from both parties seeking remedy under the *Residential Tenancy Act* (Act).

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), for a monetary order for \$6,756.26 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double their security deposit, for a rent reduction and for the filing fee.

The landlord applied for a monetary order of \$2,011.58 for unpaid rent or utilities, for compensation for damage or loss under the Act, regulation or tenancy agreement, and for the filing fee.

The tenants and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

I find the parties were sufficiently served as both parties confirmed that they had received the documentary evidence from the other party and had the opportunity to review that evidence. While the tenants raised an issue of the packages not being identical, I find the tenants both had the opportunity to review both packages prior to the hearing.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on their application, the most urgent of which is the application to cancel a 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the 10 Day Notice. The balance of the tenants' application is dismissed, with leave to re-apply, except for the security deposit request, which I find is related to the application and will be heard. I find that although the tenants attempted to amend their application 15 days before the hearing date, I find that this is an attempt to "queue jump" the standard waiting period for a monetary claim and is not permitted as a result.

In addition to the above, the parties confirmed at the start of the hearing, that the tenants vacated the rental unit on April 15, 2021, which is after the date the tenants filed their application. As a result, I find the tenants' application is now moot, and is dismissed without leave to reapply. The tenants are at liberty to reapply for their monetary claim.

Given the above, I will consider the landlord's monetary claim and deal with the tenants' request for double the return of their security deposit at this proceeding. I will also deal with the filing fees for both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is either party entitled to the return of their security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 15, 2021 and was scheduled to revert to a month to month tenancy after February 14, 2022. The tenants paid a security deposit of \$750.00, which the landlord continues to hold and has accrued \$0.00 in interest. Monthly rent of \$1,500.00 was due on the 14<sup>th</sup> day of each month.

The landlord has made the following claim:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent from March 15 to April 14, 2021	\$1,500.00
2. Use and occupancy from April 15 to April 21, 2021	\$350.00
3. Electricity utilities February 17 to April 16, 2021	\$261.58
4. Filing fee	\$100.00
5. Damages	\$300.00
6. Cleaning costs	\$150.00
<b>Subtotal</b>	<b>\$2,661.58</b>
<i>Less tenants' payment of \$750.00 received April 21, 2021</i>	<i>-\$750.00</i>
<b>TOTAL</b>	<b>\$1,911.58</b>

Regarding item 1, the landlord has claimed the balance owing for March 15-April 14, 2021 rent in the amount of \$750.00. This amount accounts for the \$750.00 paid by the tenants on April 21, 2021. The tenants admitted that they did not pay the entire rent during the hearing for the period of March 15-April 14, 2021.

Regarding item 2, the landlord has claimed \$350.00 for the period of April 15, 2021 to April 21, 2021 due to the tenants failing to return the rental unit keys before that date. The tenants admitted during the hearing that they returned the rental unit keys by mail instead of dropping off the keys. The tenants claim they felt threatened by the landlord as the landlord advised them that they would be contacting immigration officials. The

tenants did not explain why they could not have used an agent to drop off the keys for the rental unit. The landlord confirmed receiving the rental unit keys by mail on April 21, 2021.

Regarding item 3, the landlord has claimed \$261.58 for the electricity utilities that remained unpaid by the tenants. The tenancy agreement states that electricity is not included in the monthly rent. The landlord supplied a copy of the electricity bill in evidence which supports that \$261.58 is owing for the billing period of February 17, 2021 to April 16, 2021. The tenants confirmed that they did not pay the utility bill submitted in evidence.

Regarding item 4, the filing fee will be dealt with later in this decision.

Regarding item 5, the landlord has claimed \$300.00 for damages, which was dismissed during the hearing, which I will address further below.

Regarding item 6, the landlord has claimed \$150.00 for cleaning costs. The landlord supplied photo evidence that was both blurry and in black and white format, which I will address later in this decision. The landlord did not submit an invoice for cleaning and the tenants stated that they cleaned the rental unit before vacating.

Regarding the security deposit, the tenants testified that they provided their written forwarding address dated April 16, 2021 and submitted a copy of the letter with the rental unit keys shown in the same photo. The written forwarding address includes the address used by the landlord in their application for the tenants. The landlord testified that they could not recall the date in which they received the tenants' written forwarding address but did recall April 21, 2021 was the date the rental unit keys were returned. The landlord did not file their application against the tenants until May 21, 2021, which is the date the filing fee was paid. The landlord confirmed that they did not have written permission to retain any portion of the tenants' security deposit.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

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 landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

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.

**Item 1** - The landlord has claimed the balance owing for March 15-April 14, 2021 rent in the amount of \$750.00. This amount accounts for the \$750.00 paid by the tenants on April 21, 2021. The tenants admitted that they did not pay the entire rent during the hearing for the period of March 15-April 14, 2021. I find that the tenants breached section 26 of the Act by failing to pay the full amount of rent as required on March 15, 2021. Section 26 of the Act requires that tenants pay rent on the date that it is due in accordance with the tenancy agreement, regardless of whether the landlord has complied with the Act, unless they have a right not to pay rent, which in the matter before me, I find the tenants provided no evidence of having a right to withhold rent under the Act. As a result, I grant the landlord **\$750.00** owing for rent arrears for March 15 to April 14, 2021 rent.

**Item 2** - The landlord has claimed \$350.00 for the period of April 15, 2021 to April 21, 2021 due to the tenants failing to return the rental unit keys before that date. The tenants admitted during the hearing that they returned the rental unit keys by mail instead of dropping off the keys. Section 37(2)(b) of the Act applies and states:

**Leaving the rental unit at the end of a tenancy**

37(2) When a tenant vacates a rental unit, the tenant must

**(b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[Emphasis added]

I find that by sending the rental unit keys by mail, that the tenants are liable for the costs for use and occupancy for the period of April 15 to April 21, 2021 as the landlord did not receive the rental unit keys by mail until April 21, 2021. Therefore, as April 2021 had 30 days, and monthly rent was \$1,500.00, I find that the daily rental rate was \$50.00 per day. April 15 to April 21, 2021 is a time period of 7 days inclusive, which I find totals \$350.00 for use and occupancy as claimed (7 days x \$50.00). Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$350.00** as claimed for this portion of their claim.

**Item 3** - The landlord has claimed \$261.58 for the electricity utilities that remained unpaid by the tenants. The tenancy agreement states that electricity is not included in the monthly rent. I find the electricity bill supports that \$261.58 is owing for the billing period of February 17, 2021 to April 16, 2021. Due to the tenants confirming that they did not pay the utilities for the time period claimed, I find the tenants are liable for the costs and I award the landlord **\$261.58** for this portion of the claim as I find the landlord has met the burden of proof.

**Item 4** – As the landlord’s claim has merit, I grant the landlord the **\$100.00** filing fee pursuant to section 72 of the Act.

**Item 5** - The landlord has claimed \$300.00 for damages, which was dismissed during the hearing as I find the landlord failed to provide a breakdown of the cost of each item and that without a full breakdown of how the damages totalled \$300.00 I find the tenants would be unfairly prejudiced as they would have no way to defend themselves against such a vague claim. As a result, due to the fact that the \$300.00 amount of damages was not detailed by each amount, this item is dismissed due to insufficient details without leave to reapply. I find the landlord has failed to meet the burden of proof and as a result, I do not grant leave to reapply as Rule 2.9 states that an applicant may not divide a claim.

**Item 6** - The landlord has claimed \$150.00 for cleaning costs. I find the landlord’s photo evidence to be of no weight because it was both blurry and in black and white format, which resulted in the photos being unclear and I find did not support a dirty rental unit. Furthermore, the tenants testified that they cleaned the rental unit and as a result, I find

the landlord has failed to meet the burden of proof to support all 4 parts of the test for damages or loss.

I will now address the tenants' security deposit of \$750.00. Firstly, the landlord did not claim against the tenants' security deposit and the tenants have requested the return of double their security deposit. Secondly, the landlord did not file their application until May 21, 2021, which I find is one month after the date in which I find the landlord was served with the tenants' written forwarding address on April 21, 2021. I have used that date as the photo evidence before me supports that the tenants mailed the rental unit keys and their written forwarding address in the same envelope and on the same day. I afford little weight to the landlord not being able to recall the date they received the tenants' written forwarding address as the landlord recalled receiving the rental unit keys and the photo supports that both items were sent together to the landlord by the tenants.

Section 38 of the Act applies and states:

**38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

**(a)the date the tenancy ends, and**

**(b)the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a)may not make a claim against the security deposit or any pet damage deposit, and**

**(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[Emphasis added]

Based on the above, I find the landlord failed to comply with section 38 of the Act by submitting their application one month after having the tenants' written forwarding address and did not claim against the tenants' security deposit. This is 15 days past the 15-day deadline stated in section 38 of the Act. The landlord also confirmed that they did not have any permission to keep any portion of the security deposit. Given the above, I find the tenants' \$750.00 security deposit **doubles** under the Act as a penalty against the landlord. Therefore, I grant the tenants **\$1,500.00** for double their security deposit.

I find the tenants' application related to the security deposit did have merit. Therefore, I grant the tenants the recovery of the filing fee in the amount of **\$100.00**. As both filing fees offset each other, I will not factor the amounts into the monetary amount below.

I find that the landlord has established a total monetary claim of **\$1,361.58** comprised of \$750.00 for item 1, \$350.00 for item 2, and \$261.58 for item 3. I find the tenants have established a total monetary claim of \$1,500.00, which is double the return of their \$750.00 security deposit.

As the tenants' monetary claim exceeds the landlord's monetary claim by \$138.42, I grant the tenants a monetary order in the amount of **\$138.42** pursuant to section 72 of the Act.

### Conclusion

The tenants' monetary claim exceeds the landlord's monetary claim by \$138.42, as noted above. Therefore, I grant the tenants a monetary order in the amount of \$138.42 pursuant to section 72 of the Act. This order must be served on the landlord by the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is advised that they can be held liable for all costs related to enforcing the monetary order.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord.



This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2021

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Residential Tenancy Branch