



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

For the Landlord: MNR-S, MNDC-S, FF

For the Tenant: MNSDS-DR, FF

### **Introduction**

This hearing was convened as the result of the cross applications for dispute resolution (application) of the parties seeking remedy under the Residential Tenancy Act (Act).

The Landlord applied for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed
- authority to keep the Tenants' security deposit to use against a monetary award
- recovery of the filing fee

The Tenants applied for:

- a return of their security deposit
- recovery of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Landlord entitled a monetary order for loss of rent, other compensation and recovery of the filing fee?

Are the Tenants entitled to a return of their security deposit, doubled, and recovery of the filing fee?

### Background and Evidence

The written tenancy agreement filed in evidence shows that a tenancy start date of March 1, 2024, a fixed-term ending on March 1, 2025, a monthly rent of \$3700, and a security deposit and pet damage deposit of \$1850, each. The evidence at the hearing was that the Tenants did not pay the pet damage deposit.

### **Landlord's application**

The Landlord's agent, TB, testified and submitted the following: The Tenants unilaterally ended the tenancy, by providing a first notice on March 5, 2024, that they were abandoning the rental unit. At this time, on March 6, 2024, the Landlord began posting the rental unit for rent, in an effort to mitigate their loss. The Tenants gave as a reason that they were not satisfied with the condition of the rental unit. The Landlord gave the Tenants a first viewing of the rental unit on February 17, 2024, a second viewing on February 23, 2024, with the Tenants' mother, at which time they paid a security deposit of \$1850 to secure the rental unit. On February 29, 2024, they filled out a move-in condition inspection report (Report), two copies were signed, and on March 1, 2024, they began moving in. The Tenants paid the first month's rent of \$3700 and the utilities deposit of \$250 on February 29, 2024. In all, the Tenants viewed the rental unit three times before agreeing to the tenancy agreement.

TB continued on and submitted that the Landlord gave the Tenants an opportunity to have another move-in inspection to come up with a list of repairs, and further, attempts were made to settle the matters, all unsuccessful. The Landlord was able to secure a new tenant for April 16, 2024, and the Landlord lost rent for the first half of April 2024.

The Landlord testified they advertised the rental unit beginning March 6, 2024, on Facebook, Kijiji, Craigslist, and Used Victoria, and further, that the Tenants did not fully move out on March 5, 2024, as they saw the Tenants' couch inside the unit on March 16, 2024. The Landlord acknowledged receiving the Tenants' forwarding address on March 18, 2024.

The Landlord asserts that the tenancy ended on April 15, 2024, when they found new tenants, and that they filed for dispute resolution within 10 days.

The Landlord listed a monetary claim of \$1975, for half a month's rent and a portion of the utilities for April 2024.

The Landlord further requests \$35 for registered mail costs.

### **Tenants' response**

The Tenants testified and submitted the following: That on the February 29, 2024, walk-through with the Landlord and another agent, they noticed issues with the condition of the rental unit, such as a large smoke stain on the wall, which was melted from a previously hidden heater. Additionally, the downstairs shower was not done. When they began moving their belongings in, they discovered an electrical outlet that was yellowed and their partner, who is a firefighter, said that this is a fire hazard. They did not want to continue the tenancy due to the state of the rental unit, as noted above, and in addition, the rental unit was dirty and not ready for occupancy. As an example, there were dead flies all over the place.

The Tenants further submitted that began moving out their belongings on March 5, 2024, and they gave the Landlord their final notice on March 6, 2024, having never fully moved in or spend a night in the rental unit. On March 15, 2024, they provided the Landlord their forwarding address.

The Tenants request double their security deposit, in their own application, as the security deposit was not returned within 15 days of providing their written forwarding address.

### **Analysis**

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Test for damages or loss

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party did whatever was reasonable to minimize their loss.

Where the claiming party has not met each of the four steps, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Landlord's application**

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

In this case, under the signed tenancy agreement, the tenancy was set to begin on March 1, 2024, for a fixed-term through March 1, 2025, which means the Tenants were responsible for paying the full rent each month through the end of the fixed-term, or until March 1, 2025. In breach of the tenancy agreement and section 45(2) of the Act, the Tenants gave their notice on March 6, 2024, that they were vacating the rental unit. The Tenants assert that while they moved some belongings in on March 1, 2024, they never moved in or spent the night.

As to the claim for loss of rent for April 1-15, 2024, I find the Tenants were responsible for the monthly rent of \$3700 each month from March 1, 2024 through March 1, 2025, by the terms of the tenancy agreement. I find it reasonable to conclude that the Landlord would be unable to find a new tenant for the next month, and for this reason, I

find the Landlord has established a monetary claim of \$1850, for a loss of rent for the first half of April 2024, which the Tenants owed under the terms of the written tenancy agreement.

The purpose of compensation is to put the party in the same position as if the breach of the Act had not occurred. I grant the Landlord a monetary award of \$1850.

Further, I heard evidence that the Landlord collected a utilities deposit of \$250 for March 2024, and no evidence that it was returned. The utilities were part of the tenancy agreement, and was a set deposit for their use of utilities each month.

As I find that the utilities deposit was intended for the Tenants' usage during the month, I find it reasonable to conclude that the Tenants would be responsible for utilities for March 1 through March 5, 2024, the date the Tenants began removing their belongings. I do not find it reasonable to hold the Tenants responsible for utilities when they are not residing in the rental unit and using utilities. I dismiss the Landlord's claim for full retention of the utilities deposit, without leave to reapply, with the exception of a small portion, as noted below.

Using my authority under section 62(2) of the Act, I find that Tenants are entitled to a return of a partial portion of the \$250 utilities deposit paid, which in this case, I find to be \$209.70 ( $\$250 \div 31 \text{ days in March} = \$8.06 \text{ daily rate} \times 5 \text{ days}$ ). This issue will be dealt with in this Decision.

As to the Landlord's claim for registered mail expenses for this hearing, the does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I dismiss the Landlord's request for registered mail costs of \$35.

As I found merit with the Landlord's application, I grant them recovery of the filing fee of \$100.

### **Tenants' application**

The Tenants request double their security deposit of \$1850, under section 38 of the Act, which provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay any security deposit to the tenant or make an application for dispute resolution claiming against the security deposit. If a Landlord fails to do that, their right

to claim against the security deposit for damage is extinguished and the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, under the Act, I find the Tenants were not allowed to end the tenancy earlier than the end of the fixed-term under section 44(1)(a)(i) of the Act. I therefore accept that the tenancy did not end legally until April 16, 2024, when the Landlord secured a new Tenant. Further, I find the tenancy could not have ended when the Tenants vacated or abandoned the rental unit as they said they never moved in and neither condition would apply. For the above reasons, I order the tenancy ended on April 16, 2024, under 44(1)(f) of the Act, and find the Landlord filed an application 10 days later, on April 26, 2024, which met the deadline under section 38(1) of the Act.

While the Tenants claimed they did not receive a copy of the Report, I find the Landlord retained the right to keep the security deposit in a claim for loss of rent, which is not damage.

I therefore dismiss the Tenants' application for a return of their security deposit, doubled, without leave to reapply. I also dismiss their request for recovery of the filing fee.

### **Both applications**

The Landlord was granted a monetary award of \$1850 for loss of rent for April 1-15, 2024, and the filing fee of \$100, for a total of **\$1950**.

The Tenants' application was dismissed, without leave to reapply.

I order the Tenants are entitled to a return of a partial amount of utilities deposit, or **\$209.70** as noted above.

To date, the Tenants' security deposit of \$1850 has accumulated interest of \$22.52, for a total of **\$1872.52**.

For these reasons, I order the Landlord to keep the Tenants' security deposit and interest of \$1872.52 in partial satisfaction of their monetary award of \$1950, which leaves an outstanding balance owed to the Landlord of **\$77.48** (\$1950 total monetary award less the security deposit and interest of \$1872.52).

I have ordered the Landlord to return part of the utilities deposit, in the amount of **\$209.70**. From this amount, I deduct the remaining monetary award owed to the Landlord of \$77.48, leaving a balance owed to the Tenants in the amount of **\$132.22**.

To give effect to this order, I grant the Tenants a monetary order in the amount of \$132.22.

If the Landlord fails to comply, the Order must be served to the Landlord for enforcement and filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

### Conclusion

The Landlord's application for loss of rent for April 1-15, 2024, and recovery of the filing fee was successful. The Landlord's request for registered mail costs is dismissed, without leave to reapply.

The Tenant's application was dismissed, without leave to reapply.

The Landlord was ordered to return a remaining balance of the Tenants' utilities deposit as explained herein.

The Tenants were granted a monetary order in the amount of **\$132.22** as noted above.

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 05, 2024

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Residential Tenancy Branch