



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: MNSD FF

Landlord: MNR MNSD FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 29, 2024. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenants both attended the hearing and provided affirmed testimony. The Landlord acknowledged receipt of the Tenant’s application package and evidence. The Tenant acknowledged receipt of the Landlord’s application package and evidence. No service issues were raised. I find all documents were sufficiently served.

The Landlord submitted an amendment two weeks before the hearing to add compensation for unpaid utilities. However, both parties agreed this amount for utilities has now been paid. As such, it will not be addressed further.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord filed this application and applied under the following ground:

- I want to recover the money for the unpaid rent and/or utilities

However, I find it important to note that during the hearing the Landlord attempted to speak to and obtain items that were beyond unpaid rent or utilities. I find the Landlord failed to properly apply for any claim for damage to the rental unit, since he only filed his claim for unpaid rent and utilities. Since the Landlord failed to apply for monetary compensation for damage to the rental unit, clearly listing the items he is seeking on a worksheet, and only applied for unpaid rent, I will not consider any items beyond unpaid rent/utilities. The Landlord is granted leave to reapply for compensation related to damage to the rental unit or for damage or loss under the Act.

### Issue(s) to be Decided

#### *Tenant*

- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

#### *Landlord*

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

### Background and Evidence

The Tenancy Agreement provided into evidence shows that monthly rent was \$2,025.00 and was due on the first of the month. The Landlord holds a security deposit of \$1,975.00 and a pet deposit of \$1,000.00. The Landlord still holds this amount. The Tenants provided, and the Landlord received, their forwarding address in writing on November 14, 2023, the same day they gave their written notice that they would be terminating the tenancy. This notice to end tenancy given by the Tenants indicated they would be vacating by December 15, 2023.

The Tenants are seeking the return of their deposit, as they do not feel they owe any monies.

The Landlord is seeking compensation for unpaid rent for the last half of December 2023, since the Tenants only paid rent for the 1-15<sup>th</sup> of the month, and when they moved out part way through the month, they never paid the remaining amount for that rental month. The Tenants do not refute that they failed to pay any rent for December 15-31, 2023, and assert that they shouldn't have to because they gave 1 month notice, and also because they believed that the 15<sup>th</sup> was the start of each rental month, not the 1<sup>st</sup>.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First I turn to the Landlord's claim for monetary compensation. Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent.

I turn to the tenancy agreement provided into evidence, which clearly indicates that rent is due on the first day of the month. Section 45 of the *Act* states the following:

**45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(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.*

Since this was a month-to-month tenancy, the Tenants were not legally entitled to end the tenancy mid-month, without liability. The earliest date the Tenants could have ended the tenancy by giving notice on November 15, 2023, would be the end of December. I find the Tenants are liable for the last half of December in terms of rent. I award \$1,012.50 to the Landlord for this item.

Next, I turn to the Tenant's application to have the security deposit (double) returned. Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenants moved out of, and vacated, the rental unit by December 15, 2023, which I find reflects the end of the tenancy. This is the date the parties agreed reflected the end of the tenancy. The Landlord received the Tenant's forwarding address in writing on November 14, 2023. The latter of these two dates is December 15, 2023.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from December 15, 2023, to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord filed an application against the deposit on December 29, 2023, which is within the allowable timeframe. As such, the Tenant is not entitled to double to security deposit. The Landlord currently holds deposits, totaling \$2,975.00. Interest is payable on these deposits, but only for 2023, and 2024, as per the regulations. The total deposit held, including interest, is \$3,059.82.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I decline to award the Tenant with recovery of the filing fee as they were not awarded double the deposits, pursuant to section 38 of the *Act*.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant.

In summary, I grant the Landlord a monetary order based on the following:

<u>Claim</u>	<u>Amount</u>
Unpaid Rent	\$1,012.50

Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$3,059.82)
<b>TOTAL:</b>	<b>\$(1,947.32)</b>

I order the Landlord to return the balance of the deposits.

### Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$1,947.32**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: May 3, 2024

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Residential Tenancy Branch