



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNDC MNSD

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- a monetary order for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants sought:

- a return of their security deposit pursuant to section 38 of the *Act*;
- a monetary order for loss or other money owed pursuant to section 67 of the *Act*;
- an order for the landlord to comply with the *Act* pursuant to section 62 of the *Act*; and
- other unspecified relief.

The tenants and landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The tenants were represented at the hearing by tenant D.M. (the "tenant").

The tenant acknowledged that she received a copy of the landlord's Application for Dispute Resolution and evidentiary package by way of Canada Post Registered Mail on February 16, 2017, while the landlord acknowledged being served in person on April 29, 2017. Pursuant to sections 88 and 89 of the *Act*, both parties are found to have been duly served.

### Issue(s) to be Decided

Is either party entitled to compensation for money owed under the tenancy?

Are the tenants entitled to a return of their security deposit it? If so, should it be doubled?

Should the landlord be directed to comply with the *Act*?

Is the landlord entitled to a return of the filing fee?

### Background and Evidence

Testimony was provided by both parties that this tenancy began on July 15, 2016 and ended on January 31, 2017. This was a fixed-term tenancy which was to continue as a periodic, month to month tenancy ending on or before July 31, 2017. Rent was \$1,995.00 per month and a security deposit of \$2,000.00 was collected by the landlord at the outset of the tenancy. When asked about the large size of the security deposit, the landlord explained that \$1,000.00 was collected as a security deposit, while \$1,000.00 was collected as a furniture deposit.

The tenancy agreement entered into evidence demonstrates that the parties agreed to a 6.5 month tenancy ending on January 31, 2017. The parties have left blank the section of the agreement that states:

**At the end of this fixed-length of time** (please check one option)

- i) the tenancy may continue on a month-to-month basis or another fixed length of time
- ii) the tenancy ends and the tenant must move out of the residential unit

The tenants testified that they understood the agreement to be a fixed term tenancy, while the landlord explained that she understood the agreement to be a periodic tenancy.

The landlord explained that she was seeking a Monetary Order of \$2,095.00. She said that this amount represented the loss in rental income she experienced. The landlord testified that an addendum to the tenancy agreement signed by the parties contained a clause that noted, "The Tenant and Landlord both agree to give a minimum of 45 days notice to end this lease agreement and both parties must agree to the terms." She stated that on December 29, 2016 the tenants provided written notice of their intention to vacate the property by January 31, 2017. The landlord argued that this was 33 days, not 45 days' notice, and the tenants had therefore violated their tenancy agreement. The landlord said that this property was never again rented to tenants.

The tenants are seeking a Monetary Order of \$6,305.80. They said that this amount represents the following loss:

Item	Amount
Return of rent for July 15-31, 2016/cleaning/storage	\$1,900.00
Carpet Cleaning	205.80
Move Out Cleaning	100.00
Return of Security Deposit (2 x \$2,000.00)	4,000.00
Return of Filing Fee	100.00
<b>Total =</b>	<b>6,305.80</b>

During the course of the hearing, the tenants explained that they sought a refund of the rent paid for the dates of July 15-31, 2016. They said that the landlord only offered them the property contingent on their rental of the home starting July 15, 2016. They said that this was an unnecessary expense as they only required the home starting August 1, 2016. Upon taking possession of the unit, the tenants explained that the home was given to them in a dirty state which required four, half-days (12 hrs) worth of cleaning in the unit. They said that in addition to the extra rent and cleaning that was required, the tenants had to pay an extra \$150.00 per month they did not anticipate to use the storage for the entire length of the tenancy. The tenants are seeking a return of this storage fee.

In addition to these expenses the tenants say they paid for a carpet cleaning of the unit and professional cleaners at the time of their move out, as per the terms of their tenancy agreement.

The tenants explained that a condition inspection of the rental unit was completed between themselves and the property's caretaker on January 31, 2017. A copy of the report was submitted to the hearing as part of the tenants' evidentiary package. The tenants' provided their forwarding address to the landlord on this report.

### Analysis

There were numerous issues present in this cross-application between the parties.

The first matter that must be addressed is the security deposit of \$2,000.00 collected by the landlord at the outset of the tenancy. Section 19 of the *Act* notes that, "A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy

agreement...If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.”

Testimony and written submissions were provided to the hearing by the landlord that she asked the tenants to pay a security deposit of \$2,000.00 as means of protecting her home which was fully furnished. She said that \$1,000.00 of this deposit was meant as security against any damage that her furniture might experience, while the other was held as a traditional security deposit. As section 19 of the *Act* explains, asking for an amount that is greater than the equivalent of ½ of one month’s rent is prohibited under the *Act*. If the landlord had concerns about any damage to her furniture, she would need to address these through the dispute resolution process and apply for a Monetary Order, as she has done in her application. Pursuant to section 19(2) of the *Act* the landlord is ordered to return \$1,000.00 of the security deposit to the tenants.

I will only consider the remaining \$1,000.00 of the security deposit for the balance of my decision.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

The landlord explained that she sought a Monetary Order of \$2,095.00 in compensation for the loss she experienced by the tenants having violated point 12 of the Addendum to the tenancy agreement signed between the parties. Point 12 required the tenants to provide the landlord a minimum 45 days notice to end their lease agreement. The tenants argued that this was a fixed-term tenancy, that they provided the landlord with over a month’s notice of their intentions to vacate the property and that they left the property in accordance with the terms of their tenancy agreement which was for a fixed-length of time and set to end on January 31, 2017. The landlord disagreed with this argument and said it was her understanding that the parties had a periodic tenancy which required the tenants to adhere to point 12 of their Addendum.

This issue of notice is explained upon in Section 45 of the *Act*. It lists the requirements that a tenant must follow when ending both a fixed-term and a periodic tenancy.

This section reads as follows;

**45 (1)** A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In both instances, a tenant can end a tenancy agreement with a landlord, provided that the date they provide notice to the landlord is not earlier than one month after the date the landlord receives the notice, i.e. one month's written notice. The landlord argued that the tenants' were bound by the 45 day notice period contained in point 12 of their Addendum. I find that this clause does not comply with the requirements of the *Act* and is therefore invalid.

Section 5 of the *Act* states that, "Landlords and tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect." Through point 12 of her Addendum, the landlord has attempted to contract out of the *Act*, has imposed a clause that goes beyond the relief prescribed in the *Act*, and has unfairly burdened the tenants. This clause requiring the tenants to give 45 days' notice is simply not enforceable as it is not valid. Parties may not contract outside the *Act* under section 5. The landlord's application for a Monetary Order is therefore dismissed.

Section 38 of the *Act* requires the landlord to either return a 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 and, or upon receipt of the tenant's forwarding address in writing.

Evidence was presented by both parties that the tenancy ended on January 31, 2017 and the tenants provided the landlord their address in writing on the same day.

Therefore, the landlord had until February 15, 2017 to apply for dispute resolution for authorization to retain the deposit, or to return the security deposit to the tenants pursuant to section 38 of the *Act*. As the landlord has failed to do this, the landlord must, under section 38(6), pay the tenants twice the amount of the security deposit she continues to hold. This section reads as follows; if a landlord does not within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, 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. The tenants are therefore entitled to a monetary award of \$2,000.00, twice the amount of their security deposit.

The tenants have also applied for a Monetary Order of \$2,305.80 representing recovery of expenses they incurred at the outset and conclusion of this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

I find that all of the remaining items for which the tenants are seeking a Monetary Order relate to the tenancy agreement they signed with the landlord. The tenants argued that they were coerced in to signing an agreement that required them to pay for the final two weeks of July 2016, when in fact they only required the rental unit starting in August. Furthermore, the tenants presented submissions that the landlord charged them unnecessary storage and cleaning fees.

I find that all items for which the tenants are seeking relief, relate to valid aspects of their tenancy agreement to which they agreed. The tenants stated they had no other option other than to accept the landlord's terms, yet no evidence of duress, coercion or undue influence was presented to hearing. The tenants could have simply ignored the landlords offer and not accepted it, or entered in to the agreement they actually made with the landlord. I find that the expenses related to cleaning, storage and rent for July 2016 to fall within the parameters of the *Act* and to therefore be valid terms of the

tenancy. The tenants' application for a money award related to these items is therefore dismissed.

As the landlord was unsuccessful in her application, she must recover the cost of her own filing fee.

#### Conclusion

The landlord's application for a Monetary Order is dismissed.

I issue a Monetary Order of \$3,000.00 in favour of the tenants as follows:

Item	Amount
Return of \$1,000.00 for overpaid Security Deposit	\$1,000.00
Return of Security Deposit with Penalty (2 x \$1,000.00)	2,000.00
<b>Total =</b>	<b>\$3,000.00</b>

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

The landlord is directed to comply with the *Act* and return the security deposit to the tenants pursuant to section 38.

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 27, 2017

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Residential Tenancy Branch