



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-S, MNDC-S, FF

### Introduction

This hearing dealt with the landlords' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlords and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties all affirmed they were not recording the hearing.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenant, to keep the security deposit and pet damage deposit to satisfy a portion of a monetary award, and recovery of the filing fee?

#### Background and Evidence

The evidence showed that this tenancy began on April 15, 2020, with a fixed-term through April 15, 2021, for a monthly rent of \$2,000, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,000 and a pet damage deposit of \$1,000 being paid by the tenant to the landlords.

The landlords retained the tenant's security deposit and pet damage deposit, having made this claim against them.

The landlords' monetary claim is listed as \$2,135.46, comprised of \$2,000 for unpaid monthly rent for May 2021, unpaid utility charges of \$35.46, and the filing fee of \$100 for each of their two applications.

As to the claim for unpaid monthly rent, the landlords submitted that the tenant did not provide a proper, one month notice to end the tenancy. In explanation, the landlord submitted they received a notice from the tenant on April 20, 2021 informing the landlord that she would be out of the rental unit by the end of May 2021. Additionally, the landlords submitted they received a letter on April 21, 2021, from the tenant, stating she was vacating the rental unit and would be completely out by May 31, 2021. The landlords submitted they received an email from the tenant, again telling the landlords she would be out of the rental unit by May 31, 2021. Filed in evidence were the notices.

The landlords submitted that the tenant ultimately vacated the rental unit on May 1, 2021, without paying the monthly rent for May 2021. Due to the tenant's insufficient

notice, the landlords assert they are entitled to receive monetary compensation of \$2,000 for unpaid monthly rent for May 2021.

As to the unpaid utility charges, the landlord submitted that the tenant was required to pay 1/3 of the Fortis bills, and she failed to pay the required amount, or \$35.46. Filed in evidence were copies of the billing statements.

### **Tenant's response –**

The tenant submitted on February 14, 2021, the landlords notified her that they wanted to move a flower business into the garage, which meant she would no longer have a parking space. The tenant submitted that the landlords had her vehicle removed, which violated their tenancy agreement, causing the tenant to file for dispute resolution for loss of a parking spot.

The tenant submitted that the landlords asked her to move out, as indicated by sending her a mutual agreement to end the tenancy. The agreement was never signed.

The tenant submitted that she agreed with the landlords to drop her dispute resolution matter as she agreed with the landlord to vacate the rental unit. The tenant said that they had been discussing her moving out since February 2021.

Filed in evidence by the tenant were copies of email and text message communication between the parties and photographs.

### **Analysis**

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove their claim with a balance of probabilities.

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 obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results.

**Unpaid monthly rent, May 2021 –**

The fixed-term of this tenancy ended on April 15, 2021, which means that at the time the tenancy ended on May 1, 2021, the tenancy was on a month-to-month basis.

Under section 45(1) of the Act, a tenant may end a month-to-month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable.

Here, the tenant provided a written statement, dated April 21, 2021, that she was vacating the rental unit by 12:00 May 31<sup>st</sup>, 2021. However, I find the tenant would still be responsible for paying the monthly rent for May 2021. Instead, the tenant vacated the rental unit and ended the tenancy by May 1, 2021, without paying the monthly rent.

As the landlords would not have sought a new tenant for May 2021 to minimize their loss, due to the written notice, I find the tenant's actions caused the landlords to suffer a loss of rent of \$2,000 for May 2021. I therefore find the landlords have established a monetary claim of \$2,000.

While the tenant has presented evidence that the loss of a parking space prompted an early end to the tenancy, that is a separate matter which must be dealt with through an application for dispute resolution. While the tenant did so, that application was withdrawn. However, the tenant was not authorized to end the tenancy for this matter. I additionally find the tenant submitted insufficient evidence that the landlords agreed that she could vacate the rental unit early without having to pay the monthly rent.

As to the landlords' claim for unpaid utility charges, I have reviewed the written tenancy agreement and did not find that their agreement required the tenant to pay 1/3 of the utilities. For this this reason, I dismiss the landlords' claim for \$35.46.

As the landlords were successful with their application, I grant them recovery of their filing fee of \$100.

Using the offsetting provisions contained in section 72 (2)(b) of the Act, the landlords may keep the tenant's security deposit of \$1,000 and pet damage deposit of \$1,000 in partial satisfaction their monetary award.

### Conclusion

I issue a monetary order of \$100 in favour of the landlords as follows:

ITEM	AMOUNT
1. Unpaid rent for May 2021	\$2,000
2. Filing fee	\$100
3. Less deposits	(\$2,000)
<b>TOTAL</b>	<b>\$100</b>

The landlords are provided with a Monetary Order in the above terms and the tenant must be served with this order as soon as possible to be enforceable. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 29, 2021

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Residential Tenancy Branch