



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on May 19, 2016 and has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The landlord confirmed through his translator that he had received the tenants' notice of hearing package and the submitted documentary evidence as claimed via Canada Post Registered Mail. The landlord stated that the tenant was served in person with his submitted documentary evidence on October 21, 2016. The Tenants confirmed receipt as claimed by the landlord. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation and return of the security deposit?

### 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 applicant's claim and my findings are set out below.

This tenancy began on March 27, 2013 on a fixed term tenancy ending on March 31, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 10, 2013. The monthly rent was \$2,100.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$1,050.00 was paid.

The tenants seek a monetary claim of \$1,960.00 which consists of:

\$1,050.00	Return of Original Security Deposit
\$910.00	Compensation not paid

Both parties confirmed that the tenancy ended on April 17, 2016. The tenants stated that their forwarding addressing was given to the landlord via email on April 30, 2016. The landlord acknowledged that he did in fact receive the tenants' forwarding address as claimed. The landlord stated that he did in fact withhold the tenants' security deposit due to damages that he claims that the tenants made to the rental.

The tenants both stated that they had received a typed letter titled, "Notice To End Tenancy", in which the landlord gives notice to end the tenancy and the tenants to move out by May 1, 2016. A reason given is that the property was being transferred to his sister-in-law to occupy it. The tenants stated that as such they were entitled to compensation under the Act.

### Analysis

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 a tenant's provision of a 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.

I find based upon the undisputed affirmed evidence of both parties that the landlord did receive the tenants' forwarding address via email which was accepted by the landlord in which he responded to it on May 1, 2016. The landlord did not return the \$1,050.00 security deposit or file an application for authorization to retain it against a claim for damages. As such, the landlord has failed to comply with section 38 (1) of the Act and is liable under section 38 (6). The tenants are successful in their claim for return of the original \$1,050.00 security deposit. The tenants are also entitled to compensation under section 38 (6) of \$1,050.00.

As for the second portion of the tenants' claim of compensation of \$910.00 for complying with a notice to end tenancy, both parties confirmed that the landlord did not serve the tenants with a 2 Month Notice To End Tenancy issued for Landlord's Use. The tenants instead relied upon a typed letter, "Notice To End Tenancy". Both parties confirmed that there was no offer of compensation to end the tenancy as part of this letter. Section 49 (7) states that a notice under this section must comply with section 52. Section 52 (e) states that when given by a landlord, be in the approved form. I find that as the landlord failed to give notice to the tenants in the approved form that no compensation is owed. As such, this portion of the tenants' application is dismissed.

The tenants are entitled to a total monetary award of \$2,100.00 consisting of the return of the original \$1,050.00 security deposit and \$1,050.00 as compensation under section 38 (6).

### Conclusion

The tenants are granted a monetary order for \$2,100.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 09, 2016

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Residential Tenancy Branch