



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenants' Application made February 28, 2017: AS; CNC; MNSD; MT; OLC; FF; O  
Amended March 4, 2017, to include MNDC.

### **Introduction**

This Hearing was scheduled to consider the Tenants' Application for Dispute Resolution, made February 28, 2017, seeking an Order that the Tenants may assign or sublet the rental unit; more time to file an Application to cancel a One Month Notice to End Tenancy for Cause; to cancel the One Month Notice to End Tenancy for Cause; an Order that the Landlords comply with the Act, regulation or tenancy agreement; return of the security deposit; to recover the cost of the filing fee from the Landlords; and other unspecified orders. The Tenants' Application was amended on March 4, 2017, to include a request for compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

The Tenants testified that on February 28, 2017, they mailed their Notice of Hearing documents to the Landlords, by registered mail, to the address provided on the tenancy agreement. They testified that on March 5, 2017, they mailed the amended Application to the Landlords, by registered mail, to the same address as they sent the Notice of Hearing documents. The Tenants provided the tracking numbers for the registered documents.

SD stated that she helped the Landlords NC and CC with "translation" and communication between them and the Tenants, but told the Tenants to contact NC and CC directly if they had any problems. She stated that she was not an agent for the Landlords NC and CC. SD acknowledged that the address for service of the Landlord provided on the tenancy agreement is her address.

The Tenants testified that they named the Landlord SD on their Application because they communicated with her throughout the tenancy with respect to "troubles with the place", and when they required access to the breaker. They stated that they requested an alternate address or contact information for the Landlords NC and CC, but none was given.

The tenancy agreement provides an “address for service of the landlord or the landlord’s agent”. This is the address the Tenants sent the Notice of Hearing and their amended Application. I find that the Landlords were duly served with these documents, pursuant to the provisions of Section 89 of the Act.

The Tenants stated that they have moved out of the rental unit and that the Landlord did not issue and serve them with a One Month Notice to End Tenancy for Cause. The tenancy has ended and therefore, their Application is dismissed with respect to

- an Order that the Tenants may assign or sublet the rental unit;
- more time to file an Application to cancel a One Month Notice to End Tenancy for Cause;
- to cancel the One Month Notice to End Tenancy for Cause; and
- an Order that the Landlords comply with the Act, regulation or tenancy agreement.

The Tenants did not specify what “other” Orders they were seeking. Therefore, this portion of their Application is also dismissed.

### **Issue(s) to be Decided**

- Are the Tenants entitled to return of the security deposit?
- Are the Tenants entitled to compensation in the equivalent of one month’s rent “due to lack of communication”?

### **Background and Evidence**

This tenancy began on August 1, 2016. It was a fixed term tenancy, ending August 1, 2017. Monthly rent was \$2,600.00, due on the first day of the month. It is important to note that the tenancy agreement stipulates that rent is \$2,600.00 each day, but it is clear from the Tenants’ Monetary Order Worksheet that rent was \$2,600.00 per month. The Tenants paid a security deposit in the amount of \$1,300.00 on August 1, 2016.

The Tenants gave the Landlords a 30 day notice to end the tenancy, by registered mail to the Landlords’ address for service on the tenancy agreement. The Tenants gave documentary evidence indicating that the Landlords received the Tenants’ notice to end tenancy on February 28, 2017. The Tenant AT moved out of the rental unit on March 11, 2017. The other two Tenants moved out of the rental unit on March 25, 2017. The Tenants have not yet provided the Landlord with their forwarding address in writing.

The Tenants provided documentary evidence with respect to their claim for compensation. The documentary evidence appears to be in support of a claim for loss of quiet enjoyment of the rental unit.

### **Analysis**

The Tenants' claim for return of the security deposit is premature. Sections 38 and 39 of the Act provides for how security deposits must be applied at the end of a tenancy:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

### **Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

At the time of making their Application, the tenancy had not ended, nor had the Tenants provided their forwarding address to the Landlord. This portion of their Application is dismissed **with leave to reapply** if and when the Tenants have complied with Section 38(1)(b).

With respect to the Tenants' claim for compensation, I find that their Application is confusing. The Tenants applied for compensation because of "lack of communication with the Landlords", but provided evidence that appears to support a claim for loss of quiet enjoyment. The Landlords NC and SC were duly served with the Tenants' documents, but did not attend the Hearing. Therefore, I find no prejudice to the Landlords NC and SC in dismissing this portion of the Tenants' claim **with leave to reapply**.

The Tenants have not been successful in their Application and therefore I dismiss their application to recover the cost of the filing fee from the Landlords.

### **Conclusion**

The Tenants' Application for return of the security deposit and for compensation for damage or loss is **dismissed with leave to reapply**. The remainder of the Tenants' Application is dismissed.

If the Tenants choose to reapply, they may serve the Landlords NC and SC at the address for service given on the Residential Tenancy Agreement, unless the Landlords choose to provide the Tenants with another address for service, in writing.

I make no finding with respect to whether or not the Landlord SD is an agent for the Landlords NC and SC, or when the tenancy ended.

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 31, 2017

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Residential Tenancy Branch