



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, FF, MNSD

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for a monetary order for \$3850.00 and a request to retain the full security deposit towards the claim.

The tenant's application is a request for a monetary order for \$2914.00

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

The issue is whether or not either the landlords or the tenants have established monetary claim against the other, and if so in what amount.

### Background and Evidence

This tenancy began on June 1, 2014 for a fixed term expiring May 31, 2015 with the monthly rent of \$1600.00.

The tenants paid a security deposit of \$800.00 and a pet deposit of \$800.00, for a total of \$1600.00, both paid before the beginning of the tenancy.

The tenants subsequently vacated the rental unit on December 22, 2014, prior to the end of the lease.

A move in inspection was done at the beginning of the tenancy, however no move out inspection report was done at the end of the tenancy.

The landlords testified that:

- Since the tenants breached the tenancy agreement, they believe that they should be allowed to keep the full security deposit as a consequence of the breach of the tenancy agreement.
- The dishwasher in the rental unit was in good condition at the beginning of the tenancy, however the end of the tenancy there was a large dent in the front of the dishwasher and as a result the door has to be replaced.
- The tenants breached the fixed term tenancy agreement and although they attempted to re-rent the unit as soon as possible they were not able to re-rented until January 15, 2015 and therefore they lost one half a months rent.
- Further, although the utilities were not included with the rent for these tenants, they had to include utilities with the rent as an incentive to get new tenants into the rental unit in the middle of winter.
- Further, since they were unable to re-rent the unit in the month of December they believe that the tenant should also be liable for the portion of utilities that they did not pay for in December 2014.
- They also had to pay postal fees to have the dispute resolution documents sent to the tenants by overnight post.

The landlords are therefore requesting a monetary order as follows:

Security deposit	\$1600.00
Dishwasher repair	\$204.10
Loss of rental revenue for one half month	\$800.00
Cost of utilities for 4.5 months at approximately \$200.00 a month	\$900.00
Unpaid utilities for December 1, 2014 to December 14, 2014	\$100.00
Postal costs to deliver hearing package	\$40.65
Filing fee	\$50.00
Total	\$3694.75

The tenant testified that:

- She does not believe that the landlord is allowed to keep the security deposit as a consequence of breaking lease, unless the security deposit is applied to some outstanding debt or damages.

- There was no damage to the dishwasher that she is aware of, and since the landlord refused the move out inspection, she fails to see that the landlord has any proof that this damage existed when they vacated.
- The landlord told her that she had found a new tenant to move into the rental unit on January 15, 2015, however she personally saw furniture and a Christmas tree in the rental unit before Christmas of 2014 and therefore she believes that there was someone in the rental unit before January 15, 2015.
- As well, the landlord told her when she moved out that she would not owe any further rent.
- Further, the landlord pressured her to move out of the rental unit early so that the new tenants could move their belongings in early.
- She also does not believe that she should have to pay the landlords claim for utilities, as the landlord has provided no actual breakdown of the cost of utilities.
- Further, since the landlord pressured her to move out of the rental unit early so that the new tenants could move in, she believes the landlord should be reimbursing her for rent she paid for the period of December that she was not in the rental unit.
- As well since the landlord did not return her security deposit within 15 days, she believes the landlord is required to return double the security deposit.

The tenant is therefore requesting a monetary order as follows:

Security deposit double	\$1600.00
Pet deposit	\$800.00
Return of a portion of December rent	\$464.52
Filing fee	\$50.00
Total	\$2914.52

In response to the tenant's testimony the landlords testified that:

- They had informed the tenants that since they had broken the lease they would not be returning there security deposit and the tenant agreed to that.
- They did not force the tenant to move out early, and no one was living in the rental unit in the month of December, and therefore they do not believe they should be returning a portion of the December rent.
- The reason there was a Christmas tree and some furniture in the rental unit in December 2014 is because they had some relatives visiting and since the new tenants were not moving in until January 15, 2015 they allowed the relatives to use that portion of the house during Christmas.
- These tenants were responsible for 50% of utilities, and the utilities were more than \$400 per month on a regular basis and therefore they believe the \$200.00 per month is a reasonable amount for the tenants to pay, and is the amount that the tenants had been paying during the tenancy.
- Further the tenants told them they did not require the move out inspection.

### Analysis

It is my finding that the landlords do not automatically get to keep the security/pet deposit as a consequence of the tenant breaching the tenancy agreement. Landlords can applied to keep the security deposit towards losses resulting from a breach, but they cannot add the amount of security/pet deposit onto those losses and then deduct the amount off again.

I therefore deny the landlords request to add the security/pet deposit onto their the claim.

I also deny the landlords claim for alleged damage to the dishwasher. The landlord is required, under Section 35 of the Residential Tenancy Act, to do a move out inspection with the tenant at the end of the tenancy, and if the landlord fails to do so it is basically the landlord's word against the tenants as to whether there is any damage caused during the tenancy. Therefore since the burden of proving a claim is on the person making the claim it is my finding that the landlords have not met the burden of proving this portion of their claim.

I will allow the claim for lost rent for the period of January 1, 2015 to January 14, 2015 because the tenants breached the tenancy agreement and the landlord was not able to re-rent the unit until January 15, 2015 and therefore the tenants are liable for the loss that resulted from their breaching the tenancy agreement.

I will also allow a portion of the claim for utilities. I accept the landlords statement that they had to include utilities as an incentive to re-rent the unit in the winter months, however since the landlords have not provided an accurate breakdown of the cost of utilities I will only allow 50% of the amount claimed. This includes the claim for outstanding utilities for the month of December 2014.

I deny the landlords claim for the cost of delivering the hearing packages by Canada post. This is a cost of the dispute resolution process and I do not have the authority to award costs other than the filing fee, which I have allowed.

I will not allow the tenants claim for the return of any rent for the month of December 2014. It was the tenant who chose to breach the tenancy agreement and move out of the rental unit before the end of the lease and since there is no evidence to prove that anyone else paid any rent for the rental unit for the remainder of December 2014 it's my decision that the landlords are not required to return any rent to the tenant.

Further with regards to the tenants claim that the security deposit should be paid double, this would only apply if the landlords had not applied for dispute resolution within 15 days of the end of the tenancy, and since the tenant moved out on December 22, 2014 and the landlord applied on January 5, 2015, the landlord was within the 15 day time frame.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Lost rental revenue for January 1, 2015 to January 14, 2015	\$800.00
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Utility costs for 4.5 months at \$100.00 per month	\$450.00
Utility costs for one half of December 2014	\$50.00
Filing fee	\$50.00
Total	\$1350.00

And the total amount of the tenant's claim I have allowed is as follows:

Security/pet deposit	\$1600.00
Filing fee	\$50.00
Total	\$1650.00

### Conclusion

I have allowed \$1350.00 of the landlords claim, and I have allowed \$1650.00 of the tenants claim, and I therefore have set off the amount of the landlords claim against the amount of the tenants claim and I have issued an Order for the landlord's to pay \$300.00 to the tenant.

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: March 25, 2015

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Residential Tenancy Branch

