# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDC, MNSD, FF; DRI, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits") in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for their application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the deposits, pursuant to section 38; and
- authorization to recover the filing fee for their application from the landlords, pursuant to section 72.

The individual landlord KH ("landlord") and the tenant LD and his agent TF attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager for this rental unit and that she had authority to speak on behalf of the landlord company named in this application as an agent at this hearing (collectively "landlords"). The tenant confirmed that he had authority to represent the other tenant PC named in this application as an agent at this hearing. The tenant also

confirmed that his agent had authority to speak on behalf of both tenants at this hearing (collectively "tenants"). The landlords called "witness CT" to testify on their behalf at this hearing. Both parties had an equal opportunity to question the witness. This hearing lasted approximately 78 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants' deposits in partial satisfaction of the monetary award requested?

Are the tenants entitled to a return of double the amount of their deposits?

Are the tenants entitled to an order regarding a disputed additional rent increase?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. The landlord owner purchased the rental building around January 2015. This tenancy began on September 15, 2014 and ended on February 25, 2016. Monthly rent in the amount of $1,450.00 was payable on the first day of each month. A security deposit of $725.00 and a pet damage deposit of $650.00 were paid by the tenants and the landlords continue to retain these deposits. A move-in condition inspection report was completed for this tenancy but a move-out condition inspection report was not completed for this tenancy. Written permission was given by the tenants to the landlords to keep $125.00 from the deposits for cleaning. The landlords filed their application to retain the deposits on March 24, 2016.

The landlords seek liquidated damages of $1,450.00, a cleaning fee of $100.00, a sink and tub clog repair of $80.00 and the $100.00 filing fee from the tenants.

The tenants seek the recovery of their $100.00 filing fee, a return of double the value of their deposits totalling $2,750.00 (corrected from $2,900.00 which they said they mistakenly applied for), $750.00 for rent paid due to an illegal rent increase, $168.00 for a moving truck rental and $583.00 for lost wages for having to move early from the rental unit. The tenants confirmed they were not seeking $125.00 for cleaning expenses from the landlords, as noted in their original application.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. To prove a loss, the applicants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

*Landlords' Application*

*General Damages*

I award the landlords $100.00 for cleaning of the rental unit after the tenants vacated. The tenants agreed to pay this amount during the hearing. Both parties agreed that although the tenants agreed to pay $125.00 for cleaning in the move-out condition inspection report, the landlords are only seeking $100.00 for the cleaning, not $125.00.

I dismiss the landlords' claim for $80.00 without leave to reapply, to unclog the drains in the kitchen sink and the bathroom tub. I find that the landlords failed to show that the tenants caused these areas to be clogged. The tenants provided documentary proof in the form of emails to the landlords in December 2015, that there were problems with drain clogging in the rental unit and the landlords agreed to repair it. The tenants said that the landlords were performing other piping repairs in the building, which caused clog and drainage issues in their rental unit, which the landlords denied. Both parties

agreed that the landlords repaired the issue in December 2015 but the tenants said that it was a temporary fix, while the landlords said that the tenants clogged the drains with their hair after the permanent repair was done. However, the $80.00 repair invoice that the landlords provided did not indicate the source of the clogging, whether from hair or due to the tenants' negligence. Therefore, I find that the landlords have failed to meet their burden of proof in part 2 of the above test to show that the tenants caused the drains to clog. I find that the landlords are responsible for this repair.

*Liquidated Damages*

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

> *A tenant may end a fixed term 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,*
> >
> > *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
> >
> > *(c) 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.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, the tenants could be liable to pay for a loss of rent and liquidated damages to the landlords.

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

Both parties agreed that the former landlord and tenants entered into a fixed term tenancy for the period from September 15, 2014 to September 30, 2015, after which the tenants were required to vacate the rental unit. Both parties provided a copy of this tenancy agreement for this hearing, which indicates rent of $1,300.00 was due on the first day of each month.

I find that the current landlords named in this application and the tenants entered into a fixed term tenancy for the period from October 1, 2015 to December 31, 2015, after

which the tenants were required to vacate the rental unit. I find that as of January 1, 2016, it became a month-to-month tenancy agreement because the tenants stayed past the fixed term end date and the landlords agreed to this. Both parties provided a copy of this tenancy agreement for this hearing, which indicates rent of $1,450.00 was due on the first day of each month. The tenants agreed that they signed the above tenancy agreement.

I find that the landlords failed to prove that the tenants entered into a fixed term tenancy agreement from October 1, 2015 to March 31, 2016. The tenants denied signing this latest tenancy agreement. The landlord testified that it did not matter whether this was a fixed term agreement because it would default to a month-to-month tenancy. There were no witnesses to the tenants signing this latest tenancy agreement provided by the landlords. Witness CT stated that he could not remember whether he witnessed the signing and the landlord said that she did not witness this signing. There were no initials beside the provision indicating that the tenants would vacate the rental unit at the end of the fixed term of March 31, 2016, on page 1 of the agreement, as required. The last signature page of the October to March tenancy agreement is identical to last page of the fixed term agreement from October to December 2015, and it was dated for that same date. Further, the landlords were unable to explain why the tenants would sign two different tenancy agreements for two different fixed term periods on the same date of August 18, 2015.

The landlords said that they are entitled to liquidated damages even if there was no breach of the fixed term because the tenants did not provide one month's written notice to vacate even if this was a month-to-month tenancy. However, the landlords' tenancy agreement specifically indicates that the liquidated damages are for a breach of the fixed term, of which I have found no breach because the parties were not in a fixed term but rather a month-to-month tenancy at the time that the tenants vacated.

Moreover, the landlords did not provide documentary evidence of the amount claimed of $1,450.00 and show how this was a genuine pre-estimate of the costs of re-rental. The landlord is the property manager for the landlord owner of this rental unit and said that her sourcing fee was $725.00 as per her invoice issued. However, the landlord did not provide a copy of this invoice. She stated that the other $725.00 was for a "half month's rent" but did not explain the above comment. For the above reasons, I dismiss the landlords' claim of $1,450.00 for liquidated damages without leave to reapply.

The landlords confirmed that they are not seeking a loss of rent from the tenants because there was none. They said that they re-rented the unit as of March 1, 2016 and that the tenants paid rent until the end of February 2016.

As the landlords were mainly unsuccessful in their Application, I find that they are not entitled to recover the $100.00 filing fee from the tenants.

*Tenants' Application*

*Damages*

I dismiss the tenants' claim of $168.00 for a moving truck rental and $583.00 for lost wages without leave to reapply. I find that the tenants failed to prove that the landlords caused them to vacate the rental unit early on February 25, 2016 in order for new tenants to move in. The tenants did not provide any documentary evidence showing that the landlords asked them to vacate early. The tenants only provided emails and documents involving third parties but no documents indicating that the landlords had requested the early move. The landlords said that new tenants moved in on March 1, 2016 and they did not ask the tenants to leave the unit early.

*Disputed Additional Rent Increase*

I dismiss the tenants' claim of $750.00 for additional rent that they said they paid to the landlords due to an illegal rent increase, without leave to reapply. The tenants said that they paid an additional $150.00 per month from October 2015 to February 2016, because the landlords increased their rent from $1,300.00 to $1,450.00, against the allowable *Regulation* amount for each year. I find that the tenants voluntarily signed two successive fixed term tenancy agreements requiring them to move out at the end of each fixed term period. In each case, the tenants renegotiated a new fixed term with the landlord. The rent in the first tenancy agreement with the former landlord was $1,300.00 per month. The rent in the second tenancy agreement with the current landlords was $1,450.00. The tenants were not forced to sign these agreements and chose to do so voluntarily. By doing this, the tenants agreed to pay the amounts of rent indicated in each separate fixed term agreement. Accordingly, I find that the landlords did not illegally increase the tenants' rent because the separate fixed term agreements were not subject to the rent increase rules in the *Regulation*.

*Security Deposit*

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the

later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Both parties agreed that the tenancy ended on February 25, 2016 and the tenants provided a written forwarding address to the landlords on March 18, 2016. The landlords did not return the deposits to the tenants. The landlords made an application for dispute resolution to claim against this deposit, within 15 days of the written forwarding address being provided. The landlord's application was made on March 24, 2016.

The landlords' right to claim against the deposits for damages was extinguished as per section 36 of the *Act*, due to their failure to complete a move-out condition inspection report. However, the landlords also applied to retain the deposits for other amounts aside from damage, specifically liquidated damages of $1,450.00. Although the landlords were not successful in obtaining liquidated damages from the tenants at this hearing, the landlords believed that they were entitled to this amount and applied for it. Therefore, I find that the tenants are not entitled to the return of double the value of their deposits, only the original amount totalling $1,375.00.

As the tenants were mainly unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee from the landlords.

The landlord continues to hold the tenants' deposits totalling $1,375.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain $100.00 from the tenants' deposits of $1,375.00, in full satisfaction of the monetary award. I order the landlords to return the remainder of the tenants' deposits of $1,275.00 to the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of $1,275.00 against the landlords. The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' application to recover the $100.00 filing fee is dismissed without leave to reapply.

The tenants' application for an order regarding a disputed additional rent increase, a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and to recover the $100.00 filing fee for their application, is dismissed without leave to reapply.

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: August 18, 2016

Residential Tenancy Branch