



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the landlord, accompanied by another person for translation purposes. The landlord also attended with the landlord's spouse. One of the tenants and the landlord and the landlord's spouse each gave affirmed testimony and the parties were given the opportunity to question each other.

At the commencement of the hearing I learned that the landlord had only provided 1 of 12 pages of evidence to the tenants. The landlord's spouse advised that the remaining pages were provided to the tenants for a previous hearing, so they already had it.

One of the tenants advised that the landlord was provided with all of the tenants' evidentiary material, which was not disputed by the landlord or the landlord's spouse.

Any evidence that a party wishes me to consider must be provided to the other party, even if they already have it. It is important that each party is aware of what evidence I have access to. Since the landlord has not provided all evidence to the tenants, I decline to consider any of it except for the first page of 12 pages. Since the tenants have served all evidence to the landlord, all evidence of the tenants has been reviewed and is considered in this Decision.

The tenants also indicated that they attended at the Residential Tenancy Branch to have other paper documents uploaded as evidence around the end of July, 2021,

including receipts for translation and medical bills, but none of those items have been uploaded to the evidence of the tenants.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for medical bills, translation letters, missed work, gasoline bills for moving and looking for a place to live, and mailing costs?

### Background and Evidence

**The tenant** testified that this tenancy began on December 14, 2019 and was supposed to be for a year and then revert to a month-to-month tenancy, however the tenants moved out on July 31, 2020. Rent in the amount of \$900.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed. The rental unit is a shared house containing other families as well.

There is no written tenancy agreement, but a note that the tenants had taken to a translator, which states in English: "I received a deposit of 900 Canadian dollars from you today for a one-year term for regularly doing indoor sanitation, regularly taking out garbage and cleaning the snow in front of the door." It is dated December 14, 2019.

The tenant further testified that the landlord would arrive at the rental unit and would check the kitchen and cupboards, fridge and around the living room. The landlord was there every week or twice a week telling the tenants that they had to clean their area, and didn't like the amount of groceries that the tenants put in the cupboards. The landlord wanted the tenants to move out and told them that verbally as well as in text messages in May and in June. The tenants took that seriously because they had moved from another Province and didn't want to be homeless.

The tenant also testified that at the time of move-out, the landlord stated that the tenants owed money for utilities and refused to give back the entire security deposit. There was no mention of utilities until the day the tenants moved out. There were no

damages mentioned and no written description about the landlord keeping any portion of the security deposit.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$2,561.10:

- \$55.00 for translation letter receipt;
- \$160.00 for an additional translation receipt;
- \$1,800.00 for double the security deposit;
- \$50.00 for medical bills;
- \$300.00 for missed work due to move;
- \$100.00 for the application fee;
- \$80.00 for gasoline bills for moving and looking for houses; and
- \$16.10 for mailing.

The tenants had to get some of the landlord's documents translated, and paid \$55.00 for translation of the note regarding the security deposit as well as an additional \$160.00 for translating the text messages.

The other tenant is a single parent and suffered stress by not receiving back the security deposit to pay for another rental unit, and had a difficult time getting another unit to live in. The doctor prescribed medicine for acid reflux due to stress and not eating much, and for sleeping.

The tenants have provided a copy of a letter from an employer indicating that \$300.00 would have been earned for 2 days in July but took the time off for moving purposes. The tenants intended to stay in the rental unit longer, but the landlord added pressure by verbally and texting the tenants stating that the landlord wanted the tenants to move out; and by forcing the tenants to move out, and it not being safe to stay there. The tenants claim gasoline bills and missed work.

**The landlord's spouse** testified that the issue is the landlord's request for \$300.00 for utilities. The landlord's spouse asked the tenants to stay, and since they had a place to stay, the claim is nonsense. Utilities were not charged each month because if the tenants had stayed for a year as per the agreement, no utilities would be charged, but they didn't stay.

The landlord's spouse further testified that the government paid the tenants' rent, so they didn't pay rent. Therefore, the landlord was justified in charging for utilities.

**The landlord** testified that the tenants were not pushed out. The landlord told the tenants to not put groceries in the living room; other people lived there too, and the landlord told the tenants to organize.

### Analysis

Firstly, a landlord may not collect a security deposit that is more than one-half of the monthly rent payable. In this case, the landlord collected double the amount that the landlord was permitted to collect by law.

Secondly, a landlord may not enter a rental unit for any reason unless the tenant invites the landlord in at the time of entry or an emergency exists. In this case, the tenants' evidentiary material states that the landlord would enter without informing any tenants, unmasked, and said that the landlord has every right to enter because she is the landlord. If a landlord wishes to enter a rental unit, the landlord must give no less than 24 hours written notice to enter which must be in writing and must contain the date, time of entry and reason for entering. Otherwise, the landlord is trespassing.

The law also states that a landlord must return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant.

In this case, I accept the undisputed testimony of the tenant that the tenancy ended on July 31, 2020 and the tenants gave the landlord a note that day in person which contained a forwarding address of the tenants. I also accept the undisputed testimony of the tenant that a second letter was given to the landlord as well by mail. Copies of both letters have been provided for this hearing. The parties agree that the landlord offered to return a portion of the security deposit, but that is contrary to the law. The landlord did not return the entire security deposit to the tenants and did not make an Application for Dispute Resolution claiming against the security deposit within 15 days. Therefore, I am satisfied that the tenants have established a claim for double the amount, or \$1,800.00.

With respect to the balance of the tenants' claim, in order to be successful in a claim for damage or loss, the onus is on the tenants to satisfy the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenants made to mitigate, or reduce the damage or loss suffered.

Although I accept the testimony of the tenant that receipts were taken to the Residential Tenancy Branch to upload as evidence, none were uploaded. Therefore, I am not satisfied that the tenants have established element 3 in the test for damages for translations, or for medical bills, or gasoline bills for moving and looking for houses. Those portions of the application are dismissed.

The *Residential Tenancy Act* provides for recovery of a filing fee if a party is successful with an application, but does not provide for costs of service or mailing documents. Therefore, the tenants' application for mailing costs is dismissed.

With respect to missed work due to the requirement of the tenants to move out and look for a place to move, the tenant testified that the landlord added pressure and COVID was at high peak. The tenant also testified that the landlord arrived into the rental unit without a mask and vaccines were not yet available, and that the landlord repeatedly told the tenants to move out, verbally and by text messages.

I have reviewed all of the tenants' evidentiary material, including the translated text messages. The messages on June 30, 2020 from the landlord tells the tenant to put a lid on the trash can, and the tenant replied that she could not do so and the landlord's response was, "Then you move out next month!" On July 31, 2020 the landlord asks for rent to be paid for which the tenant replies that Monday morning should be fine. The landlord's response is: "Tonight. I will consider you as no longer living in here if you don't pay tomorrow! Return the keys to me when moving in tomorrow, or you will bear all the consequences." The letter from the tenant's employer indicates that the tenant took time off July 15 and July 22 because the tenant needed to move and find another place to rent.

The *Residential Tenancy Act* specifies how a tenancy ends, and one of those methods is not by telling the tenants to move out. The landlord's spouse testified that the tenants were asked to stay, and the tenants didn't dispute that. However, I also accept that the tenants were from another Province and were concerned about not having a place to stay. Considering the landlord's text messages, and the testimony that the tenants took the verbal and written messages seriously, I am satisfied that the landlord has caused the tenants to end the tenancy early and caused the tenants to miss work in order to avoid being homeless. With respect to mitigation, I find that the tenants mitigated any

further losses, and were unable to trust that the landlord would not evict the tenants. Therefore, I find that the tenants have established a monetary claim of \$300.00 for missed work.

Since the tenants have been partially successful with the application, the tenants are also entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,200.00.

This order is final and binding and may be enforced.

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: January 04, 2022

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Residential Tenancy Branch