



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (“the Act”).

On May 14, 2021, the Landlords filed an application requesting to recover unpaid rent; to keep a security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

On June 9, 2021, the Tenants filed an application for the return of a security deposit and pet damage deposit and to recover the cost of the filing fee.

The matter was set as a teleconference hearing. The Landlords and Tenants appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted.

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

Th Tenants stated that they did not serve the Landlord with a copy of their documentary evidence that they provided to the Residential Tenancy Branch. Since it would be unfair for me to consider evidence that the Landlord has not had an opportunity to consider or

respond to, the Tenants' documentary evidence was excluded from the hearing. The Tenant were informed that they could give evidence by direct testimony.

### Issues to be Decided

- Are the Landlords entitled to the monetary relief sought for unpaid rent?
- Are the Landlords entitled to keep the security deposit and pet damage towards unpaid rent?
- Are the Tenants entitled to the return of a security deposit and or pet damage deposit?

### Background and Evidence

The Landlords and Tenants testified that the tenancy began on September 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,900.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$950.00 and a pet damage deposit of \$950.00. The Landlords provided a copy of the tenancy agreement.

The Landlords and Tenants entered into a mutual agreement to end tenancy with an effective date of May 31, 2021. The Landlords provided a copy of the mutual agreement.

The Landlords and Tenants testified that the Tenants vacated the rental unit on May 1, 2021.

The Landlord testified that there were some issues and complaints regarding the Tenants making noise and smoking cannabis at the rental unit. The Landlord stated that he approached the Tenants and informed them that the tenancy was not working out. The Landlord proposed the parties could agree to end the tenancy by way of a mutual agreement. The Landlord testified that the Landlords and Tenant signed the mutual agreement that the tenancy would end on May 31, 2021.

The Landlord stated that the Tenants called and stated they were able to find a new rental home for May 1, 2021, and since they were moving out, they did not want to pay the Landlord rent for May 2021. The Landlord testified that he did not receive any rent for the month of May 2021.

The Landlords are seeking \$1,900.00 for unpaid May 2021 rent.

The Landlord stated that he also issued a One Month Notice to End Tenancy for Cause to the Tenants via email sent to them on April 19, 2021; however, the Landlord later rescinded the One Month Notice when the parties entered into the mutual agreement.

In reply, the Tenant M.B. stated that she signed the mutual agreement and also signed it for her husband. The Tenants stated that living at the rental unit was hell for them and they were considering moving when the Landlord proposed to end the tenancy by way of a mutual agreement to end tenancy. The Tenants stated that they found a new place to live for May 1, 2021. The Tenants stated the Landlord did not prove any allegations made against them, and they were forced to move out, and they do not believe it is fair to have to pay May 2021 rent.

#### Security Deposit and Pet Damage Deposit

The Landlord testified that the Tenants provided their forwarding address in writing to them on May 8, 2021. On May 14, 2021, the Landlords applied for dispute resolution and claimed against the security deposit and pet damage deposit.

The Landlords confirmed that they did not return any amount of the deposits and that there is no written agreement permitting them to keep any amount of the deposits.

In reply, the Tenants testified that the rental unit was left clean and undamaged and therefore they should get their deposits back.

The Tenants confirmed that they provided the Landlord with their forwarding address on May 8, 2021. The Tenants confirmed that they have not received any amount of the deposits from the Landlord and that there is no written agreement permitting the Landlord to keep the deposits.

#### Analysis

Section 44 of the Act provides that 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; [my emphasis]**
- (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.

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

*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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I have reviewed the mutual agreement to end tenancy document. I find that the mutual agreement is signed and dated by the Landlords and Tenant. I find that the mutual agreement is a valid and enforceable agreement that the tenancy ends on May 31, 2021.

I find that the parties entered into a one-year fixed term tenancy to continue until September 2021. I find that the parties entered into a written agreement that the fixed term tenancy would end early on May 31, 2021. I find that the tenancy ended in

accordance with section 44 of the Act when the parties agreed in writing to end the tenancy for May 31, 2021. I find that May 31, 2021 is the earliest date that the tenancy could legally end. The Tenants were entitled to move out of the unit early; however, they were still contractually obligated to pay the rent under the tenancy agreement for the month of May 2021.

I find that the Tenants do not have a legal justification under the Act to avoid paying rent for the month of May 2021.

I find that the Tenants owe the Landlords the amount of \$1,900.00 for May 2021 rent.

#### Security Deposit and Pet Damage Deposit

Section 72 of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, in the case of payment from a tenant to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

I find that the Tenants vacated the rental unit on May 1, 2021 and provided their forwarding address to the Landlords on May 8, 2021.

I find that six days later, on May 14, 2021, the Landlords applied for dispute resolution and claimed against the deposits. I find that the Landlords claimed against the deposits in accordance with section 38 of the Act. The deposits will apply against any monetary awards granted to the Landlords.

The Tenants' application is not successful and is dismissed in its entirety.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

The Landlord established a monetary award in the amount of \$2,000.00. I authorize the Landlord to keep the security deposit and pet damage deposit of \$1,900.00. After applying the deposits towards the Landlord's award of \$2,000.00, I grant the Landlords a monetary order for the balance of \$100.00. This monetary order must be served on the Tenants and may be enforced in Provincial Court.

#### Conclusion

The Tenants moved out of the rental unit early and did not pay the rent owing for May 2021. The Tenants owe the Landlords \$1,900.00 for May 2021 rent.

The Landlords are authorized to keep the security deposit and pet damage deposit of \$1,900.00 towards unpaid May 2021 rent and are granted a monetary order for the cost of the \$100.00 fling fee.

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: November 17, 2021

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Residential Tenancy Branch