



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Landlord: **MNRL-S, MNDL-S, MNDCL-S, FFL**

Tenants: **MNSDS-DR, FFT**

### **Introduction**

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- An order for the return of a security deposit that the landlord is holding without cause, pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing and the landlord attended with an advocate, NR. Each party acknowledged receipt of the other's Notice of Dispute Resolution

Proceedings package and evidence. The tenants also acknowledged service of the landlord's amendments. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to compensation because the tenants ended the tenancy with less than a month's notice?

Is the landlord entitled to more compensation for damages and cleaning than the parties agreed to on the condition inspection report?

Is the landlord entitled to compensation for unpaid utilities?

Can the landlord retain all or part of the tenants' security deposit?

Should the tenants' security deposit be returned to them?

Can either party recover the filing fee?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to the extraordinary amount of documentary evidence provided: including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on March 1, 2020 and became month to month after February 28, 2021. The rent was set at \$2,500.00 per month, payable on the first day of each month with a condition that the tenants pay 2/3 of the utility bills. The tenants were paying \$300.00 per month for utilities, plus or minus overcharges or undercharges. A security deposit

of \$1,250.00 was collected and a condition inspection report was done at the commencement of the tenancy.

The tenancy ended with the tenants giving the landlord a text message on September 5<sup>th</sup>, followed by a formal written notice to end tenancy on September 6, 2022. The effective (move-out) date was September 30, 2022. On that day, the parties conducted a move-out condition inspection report, provided as evidence. On the condition inspection report, the tenants agreed to a deduction of \$260.00, claimed by the landlord as 4 hours of cleaning and repairs at \$40.00 per hour, plus the cost of a new blind, estimated at \$100.00. The tenant's forwarding address is noted on the condition inspection report.

The landlord testified that the blind in one of the bedrooms was not functioning properly at the end of the tenancy. It pulled at a 45-degree angle and needed to be replaced. The landlord testified that this particular blind had been purchased on January 2, 2020 and was new when the tenants moved in. The tenants argued that the original blind was already broken when they moved in; and pointed to the condition of the blinds noted on the move-in condition inspection report. The blind in their son's room was the broken one and the tenants took it down, moved the master bedroom blind into the son's room, then bought a second hand one for the master bedroom which they took with them when they left. They put the landlord's broken blind back up when they left.

The landlord seeks more than the original \$160.00 estimated for cleaning, stating that the actual cost was \$265.00. The estimated \$100.00 for the blind replacement was also wrong, as it cost \$189.28. Instead of \$260.00 as the parties agreed to, the landlord seeks \$454.28.

The landlord seeks 2/3 of the utilities for both September and October, 2022. The landlord provided a spreadsheet indicating the cost of each utility for both months and how much 2/3 comes to. For September, the landlord seeks \$415.46, less the monthly \$300.00 paid by the tenants for utilities, a remainder of \$115.46. The landlord also seeks October utilities in the amount of \$118.33. The tenants did not pay the \$300.00 towards utilities for that month, so no deduction. The tenants argue that they didn't occupy the unit for the month of October, so they shouldn't be required to pay it. They acknowledge the amount of \$115.46 sounds reasonable for the month of September.

Lastly, the landlord seeks a month's rent because the tenants ended their tenancy on September 30, 2022 and gave less than a month's notice to end the tenancy, on September 6<sup>th</sup>. When I asked the tenants why they didn't provide a full month's notice

to end the tenancy, the tenants stated they were unaware that they were required to. The tenants also alleged that the landlord acted aggressively towards them following a visit she made to the home to talk about potentially putting paving stones by the vehicles. The landlord told the tenant AW that she may be selling the house and that they should find a new house in a patronizing tone.

The landlord testified that she was able to secure a new tenant for the house commencing November 11, 2022. The rent for the new tenant was \$3,300.00 instead of the \$2,537.50 being charged to the tenants as the market value had gone up significantly.

In her amendment, the landlord also sought to recover postage fees, however I advised the parties that those fees are not recoverable in Residential Tenancy Branch dispute resolution proceedings. I would consider the recovery of the filing fees.

### Analysis

- Rent for October, 2022

In a month-to-month tenancy, a tenant can end the tenancy under section 45(1) by giving a notice to end tenancy with an effective date that is not earlier than one month after the date the landlord receives the notice and 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. In other words, the earliest effective date for a notice to end tenancy served on September 6<sup>th</sup> would be the end of October, not the end of September.

Residential Tenancy Branch Policy Guideline 3 [claims for rent and damages for loss of rent] states:

*Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.*

...

*In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased*

*rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.*

This requirement to mitigate the loss is repeated in policy guideline 5: [duty to minimize loss]:

***Loss of Rental Income***

*When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:*

- 1. re-rent the rental unit at a **rent that is reasonable** for the unit or site; and*
- 2. re-rent the unit as soon as possible.*

In this case, the landlord obtained a new tenant at what I would consider a greatly increased rent, \$762.50 more per month than what the tenants were paying. While the landlord justifies this as being market rates for the location and time of rental, I find the landlord failed to do whatever is reasonable to minimize the damage or loss, as required under section 7(2) of the Act. I find the landlord could have sought a new tenant for the rental unit at a reasonable amount of rent immediately after being served with the tenant's notice to end tenancy.

The tenant provided a copy of an advertisement for \$3,600.00 per month dated September 7<sup>th</sup> and an undated advertisement for rent at \$3,750.00. While the landlord should be entitled to compensation from the tenants for providing less than a full month's notice to end the tenancy, I find the landlord failed to mitigate her loss by seeking a greatly increased rent, making it less likely she would have found a tenant for October at a reasonable rent. Consequently, I reduce the one month's compensation I would have awarded to the landlord by \$762.50, the amount of greater rent the landlord is achieving from the new tenant. [\$2,537.50 - \$762.50 = **\$1,775.00**].

- Suite Cleaning claim

Section 37(2)(a) states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

*the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for*

*repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).** (emphasis added)*

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

I have reviewed the photos and videos taken by the tenants at the end of the tenancy, as well as the condition inspection report provided by both parties. I find that the unit was reasonably clean at the end of the tenancy and that the tenants are not required to pay anything more than the \$160.00 they originally agreed to compensate the landlord with for cleaning. The landlord is awarded **\$160.00**.

- Broken blind

Based on the condition inspection report on move-in, I believe the original blind in bedroom 3 was already damaged, noting "two small holes in blind, 2 nicks in window wood of sill". Beside the condition comment for blind in bedroom 3 on move-in is the comment "blind is broken". The new blind was in bedroom 4 – where it says "brand new blinds". Based on this finding, I determine that the blind was already suffering from damage and that any additional damage can be attributed to regular wear and tear. Despite this, the tenants agreed to compensate the landlord with \$100.00 for any damage to the blinds they may be responsible for, and as such, the landlord is awarded **\$100.00** compensation.

- Utilities

The tenancy ended on September 30<sup>th</sup>. There is no requirement under the Act for a tenant to pay utilities beyond the end date of the tenancy and the landlord's claim for October, 2022's utilities is dismissed. The tenants acknowledge that **\$115.46** sounds

reasonable for the month of September and I award that to the landlord for unpaid utilities.

The recovery of the filing fees is at the sole discretion of the arbitrator. Neither party will recover the filing fee from the other.

The landlord filed her application to retain the tenant's security deposit within 15 days after the tenancy ended and the date she received the tenant's forwarding address. As such, the tenants are not entitled to a doubling of their security deposit.

Item	amount
Compensation for less than 1 months notice to end tenancy	\$1,775.00
Suite cleaning	\$160.00
Blind in bedroom #3	\$100.00
Utilities for September 2022	\$115.46
Less security deposit	(\$1,250.00)
TOTAL	\$300.46

#### Conclusion

The landlord is granted a monetary order in the amount of \$300.46..

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: April 04, 2023

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Residential Tenancy Branch