



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit and pet deposit and compensation pursuant to an agreement to end the fixed term tenancy early, less utilities. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit and pet deposit?
2. Are the tenants entitled to compensation for ending the fixed term tenancy early?

### Background and Evidence

The parties executed a written tenancy agreement for a fixed term tenancy set to commence July 1, 2012 and expire on June 30, 2013. The tenants paid a security deposit of \$750.00 and a pet deposit of \$750.00. The tenants were required to pay rent of \$1,500.00 on the 1<sup>st</sup> day of every month. The tenancy ended February 28, 2013 pursuant to a mutual agreement.

The parties signed a document dated December 30, 2012 to reflect a mutual agreement to end tenancy which provided the following terms:

- The tenants would be provided free rent for the months of January and February 2013 and would vacate the rental unit February 28, 2013;
- The landlords would "pay up to \$1,000.00 for a storage locker;
- With respect to the storage locker, the document provides the following statements:

- “Once we have found a storage locker company that meets our needs, we will find out if they accept payment through you. We will inform you ASAP.”
- “Should payment through your VISA not be accepted, we will accept \$1,000.00 at the same time as the damage/pet deposit is due.”

It was undisputed that the tenants benefited from free rent for the month of January and February 2013 but that the landlords have not paid the tenants compensation for a storage locker.

The tenants submit that they rented a storage locker starting in February 2013 and continue to have it to this day. The cost of the storage locker is over \$200.00 per month; thus, the cost of storage for the period of February 2013 through June 30, 2013 is greater than \$1,000.00. The tenants seek compensation of \$1,000.00 for having to rent a storage locker for the balance of the fixed term as agreed upon.

The landlords initially provided some conflicting submissions with respect to their intention to pay up to \$1,000.00 to the tenants; however, the landlords eventually agreed that they intended to pay the tenants for their storage costs for the balance of the fixed term. The landlords submitted that they had not yet done so because they were not requested to provide their VISA to a storage company as indicated in the mutual agreement and have not been provided copies of any storage bills. The landlords are agreeable to paying the storage costs upon receiving copies of the storage bills.

Although the tenants pointed to a subsequent email communication dated February 27, 2013 where the landlord indicated she would send the \$1,000.00 to the tenants at their forwarding address, the tenants acknowledged that they are willing to send documentation to the landlords to prove the cost of the storage locker via registered mail.

With respect to the security deposit and pet deposit it was undisputed that the landlords did not prepare move-in or move-out condition inspection reports and the tenants did not authorize any deductions from the deposits in writing.

The tenants submitted that they provided their forwarding address to the landlords via an email send on March 1, 2013. The landlords sent the tenants a partial refund of their deposits but used an incorrect last name for the tenants, making the cheque non-negotiable. As such, the landlords continue to hold the tenants' deposits.

The landlords were of the position they are entitled to compensation from the tenants for hydro, propane and damage to the rental unit; however, the landlords have not filed an Application for Dispute Resolution seeking compensation.

The tenants were agreeable to compensating the landlords for the hydro and propane but not damage.

The landlords were informed of their right to file their own Application for Dispute Resolution seeking compensation for damage to the rental unit.

### Analysis

Upon consideration of every before me, I provide the following findings and reasons with respect to the tenants' claims against the landlords.

#### **Compensation for storage costs**

Upon review of the document signed by all parties on December 30, 2012 I find the parties agreed that the landlords would compensate the tenants for their storage locker costs, up to \$1,000.00, as the tenant were agreeing to move out of the rental unit before the end of the fixed term so that the landlords could sell the house. Considering the tenants did not ask the landlords to provide a Visa number to the storage facility as indicated in the mutual agreement signed by the parties, I find it reasonable that the landlords be provided proof of the storage costs before making payment to the tenants. Therefore, I make the following ORDERS to the parties:

1. The tenants shall send copies of their storage locker contract and bills, invoices or credit card statements to show proof of payment for the period of February 2013 through June 30, 2013 to the landlords via registered mail.
2. Within 15 days of receiving the above documentation the landlords shall send to the tenants payment equivalent to the cost of their storage locker for the above described time period, up to \$1,000.00.

Should the landlords fail to compensate the tenants for the cost of their storage facility despite sending the landlords proof of such costs, or if the parties remain in dispute as to the amount payable by the landlords, the tenants are at liberty to file another Application for Dispute Resolution seeking a Monetary Order.

#### **Security deposit and pet deposit**

Under the Act, a landlord must complete a condition inspection report at the beginning and end of every tenancy. The Act provides that as a consequence for not preparing

inspection reports the landlord extinguishes their right to claim against the security deposit and/or pet deposit with respect to damage to the unit or property. In this case, I find the landlords have extinguished their right to claim against the deposits for damage as they failed to complete condition inspection reports.

The landlords indicated they had claims for hydro and propane which the tenants agreed to during the hearing. Therefore, I have deducted the tenants agreed to pay for hydro and propane from the tenants' security deposit.

The Act provides that a security deposit and/or pet deposit shall be doubled where the landlord fails to repay or file an Application for Dispute Resolution claiming against the deposit within 15 days of the tenancy ending or the date the tenant gives the landlord their forwarding address in writing, whichever date is later. Section 88 of the Act provides for the ways a document must be given to the party. Email is not an permissible method of giving a document to another party. Thus, I find the tenants had not given the landlords their forwarding address in writing in a manner that complies with section 88 of the Act prior to filing this Application for Dispute Resolution seeking return of double the deposits. Therefore, I find the tenants are not entitled to doubling of the deposits.

As the tenants agreed to deductions for hydro and propane and the landlord's right to claim against the deposits for damage has been extinguished I order the landlords to return the balance of the deposits to the tenants, calculated as follows:

Security deposit	\$750.00
Pet deposit	750.00
Less: deduction for hydro	(542.91)
Less: deduction for propane	<u>(119.00)</u>
Balance of security deposit and pet deposit	\$ 838.09

I further award the \$50.00 filing fee to the tenants as the tenants' application to have merit. Therefore, the total amount of the Monetary Order provided to the tenants is \$888.09.

To enforce the Monetary Order it must be served upon the landlords and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The tenants have been provided a Monetary Order in the sum of \$888.09 to serve upon the landlords and enforce as necessary.

I have issued orders to both parties with respect to compensation for the tenants' storage costs. Should the landlords fail to compensate the tenants as ordered, or the parties remain in dispute as to the amount payable by the landlords, the tenants are at liberty to file another Application for Dispute Resolution seeking a Monetary Order for storage costs.

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: June 28, 2013

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Residential Tenancy Branch