



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38 and to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended this hearing and were given an opportunity to make submissions. The landlords acknowledged receipt of the tenant's Application for Dispute Resolution and both parties testified that they had received the other party's evidence for this hearing.

### Issue(s) to be Decided

Are the tenants entitled to return of all or a portion of their security deposit? Are the tenants entitled to a monetary award in the amount equivalent to their security deposit as a result of a failure by the landlord to comply with section 38 of the *Act*?  
Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began on October 15, 2014 and continued until the tenants vacated the rental unit on June 30, 2015. The tenants testified that they did not know they were required to provide written notice to end the tenancy. Therefore, the tenants provided a notice in writing when they became aware of this requirement. The tenants testified that they sent a written notice on July 20, 2015, after they vacated the rental unit. They submitted a copy of the letter as evidence. The letter was dated June 1, 2015 however a handwritten note indicated it was sent to the landlords on July 20, 2015. The landlords confirmed that they continue to hold a \$300.00 security deposit paid by the tenants at the start of this tenancy. The landlords confirmed that they have made no application to

retain the tenants' security deposit but they submitted that they were under no obligation to return the deposit as the tenants had not provided them with a forwarding address.

Both parties testified that there was no condition inspection report prepared at the start or end of this tenancy. Both parties agreed that there was a partial walk through at the end of tenancy but the parties disagreed about the condition of the rental unit.

The tenants sought return of their security deposit as well as an amount equal to that \$300.00 deposit as a result of the landlord not returning their deposit in accordance with section 38 of the *Act*. The tenants testified that they provided a forwarding address to the landlords on July 20, 2015 after they vacated the rental unit on June 30, 2015. Both Landlord S and Landlord J testified that they were not provided with a forwarding address for the tenants until they received the Application for Dispute Resolution in the mail. Landlord S testified that, once the Dispute Resolution application was filed and they had contact information for the tenants, any efforts by the landlords to resolve the matter of the security deposit with the tenants were rebuked.

Landlord J also testified that the unit was not cleaned at move out. Both landlords stated that they had to change the locks on the rental unit and that they had difficulty re-renting the unit because of the tenants' lack of notice. The tenants testified (without any supporting evidence) that the unit was re-rented as of July 1, 2015.

### Analysis

Section 38(1) of the *Residential Tenancy Act* requires a landlord to either return the security deposit in full or file an Application for Dispute Resolution (to retain the deposit) within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, must return the tenant's security deposit and must pay the tenant a monetary award equivalent to the original value of the security deposit. With respect to the landlords' obligation to return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlords both testified that the tenants did not provide a forwarding address prior to applying to the Residential Tenancy Branch on August 18, 2015.

Given the conflicting testimony regarding provision of the tenants' forwarding address, a decision regarding the triggering of the landlords' obligation to return the tenants' deposit hinges on a determination of credibility. It is useful to consider the manner and tone (demeanour) of the witness' evidence in determining credibility. As well, I have

considered the content of each party's testimony, and whether it is consistent with the other events that took place during this tenancy.

The tenants' evidence lacked credibility. The tenants stated that they were not aware they needed to provide written notice to the landlord before vacating the rental unit. The correspondence between the parties prior to the tenants vacating the rental unit suggests that the disputes between the parties continued to escalate and that the tenants chose to vacate the residence. The tenants comment in both their correspondence to the landlord and in their submissions that Landlord J had asked them to vacate the rental unit prior to their decision to move out. The tenants also listed a series of complaints in their application regarding irritations to them throughout the course of the tenancy. One piece of correspondence from the tenants referred to one of the tenants working graveyard shifts and that the landlords' children are disturbing their sleep in the day. Another piece of evidence, the tenants' late "Notice to End Tenancy" provides a similar list of complaints.

The tenants testified that they provided the landlord with their forwarding address on July 20, 2015. However, the copy of that letter provided for this hearing is "backdated" to June 1, 2015. Furthermore, the tenants' application for dispute resolution was filed on August 18, 2015. These dates result in a discrepancy to be explained by the tenants. I find that the tenants' initial explanation that they were not aware of the need to provide a written notice to end tenancy is insufficient to rectify these discrepancies or to determine when the landlord might have been provided with a notice that the tenants intended to vacate the rental unit. As tenants, they are required to know their obligations under the *Act*. I find that the tenants should have known the law with respect to ending the tenancy and should have known to exercise common sense in providing the landlord notice so that he could re-rent the unit.

Tenant CB's demeanour during the course of the hearing was argumentative. I find that his lack of ability to restrain himself during the course of the hearing reflects the manner in which he addressed the end of this tenancy. I find that all of the evidence shows that he and his co-tenant chose to vacate the rental unit without sufficient notice to their landlord.

On the other hand, I found Landlord S's demeanor during the hearing was reasonably calm and that his testimony was candid. Both he and Landlord J did not waver in their version of events and their testimony was consistent with each other. Furthermore, the landlords' version of events provides a reasonable explanation of the current circumstances.

I have considered the credibility of both party's testimony as well as the burden of proof, which, in this case, requires the tenant to provide sufficient evidence to prove when they provided their forwarding address to the landlord. I find that the tenants have not provided sufficient evidence to support their claim that they provided their forwarding address on July 20, 2015. Therefore, I do not find that they have provided evidence to show that the landlord's obligation to return the security deposit or make a claim against that deposit has been triggered. I dismiss the tenant's application with leave to reapply.

I order that, as of the date of receipt of this decision by the landlord, he is considered to have been provided the tenants' forwarding address of the tenants, thereby triggering his obligation to take steps with respect to the deposit.

### Conclusion

I dismiss the tenant's application in its entirety.

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 7, 2016

---

Residential Tenancy Branch

