



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Dispute Codes

For the landlord: MNRL-S FFL

For the tenant: MNRT MNDCT FFT

### 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 landlord applied for a monetary claim of \$1,600 for unpaid rent or utilities, to retain the tenants' \$700 security deposit towards any amount owing, and to recover the filing fee. The tenants applied for a monetary claim of \$4,298.64 for furniture replacement, moving costs, emergency repairs and the filing fee.

On September 27, 2022, the hearing commenced and the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. After 61 minutes the hearing was adjourned to allow more time to hear the evidence from the parties. An Interim Decision was issued dated September 28, 2022 and should be read in conjunction with this decision. On February 3, 2023, the hearing reconvened and after an additional 27 minutes the hearing was concluded. During the 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 have 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.

### Preliminary and Procedural Matter

The parties confirmed their respective email addresses during the hearing. The parties were also advised that the decision would be emailed to both parties.

### Issues to be Decided

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

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on August 1, 2021, ended on April 10, 2022 when the rental unit keys were returned. During the tenancy monthly rent was \$1,400 and was due on the first day of each month.

#### *Evidence for Landlord's Claim*

The landlord has claimed \$1,400 for unpaid rent for August 2021, plus the \$100 filing fee and to offset any amount owing with the tenants' security deposit of \$700. As the tenants' security deposit has accrued interest during the tenancy, I will calculate that amount later in this decision.

A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2022 (10 Day Notice) was submitted in evidence and claims that rent of \$1,400 was never paid due August 1, 2021. The 10 Day Notice has an effective vacancy date of March 17, 2022. The tenants vacated the rental unit on April 10, 2022.

The landlord testified that the tenants failed to pay any rent for August 2021. The tenants stated that they paid \$0 in exchange for "two hose bib jobs" for tenant RH (RH) to complete in exchange for August 2021 rent.

In addition, the tenants submitted a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 20, 2021 (2 Month Notice) that includes an effective vacancy date of November 30, 2021.

The parties confirmed that they had a previous hearing related to the 2 Month Notice, the file number of which has been included on the cover page of this decision for ease of reference. The previous hearing resulted in a settlement agreement between the parties dated February 10, 2022 (Previous Decision). In the Previous Decision the parties agreed that the tenancy was ending based on the 2 Month Notice and that the effective date was extended to May 31, 2022. As part of the Previous Decision the landlord was also granted an order of possession.

The parties also confirmed during the hearing, that the tenants then gave their written notice on March 31, 2022, to vacate early on April 10, 2022, which is the date the tenants vacated. The parties also agreed that the tenants provided their written forwarding address in their written notice dated March 31, 2022. The landlord filed their application on April 14, 2022, which is within the 15-day timeline provided for claiming against the tenants' security deposit under section 38 of the Act.

During the hearing, the landlord stated that they agreed that the tenants did not have to pay August 2021 rent in exchange for repairing the 2 hose bibs. The landlord later changed their testimony that repair was later related to a leak in the kitchen, which the tenants disputed as tenant RH testified that the kitchen leak was not discovered until much later and was not leaking at the start of the tenancy.

#### *Evidence for Tenant's Claim*

The tenants have claimed \$4,298.64 for moving costs, furniture replacement, emergency repairs and the filing fee.

During the hearing, the moving costs and furniture replacement costs to replace the cost of the furniture they tenants sold before moving into the rental unit were immediately dismissed as the tenancy ended based on the 2 Month Notice and of which was confirmed in the Previous Decision. I will address this further below.

Regarding the emergency repairs, the tenants confirmed that they had a verbal arrangement with the landlord regarding emergency repairs, and of which the landlord denied making any such verbal agreement or arrangement. The tenants were asked when they were given verbal permission and the tenants stated August 16<sup>th</sup>, the landlord denied that completely.

## Analysis

Based on the documentary evidence and the testimony of the parties, 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 was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the applicant to provide sufficient evidence to prove their respective claims and 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 respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did what was 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.

***Tenant's claim*** – The tenants have claimed \$4,298.64 for moving costs, furniture replacement, emergency repairs and the filing fee. As indicated above, the tenants' claim for moving costs and furniture replacement are dismissed without leave to reapply as the tenants formed a mutual agreement to end the tenancy confirming the tenancy was ending based on the 2 Month Notice. As such, I find the tenants have failed to prove all 4 parts of the 4-part test for damages or loss described above.

In addition, I find the tenants have provided insufficient evidence to support that they received permission from the landlord regarding emergency repairs or had advised the

landlord by phone of the emergency repairs and provided the landlord a reasonable opportunity to address any emergency repairs. Section 33(3) of the Act applies and states:

33(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) **emergency repairs are needed;**
- (b) **the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;**
- (c) **following those attempts, the tenant has given the landlord reasonable time to make the repairs.**  
[emphasis added]

Given the above, I find the tenants have provided insufficient evidence of their claim for compensation related to any emergency repairs. Accordingly, I dismiss the tenants' claim without leave to reapply, due to insufficient evidence.

I decline to grant the filing fee for the tenants as their application has no merit.

***Landlord's claim*** - The landlord has claimed \$1,400 for unpaid rent for August 2021, plus the \$100 filing fee and to offset any amount owing with the tenants' security deposit of \$700. I will first calculate the interest on the \$700 security deposit, which I find is \$2.24. Therefore, I find the landlord is holding a security deposit including interest which totals \$702.24. I will further address the security deposit including interest below.

While the landlord claims \$1,400 was not paid for August 2021 rent, I have also considered the tenants testimony that they paid \$0 for August 2021 rent in exchange for "two hose bib jobs". I find the landlord's testimony to be inconsistent as they first testified that they agreed that the tenants did not have to pay August 2021 rent in exchange for repairing the 2 hose bibs and then later changed their testimony that repair was later related to a leak in the kitchen. Given the above, I find I prefer the testimony of the tenants over the landlord regarding this item based on the tenants' testimony being consistent throughout the hearing.

Therefore, I dismiss the landlord's request for August 2021 unpaid rent due to insufficient evidence without leave to reapply. I find the parties more likely than not agreed that the 2 hose bibs were to be repaired in exchange for August 2021 rent and I

have insufficient evidence before me from the landlord to support that the 2 hose bibs were not repaired as agreed upon.

I decline to grant the filing fee for the landlord as their application has no merit.

Given the above, I make the following order regarding the tenants' security deposit.

**I ORDER** the landlord to return the tenants' full security deposit of **\$702.24**, which includes interest, no later than **March 20, 2023**.

Should the landlord fail to comply with my order, I grant the tenants a monetary order in that amount. In the event the landlord does comply with my order, the monetary order will be of no force or effect.

### Conclusion

Both applications fail in their entirety.

The landlord has been ordered to return the tenants' security deposit of \$702.24, which includes interest, no later than March 20, 2023.

The tenants have been granted a monetary order pursuant to section 67 of the Act in that amount.

Should the tenants require enforcement of the monetary order, they must first serve the monetary order on the landlord, with a demand for payment letter and then may apply to the Provincial Court (Small Claims) for the order to be enforced as an order of that Court.

The landlord is reminded that they can be held liable for all costs related to enforcement of the monetary order, including court costs.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for served on the landlord, if necessary.

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: March 1, 2023

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Residential Tenancy Branch