



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Dispute Codes

Parties	File No.	Codes:
(Landlord) S.P., G.P.	310080323	MNDCL-S, FFL
(Tenant) G.K.	310079030	MNSDS-DR, FFT

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlords applied for:

- \$800.00 compensation for damage caused by the Tenant, their pets or guests to the unit or property – holding the pet or security deposit; and
- recovery of their \$100.00 application filing fee.

The Tenant applied for:

- the return of her \$800.00 security deposit; and
- recovery of her \$100.00 application filing fee;

The Tenant and the Landlords, G.P. and S.P., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the application filing fee?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 application filing fee?

### Background and Evidence

The Parties agreed that the tenancy was to begin on July 15, 2022, with a monthly rent of \$1,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of \$800.00, and no pet damage deposit. They also agreed that the Tenant did not ever move into the rental unit, as planned.

The Tenant said she decided not to move in on moving day, because:

On July 15, I went to get the keys and do a walk-through, and there was so much damage, and it was not clean. I have a baby and so I couldn't move in. When I saw it before, there were people living there, and cooking. And I couldn't see the floor for their furniture. But it was not cleaned when they left.

The Landlord said: "She assured us she was renting, and it was okay at inspection, but on moving in day, it was not good enough for her."

## **LANDLORDS' CLAIM**

The Landlords explained their claim, as follows:

Actually, we put our basement suite on [a website for viewing and posting advertisements] to be reviewed. She came and viewed it and was never pressured to rush while viewing. On the day of viewing, she agreed to rent it, because she liked it. That was the basic agreement.

Basically, she wanted us to remove the advertisement from the website, so no one else can rent it. We submitted proof. She agreed to pay the security deposit; she did pay this. We talked over the phone.

When she was supposed to occupy it, that's when she decided that it wasn't good enough. We lost rental income for that month. So, to mitigate, we're not fair to lose rent, but we said we would give her half the security deposit back.

We never collected any rent. We gave her the keys before, but the rent was never paid – we should have collected \$1,600.00 on that day; we never collected any rent.

I asked the Landlord about the condition of the rental unit on the Tenant's moving in day, and he said it was: "Perfectly alright". The Landlord said they had not had the rental unit professionally cleaned, but that they had cleaned it themselves.

The Tenant responded:

I paid \$800.00, and I was not pressured. When we checked it, we gave the deposit. I gave it on the 15<sup>th</sup> - see my texts. I went to get a key, and the floor is totally damaged in the living room, the blinds need to be changed. And baseboards were so damaged – they have cracks. I told them I'm okay to move in on the 1<sup>st</sup> if you fix that first. But they couldn't afford it.

I returned the key right away [on move-in day], and texted them. [G.P.] said she made us remove the advertisement. But when you take a security deposit you remove it.

I got another place in September, so I struggled for a couple months to find another place. I can't give them \$800.00. They said they removed the

advertisement; you just delete it for yourself. They can keep it – the advertisement. I didn't force them; I didn't force them to delete it.

### **TENANT'S CLAIM**

The Tenant explained her claims, as follows:

My claim is about I want my security deposit back, because I didn't move into that place or do any damage; I'm not moving in with so many issues, I wrote them a letter – it's all in my evidence. The place is gross and I have a 4-month-old baby, and I couldn't clean that place myself.

They said: 'We are not refunding back'. They offered half of the deposit. Why would I take half? I'm on maternity leave and I'm struggling with my financial needs, too. Why would I leave money like that?

The Landlords responded:

On the day of moving in, if I'm looking for a basement suite and pay the security deposit, and then find one cheaper, I can't go into the last day and say it's not good enough, because as a landlord I lost one month of my rental income. And that's why I will keep the security deposit.

I called the Branch and they said the Tenant did break the lease – she didn't give proper notice to end the tenancy, so she violated the tenancy agreement and the Act, by not giving us proper notice to end the tenancy.

The Tenant said:

It's a violation, but I did talk to RTB before I emailed them a letter. And I would say once you do a walk-through with your landlord, after the key - be sure where the place is, before you rent it. It's not like you're getting into a damaged place. He said 'She might find a cheaper place'. My new place - you can contact - you will check it out. I have a witness of my sister and my mother.

The Landlord opposed the Tenant calling her sister into the hearing, because he said she is family and will say what the Tenant wants her to say. The Landlord said he could get the old tenants, too, who will say that they left it in good condition.

The Landlord went on:

The walk-through on the day of tenancy is so we don't deduct from her for damage at the end of the tenancy. It's not like showing the damage – she should have said no on the day of the agreement when she paid the security deposit.

It's just our word against her word, but she did break tenancy agreement and on day of moving in, she backed off and asked for the security deposit back. We lost one month of rent; that's the only reason we are asking for the security deposit.

The Tenant replied:

I didn't move in; I explained right away, and gave the key right back in the moment, and it's not because it's expensive, I was just not able to move in. I didn't do anything wrong, so they can't have my money.

### Analysis

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

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 7 of the Act states that if a party does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results. Policy Guideline #16 sets out that damage or loss is not limited to physical property only, but also includes less tangible costs, such as loss of rental income that was owing under a tenancy agreement.

Policy Guideline #3 states that an award of damages is intended to put the affected party in the same position, as if the other party had not breached the Act, regulation or tenancy agreement. In the case of breaching a fixed term tenancy agreement, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

### *Tenant's Notice to End Tenancy*

According to section 45 (1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Accordingly, the Tenant was required by the Act to give the Landlords one month notice to end the tenancy, the end of which would have been on August 31, 2022, not the move-in day of July 15, 2022.

Section 53 (2) of the Act states that if the effective date of the notice given by a tenant – the date on which the tenancy ends - is earlier than the earliest date permitted under the Act, the effective date is deemed to be the earliest date that complies with the section. As a result, the effective date in this situation is August 31, 2022. I find that the Tenant owes the Landlord rent for August 2022, although the Landlords have claimed only the security deposit for their claim.

As a result, I award the Landlords \$800.00 for their loss of rental income, based on the Tenant having failed to give proper notice of the end of the tenancy, pursuant to sections 45 and 67 of the Act. Given their success, I also award the Landlords recovery of their \$100.00 application filing fee from the Tenant, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$800.00 security deposit in partial satisfaction of the Landlord's monetary awards. I **authorize the Landlords to retain the \$800.00 security deposit**, and I grant the Landlords a **Monetary Order of \$100.00** from the Tenant for the balance owing from the monetary awards.

I find that the **Tenant's claim is without merit** and therefore, I **dismiss it without leave to reapply**, pursuant to section 62 of the Act.

### Conclusion

The Landlords are successful in their claims and the Tenant is unsuccessful in hers, given that the Tenant failed to give the Landlords proper notice to end the tenancy pursuant to the Act.

The Landlords are **awarded \$800.00** from the Tenant for their loss of rental income, and the Landlords are **also awarded** recovery of their **\$100.00** application filing fee from the Tenant.

The Landlords are **authorized to retain** the Tenant's **\$800.00 security deposit**, and I grant them a **\$100.00 Monetary Order** from the Tenant for the remainder of their monetary awards.

This Order must be served on the Tenant by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: February 27, 2023

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Residential Tenancy Branch