



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF; MNSD, OLC, FF

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords' details of dispute sets out that the landlords are seeking to retain the security deposit. I accept that the landlords have sufficiently pleaded that they seek authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

This hearing also dealt with the tenant's application pursuant to the Act for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

The tenant's request for an order that the landlord comply with the Act, regulation or tenancy agreement is a request for compensation pursuant to subsection 38(6) of the Act for compensation for the landlords' failure to file for dispute resolution within fifteen days of receiving the tenant's forwarding address.

Both parties appeared. The landlord JH (the landlord) appeared and confirmed he was acting on behalf of both himself and the landlord NH.

### Landlords' Evidence

The landlords submitted evidence to the Residential Tenancy Branch by email. The Residential Tenancy Branch does not accept evidence by this method. As such, the Residential Tenancy Branch did not receive the landlords' evidence. The landlord testified to the content of this evidence, but I did not order that copies be sent after the conclusion of the hearing as it was not necessary.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award for loss arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act? Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlords' claim and the tenant's cross claim and my findings around each are set out below.

This tenancy began 1 October 2014. The tenancy ended 31 January 2015 when the tenant vacated the rental unit. Monthly rent for the duration of the tenancy agreement was \$620.00. The landlords continue to hold the tenant's security deposit in the amount of \$310.00, which was collected at the beginning of the tenancy. No condition move in or move out inspection reports were created in respect of this tenancy.

The parties agree that the tenancy was for a fixed term of one year ending 30 September 2015.

On 5 January 2015, the tenant gave notice to end his tenancy by way of text message. The tenant testified that he assured the landlords that he would continue to pay rent

until the landlords found a new tenant. The landlord testified that the tenant was observed moving from the rental unit on 6 January 2015. The tenant denied that he was moving at this time, but rather that he had sold some furniture.

The landlord testified that in order to mitigate any losses, the landlords sought a replacement tenant. The landlord testified that the landlords secured a new tenancy for 1 February 2015. The landlord testified that the landlords spent approximately 14.5 hours advertising for a new tenant and vetting prospective tenants. In particular, the landlord testified that the landlords spent time posting the rental unit to various online classified sites, showing the rental unit, conducting interviews of prospective tenants, and conducting reference checks. The landlord testified that he arrived at \$350.00 as compensation as one half of his and his wife's hourly wage.

On 28 April 2015, the tenant sent his forwarding address in writing to the landlords. The landlords received the tenant's mailing on 1 May 2015.

The tenant testified that he never attempted to find a new tenant for the purpose of assigning the tenancy.

The landlords filed their claim after close of business on 14 May 2015 seeking compensation for losses. The landlords did not claim against the security deposit for compensation for damage to the rental unit.

The tenant filed his claim on 28 May 2015.

## Analysis

### *Landlords' Claim*

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the landlord and tenant entered into a fixed term tenancy for the period 1 September 2013 to 31 August 2014.

Subsection 45(2) of the Act sets out how a tenant 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.

[emphasis added]

This means that a tenant cannot give notice to end the tenancy before the end of the fixed term. I find that the landlords were entitled to rely on the tenant's expressed intent to vacate the rental unit before the end of the fixed term. In this case, the tenant vacated the rental unit before the completion of the fixed term. The tenant has breached the Act and as a result the landlords experienced a loss. In particular, the landlords seek compensation for losses resulting from the costs of re-renting the rental unit after the tenant's breach. The cost of re-renting a rental unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why landlords enter into fixed-term tenancy agreements is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when the tenant breached the fixed-term tenancy agreement resulting in an early end to the tenancy, the landlords incurred the costs of re-renting earlier than they would have without the breach. This exposed the landlords to extra costs of rental eight months earlier than anticipated. The landlord testified that the landlords spent 14.5 hours finding a new tenant. The landlords value their time for 14.5 hours at \$350.00. The term of the fixed-term tenancy was one year. Accordingly, the cost of rental was \$29.17 per month amortized over the tenancy. I find that the landlords are entitled to compensation in the amount of \$29.17 for each month remaining on the tenancy: \$233.36.

As the landlords have been successful in their application, they are entitled to recover their filing fee from the tenant.

I issue a total monetary award in the landlords' favour in the amount of \$283.36:

Item	Amount
Early End To Tenancy (8mo x \$29.17/mo)	\$233.36
Recover Filing Fee	50.00
<b>Total Monetary Award</b>	<b>\$283.36</b>

### *Tenant's Claim*

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

The landlords did not complete a condition move-in or move-out inspection with the tenant. Accordingly, their right to claim against the security deposit for damages was extinguished by this failure pursuant to both subsection 24(2) and 36(2); however, pursuant to Residential Tenancy Policy Guideline, "17. *Security Deposit and Set off*" (Guideline 17), this extinguishment would not prevent the landlord from claiming against the security deposit for any monies owing for other than damage to the rental unit.

The landlords received the tenant's forwarding address on 1 May 2015. Accordingly, the landlords had until 16 May 2015 to file for dispute resolution. The landlords made their claim before 16 May 2015. As such, the landlords have complied with subsection 38(1) of the Act and they are not liable for compensation pursuant to subsection 38(6) of the Act. The tenant's claim for compensation pursuant to subsection 38(6) of the Act is dismissed.

Guideline 17 sets out that:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the deposit
 unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

Accordingly, the tenant is entitled to the balance of his security deposit: \$76.64.

As the tenant was entitled to return of a portion of his security deposit, the tenant is entitled to recover his filing fee from the landlords.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$76.64 under the following terms:

Item	Amount
Security Deposit	\$310.00
Recover Filing Fee	50.00
Offset Landlords' Award	-283.36
<b>Total Monetary Order</b>	<b>\$76.64</b>

The tenant is provided with a monetary order in the above terms and 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 26, 2015

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Residential Tenancy Branch