



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the Landlords' Application for Dispute Resolution (the "Application") filed on December 1, 2016 requesting a Monetary Order for: unpaid rent; retention of Tenants' security deposit; and, recovery of the filing fee from the Tenants.

One of the Landlords, the Landlord's legal counsel, and both Tenants appeared for the hearing. Both Tenants and legal counsel provided affirmed testimony during the hearing.

The Tenants confirmed receipt of the Landlords' Application by registered mail. Legal counsel confirmed receipt of the Tenants' 54 pages of documentary evidence. However, the Tenants denied receipt of the Landlords' documentary evidence which comprised three emails, a tenancy agreement, and a previous decision between the same parties dated March 30, 2016. Legal counsel stated that the Landlords had sent this evidence with the Application.

I allowed the hearing to continue and explained to the parties that I would adjourn the hearing if the documents the Landlord was intending to rely on were critical to the issues to be decided on. No objections were raised to this course of action.

### Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent?
- Did the Landlords comply with the *Residential Tenancy Act* (the "Act") in dealing with the Tenants' security deposit?

### Background and Evidence

The parties agreed that they had signed a tenancy agreement for the rental unit to begin on August 15, 2015 for a fixed term of one year due to expire on August 14, 2016. The parties agreed that the rent under the signed tenancy agreement entered into was \$2,900.00 payable on the first day of each month. The Tenants provided the Landlords with a security deposit of \$1,450.00 on August 5, 2017 for which the Tenants were issued with a rent deposit receipt by the Landlords.

The Tenants testified that when they went to move into the rental unit the rental unit was not fit or suitable for accommodation because: there were several repairs that were still to be done; there were a number of safety issues like exposed wiring; there were no locks on the windows and front door; construction material had been thrown and disposed of in the yard area; the internal doors were broken; the new paint work was shoddy; and, there was no fire exit.

The Tenants testified that they contacted the Landlords by the phone the following date to inform them that the rental unit was not fit for occupancy and asked for a meeting to address the issues. The Tenants testified that the Landlords did not call them back and they did not have a service address for the Landlord because the Landlord had not given them a copy of the signed tenancy agreement.

The Tenants testified that the Landlords had been given postdated cheques for the tenancy and due to the lack of communication and action by the Landlords, they put a stop payment to all of the cheques including the rent for August 15, 2015 to August 31, 2015 and for the months thereafter.

The Tenants testified that they did eventually contact the Landlords by email on August 21, 2015 informing them that they no longer were renting the house due to the failure of the Landlords to remedy the issues with the rental unit. The Tenants explained that they never occupied the rental unit but started to look for another place to move to and were able to secure another place to move into for September 2015.

Legal counsel rebutted the Tenants' testimony and stated that at no time were the Landlords contacted about the issues with the rental unit until the August 21, 2015 email. Prior to this, the Tenants had not raised any issues by phone or verbally and proceeded to put the utilities for the rental unit into their name.

While the Landlords had applied to claim \$1,450.00 in unpaid rent, the Landlords wrote in the details section of the Application that their claim is for one month's rent. Legal counsel clarified that they were willing to accept just the \$1,450.00 in the Tenants'

security deposit as a settlement offer, otherwise they were seeking one month's unpaid rent as the Tenants had put a stop payment on their rent.

Legal counsel explained that the Tenants had not ended the tenancy properly and by September 2015, the Tenants still had keys to the rental unit. Legal counsel stated that the Landlords were unable to re-rent the rental unit until October 1, 2015 but were only claiming one month's unpaid rent.

The Tenants stated that they left all the keys in the rental unit prior to September 2015 and testified that the Landlords had re-rented the rental unit for September 1, 2015. Legal counsel rebutted and stated that this was incorrect and that the Tenants had no evidence to support this allegation.

Both parties had submitted two decisions which pertained to previous hearings held with the same parties. The parties had initially appeared before a different Arbitrator on March 30, 2016 to hear the Tenants' application for the return of their security deposit, the file number for which appears on the front page of this Decision. In that Decision, the Landlords argued that the Tenants had not met the requirements of Section 38(1) of the Act in giving their forwarding address in writing. The Arbitrator conducting that hearing determined that the Tenants had indeed failed to provide their forwarding address to the Landlords in writing and that the Tenants' application was premature. In the Analysis section of that decision, the Arbitrator laid out the Landlords' duty in dealing properly with the Tenants' security deposit including the doubling penalty provided for by Section 38(6) of the Act. That Arbitrator then concluded:

*"I dismiss the application of the tenant as it is premature. I give her leave to reapply after she has served the landlord with her forwarding address in writing if the landlord does not return her deposit and cheques or make an Application to claim against her deposit."*

[Reproduced as written]

The Tenants confirmed in this hearing that they had provided their forwarding address in writing to the Landlords on April 3, 2016 by registered mail pursuant to the directions given in the March 30, 2016 decision. However, neither the Tenants nor legal counsel were able to determine the exact date the Landlords signed for that but legal counsel confirmed that it was received by the Landlords by registered mail some time shortly after April 3, 2016. Legal counsel then confirmed the Landlords filed their application to keep the Tenants' security deposit on May 24, 2016. When legal counsel was asked why that application was made outside the 15 day time limit after the Landlords had received the Tenants' forwarding address, legal counsel submitted that the Landlords

were unsure about the validity of the address and had to do some investigation to verify that it was correct. Legal counsel confirmed that the Tenants were served with the May 24, 2016 application to the address the Tenants had provided as it turned out to be correct.

The Landlords' application made on May 24, 2016 was then heard by a different Arbitrator on November 17, 2016, the file number for which appears on the front page of this Decision. The November 17, 2016 decision reads:

"Dispute Codes            MNSD

Introduction

*This hearing was convened by way of conference call in response to the landlords' application for an Order permitting the landlords to keep all or part of the tenants' security deposit.*

*Both parties attended the hearing. I have reviewed the landlord's file and found no evidence contained within the file to support any aspect of the landlords' claim. The landlord stated that he did not know he had to provide any documentary evidence for the hearing in support of his claim.*

Conclusion

*Due to a lack of evidence I am unable to proceed with the hearing today. The landlords' application is dismissed with leave to reapply.*

*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."*

[Reproduced as written]

Legal counsel argued that pursuant to the November 17, 2016 decision above, the Landlords were given leave to re-apply and that the Landlords re-applied on December 1, 2016 (which is the Application before me) and therefore it was made within 15 days. Legal counsel submitted that to go against the November 17, 2016 decision would serve to set aside, amend or cancel that decision.

At the end of the hearing, I gave the parties an opportunity to settle this matter by way of mutual agreement. However, the parties were unable to come to a satisfactory

agreement and the Tenants rejected the Landlords' offer to mutually consent to the keeping of their security deposit. As a result, I make the following findings.

### Analysis

I first turn to the Landlords' Application to keep the Tenants' security deposit. The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord **must** repay the security deposit or make an Application to claim against it.

The parties were unable to determine the exact date the Landlords received the Tenants' forwarding address which was sent by registered mail on April 3, 2017. Therefore, I turn to the deeming provisions as provided for by Section 90 of the Act. In particular, Section 90(a) of the Act states that a document sent by mail is deemed to have been received five days later. Therefore, I find the Landlords received the Tenants' forwarding address in writing on April 8, 2016 as instructed by the March 30, 2016 Decision. As a result, the Landlords would have had 15 days to file their application to keep the Tenants' security deposit.

I reject the Landlord's submissions that the delay in filing the May 24, 2016 application was due to investigation time checking the validity of the Tenants' forwarding address. This is because it is not a landlord's responsibility to verify a forwarding address provided by a tenant even though it may appear to be an invalid address. In any event, even if the Landlords decided to undertake such an investigation of their own accord, this still should have been done before the 15 day time limit expired so that the Landlords could meet their obligations under the Act.

I find the Landlords failed to comply with the 15 day statutory time limit and did not file their application until May 24, 2016. Section 38(6) of the Act states that if the landlord fails to make an application to keep the tenant's security deposit or return the deposit within 15 days, then the landlord must pay double the amount of the deposit to the tenant. The Landlords were clearly informed of these statutory provisions of the Act in the March 30, 2016 decision and in any case are still required to know of their obligation in dealing with a security deposit at the end of a tenancy.

I also reject legal counsel's submissions that the November 30, 2016 decision gave the Landlords 15 days to re-file their application and that to decide contrary to this would change that decision. In this respect, I find the fact the November 17, 2016 decision provided the Landlords leave to re-apply does not rehabilitate the statutory breach of the Act by the Landlords. By the time the Landlords had filed their Application on May

24, 2016 and the hearing was held on November 17, 2016, the breach of the Act had already taken place. As a result, I cannot ignore or overlook this statutory breach. In addition, the November 17, 2016 decision did not make any legal findings on the Tenants' security deposit and provided no extension of the statutory time limit that the Landlords were required to follow.

Policy Guideline 17 on security deposits states that an arbitrator will order the return balance of the deposit whether or not the tenant has applied for arbitration for its return. Therefore, I dismiss the Landlords' Application to keep the Tenants' security deposit and grant the Tenants' relief for double the amount of \$2,900.00.

I now turn my mind to the Landlords' monetary claim for unpaid rent. Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Therefore, I find the parties entered into a tenancy agreement on August 15, 2015 and were accordingly obligated to follow the provisions of the Act under the tenancy agreement.

Section 26(1) of the Act provides that a tenant must pay rent under a tenancy agreement **whether or not** the Landlord complies with the Act. In this case, I accept that the Tenants were responsible to pay rent in the amount of \$2,900.00 per month but ended up cancelling their all three rent cheques given to the Landlord for this tenancy. Therefore, the Landlords did not receive any rent for this tenancy.

While the Tenants provided evidence regarding the state of the rental unit and that it was not fit for occupancy, for which I make no legal findings on in this Decision, the remedy for the Tenants in such a case was not to withhold rent but to deal with the issues with the Landlords in writing or apply for dispute resolution requesting remedy through repairs and/or compensation or an order to end the tenancy. The Tenants are still at liberty to file for such compensation. However, in this case, I find the tenancy was not ended properly by the Tenants and therefore they are responsible for unpaid rent. The Landlord only claimed rent for one month's loss which I hereby grant to the Landlords in the amount of \$2,900.00.

As the Landlords have been partially successful in this matter, pursuant to Section 72(1) of the Act, I grant the Landlords recovery of the \$100.00 filing fee from the Tenants. Therefore, the total amount awarded to the Landlords is \$3,000.00.

The Act allows me to set off amounts that I find are payable to the parties. The Tenants are entitled to \$2,900.00 for double the amount of their security deposit, and the

Landlords are entitled to \$3,000.00 for unpaid rent. Therefore, the resulting difference is \$100.00 payable by the Tenants.

The Landlords are issued with a Monetary Order for this amount. This order must be served on the Tenants along with instructions for the Tenants to make payment. The Landlords may file and enforce the order in the Small Claims Division of the Provincial Court if the Tenants fail to make voluntary payment. Copies of this order are attached to the Landlords' copy of this Decision. The Tenants may also be held liable for any enforcement costs incurred by the Landlords.

### Conclusion

The Tenants have breached the Act by not paying rent under the tenancy. The Landlord is granted a Monetary Order for \$100.00 after offsetting the amounts payable to the Tenants for double the return of their security deposit.

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

Dated: June 02, 2017

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Residential Tenancy Branch