



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MND MNDC MNR OPR

### Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order of Possession for unpaid rent pursuant to section 46 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenants individually by Canada Post Registered Mail on February 2, 2017. Tracking numbers for each package, along with copies of the receipts were provided at the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are deemed to have been served with these documents on February 7, 2017.

Following opening remarks, the landlord informed that he no longer required the order of possession, as the tenants had vacated the rental unit on approximately January 28, 2017.

### Issue(s) to be Decided

Can the landlord retain the security deposit from the tenants?

Is the landlord entitled to a Monetary Order for loss suffered as a result of the tenancy?

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

### Background and Evidence

Undisputed testimony provided by the landlord explained that this was a month-to-month tenancy that began in June 2011 and ended by way of a 10 Day Notice to End Tenancy for Unpaid rent on January 28, 2017. Rent was \$2,200.00 per month and a security deposit of \$1,100.00 continues to be held by the landlord.

The landlord explained that he was seeking a Monetary Order of \$7,994.76 in satisfaction for the expenses that he incurred as a result of this tenancy. The landlord testified that the tenants vacated the property unannounced after a 10 Day Notice was issued to them on January 9, 2017. The landlord described the manner in which the tenants abandoned the home after the issuance of this 10 Day Notice. The landlord detailed cleaning and junk removal that was required following the conclusion of the tenancy, along with unpaid utility bills that remained outstanding following the conclusion of this tenancy.

The landlord has also applied to retain the security deposit against any money awarded to him. The landlord provided undisputed testimony that he sent the tenants a letter requesting their forwarding address when he mailed them the Application for Dispute Resolution. The landlord described how he attempted to phone the tenants to arrange a condition inspection report following the conclusion of their tenancy but the phone number which had been provided to him was no longer in operation. The landlord explained that he was only able to discover their forwarding address after his friend saw them in the community and was able to identify which home they now lived in. The landlord said that in February 2017 he attended the home and was able to confirm that the tenants now resided at the address he was provided by his friend.

### Analysis

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenants, that the landlord had to make efforts to rectify this violation and that landlord is entitled to compensation as per section 14 of the tenancy agreement signed by the parties.

Through a combination of undisputed oral testimony and photographic evidence, the landlord has accurately demonstrated the loss he has suffered as a result of this tenancy. I am satisfied that the damage done to the rental unit and the resulting required repairs were due to the tenants' actions. Furthermore, evidence was provided to the hearing showing the actual monetary amount of loss suffered as a result. The landlord explained that a large amount of debris was left in the rental unit following the departure of the tenants. Receipts and invoices submitted to the hearing accurately documented the repairs that were required and note the unpaid utilities which remain. I find the landlord's undisputed testimony and evidentiary package compelling and award the landlord the entire amount of money sought in his Monetary Order for repairs to the rental unit and cleaning services.

The landlord has also applied to retain the security deposit from the tenants. Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file a claim against a tenant's deposit within 15 days of the *later* of the end of the tenancy or the date a tenant's forwarding address is received in writing. The landlord provided undisputed testimony that he has never received the tenants' forwarding address despite efforts on his behalf to contact the tenants so that he could schedule an end of tenancy condition inspection report. On February 2, 2017 the landlord applied for dispute resolution to retain the tenant's security deposit. The landlord has therefore fulfilled the requirements of section 38 of the *Act*, as this tenancy ended by way of 10 Day Notice on January 28, 2017.

Subsections 4 of this section states that, "A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount." I find that the landlord has suffered a loss as a result of this tenancy and may therefore retain the security deposit pursuant to section 38 and 72 of the *Act* against the monetary award to which he is entitled.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may deduct the security deposit from the Monetary Order awarded.

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenants.

Conclusion

The landlord may recover the \$100.00 filing fee from the tenants.

The landlord is entitled to retain the security deposit to be put against the monetary award given.

I issue a Monetary Order of \$6,994.76 in favour of the landlord. The landlord is provided with a Monetary Order in the above terms and 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 18, 2017

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Residential Tenancy Branch