



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL RES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, MNDC, FF

### Introduction

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

- a monetary order for loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties were represented at the hearing. Both the corporate and personal landlords were represented by their agent, GT (the "landlord"). The female tenant, SD (the "tenant") primarily spoke for both co-tenants.

As both parties were represented I confirmed there were no issues with service. The tenants confirmed they were served with the landlords' application for dispute resolution and evidence. The tenants testified that they had not submitted any evidentiary materials. Pursuant to sections 88 and 89 I find that the tenants were duly served with the landlords' application package.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed? Are the landlords entitled to retain any portion of the security deposit for this tenancy? Are the landlords entitled to recover the cost of this application from the tenants?

### Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in April, 2016 and was scheduled to end on March 31, 2017. The rent was \$1,600.00 payable on the first of the month and the tenants paid a security deposit of \$800.00 which is still retained by the landlords.

The landlord testified that the tenants gave notice that they wished to end the tenancy on February 15, 2017 and vacated the rental unit on February 28, 2017. A condition inspection report was prepared by the parties and submitted into written evidence. The tenants provided their forwarding address on the condition inspection report prepared on February 28, 2017. The landlord said that the tenants did not provide written permission that the landlord could retain any portion of the security deposit for this tenancy.

The landlord submitted into written evidence a copy of the tenancy agreement which includes a clause that the tenant shall pay liquidated damages of \$800.00 plus GST if the tenant ends the fixed term tenancy before the end of the original term. The landlord calculates the amount owed by the tenant to be \$840.00.

The tenant initially testified that they provided notice on March 15, 2017, two weeks after the date move-out inspection report was completed. The tenant subsequently testified that they believe they moved out on March 15<sup>th</sup> due to family circumstances. The tenant testified that they had given permission to the landlord to retain the full amount of the security deposit and the present hearing is unnecessary. The tenant testified that written authorization that the landlord may retain the security deposit was given by way of text messages but no written evidence was submitted.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the parties that this tenancy ended prior to the fixed term. I accept the evidence of the landlords that this tenancy ended on February 28, 2017 when the parties completed a move-out inspection report. I accept the landlords' evidence that the tenants did not provide written authorization that the landlords may retain the security deposit. I find the tenants' testimony to be insufficient evidence that written authorization was provided. Therefore, I find that the landlords acted in accordance with the *Act* by filing the present application to retain the security deposit for this tenancy.

Pursuant to the tenancy agreement I find that the tenants were obligated to pay the amount of \$840.00 to the landlords as liquidated damage for ending this tenancy before its full term. Accordingly, I find that the landlords are entitled to a monetary award in the amount of \$840.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' \$800.00 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

As I find the landlords' application has merit I find that the landlords are entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$140.00 under the following terms:

| Item                      | Amount          |
|---------------------------|-----------------|
| Liquidated Damages per TA | \$840.00        |
| Less Security Deposit     | -\$800.00       |
| Filing Fees               | \$100.00        |
| <b>TOTAL</b>              | <b>\$140.00</b> |

The tenants must be served with this Order as soon as possible. Should the tenants 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 31, 2017

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Residential Tenancy Branch