



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: MNDC MNSD FF

For the landlord: MND MNSD MNDC FF O

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied for a monetary order for the return of double their security deposit under the *Act*, for a monetary order for money owed or compensation for damage or loss under the *Act*, and to recover the cost of the filing fee. The landlord applied for a monetary order for damage to the unit, site or property, to keep all or part of the tenants’ security deposit, and to recover the cost of the filing fee.

The landlord, tenants, and a witness for the tenants who did not testify attended the teleconference. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure and that was presented; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlord provided two registered mail tracking numbers in evidence which have been included on the cover page of this decision for ease of reference. The landlord testified that both tenants were served with their own registered mail package containing the Notice of Hearing, application and first package of documentary evidence on September 12, 2017. According to the online registered mail tracking information both tenants signed for and accepted their registered mail packages on September 14, 2017. The landlord’s late evidence package dated October 18, 2017 was excluded in full as the landlord failed to serve it on the Residential Tenancy Branch and the tenants in accordance with the timelines set out in the Rules of Procedure.

Other than a two-page handwritten letter, the tenants did not submit documentary evidence.

Both parties confirmed that they were aware that the other party had submitted an application. I find the parties were sufficiently served in accordance with the *Act*.

#### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

#### Background and Evidence

The parties agreed that a fixed term tenancy began on January 15, 2017 and was scheduled to revert to a month to month tenancy after May 31, 2017. Instead, the tenants vacated the rental unit on April 30, 2017 prior to the end of the fixed-term portion of the tenancy. The parties confirmed that the tenants paid a security deposit of \$650.00 at the start of the tenancy which the landlord continues to hold. The security deposit has accrued \$0.00 in interest to date.

#### Evidence for Landlord's claim

The landlord is claiming a monetary amount of \$6,400.00 comprised of the following:

Item #	Description	Amount
1	Loss of May 2017 rent	\$1,300.00
2	Water leak damage	\$5,000.00
3	Filing fee	\$100.00
<b>TOTAL</b>		<b>\$6,400.00</b>

Regarding item 1, the landlord has claimed for loss of rent for May 2017 in the amount of \$1,300.00 as the due to the tenants vacating on April 30, 2017 which was before the end of the fixed term tenancy which did not expire until May 31, 2017. The tenants confirmed that they moved without providing any written notice to the landlord and stated that it was “too loud” and “no hot water left after other people had used it”.

Regarding item 2, this item was dismissed in full during the hearing as the landlord failed to provide supporting evidence in support of this portion of their monetary claim and the tenant vehemently denied causing any water leak damage.

Item 3, the filing fee, will be addressed later in this decision.

#### *Evidence for Tenant's Claim*

The tenant has claimed for the return of double the security deposit of \$650.00 for a total monetary claim of \$1,300.00. The tenant stated that the landlord was provided the tenant's written forwarding address on May 2, 2017. While the landlord could not recall the specific date she received the tenant's written forwarding address she did confirm that she received it either May 10<sup>th</sup> or May 15<sup>th</sup> of 2017.

The landlord filed their application claiming towards the tenants' security deposit on September 12, 2017. The landlord continues to hold the tenants' security deposit of \$650.00.

#### *Analysis*

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's Claim

**Item 1** - The landlord has claimed for loss of rent in the amount of \$1,300.00 for the month of May 2017. In that matter before, I find the tenants breached section 45(2) of the *Act* as that section of the *Act* applies and states:

**45 (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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

[My emphasis added]

In the matter before me, I find the tenants could not have ended the tenancy any earlier than May 31, 2017 which was the scheduled end date of the fixed term tenancy and of which was the date the tenancy would have reverted to a month to month tenancy. Furthermore, I find the tenants did not meet the requirements of section 45(3) of the *Act* listed above as the tenants provided insufficient evidence that the landlord failed to comply with a material term of the tenancy agreement. Therefore, I find the landlord has met the burden of proof for this portion of their claim and that the tenants owe the landlord **\$1,300.00** for loss of rent for the month of May 2017 due to the tenants breaching a fixed term tenancy.

**Item 2** – As described above, this portion of the landlord's monetary claim was dismissed in full as the tenant disputed the landlord's claim and the landlord failed to submit supporting documentary evidence in accordance with the Rules of Procedure. Therefore, this portion of the landlord's claim is dismissed without leave to reapply, due to insufficient evidence as I find the landlord has failed to meet the burden of proof.

The filing fees for both parties will be addressed later in this decision.

*Tenant's Claim*

The tenant has claimed for the return of double their security deposit under the *Act* in the total amount of \$1,300.00, which is double the amount of the original security deposit amount of \$650.00. Section 38 of the *Act* applies and states:

**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.**

(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.

**(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.****

[My emphasis added]

Firstly, the landlord did not deny that she received the tenants' forwarding address on either May 10<sup>th</sup> or May 15<sup>th</sup> of 2017. In the interests of fairness, I will use the later date of May 15<sup>th</sup>, 2017. Secondly, there is no dispute that the landlord applied to keep all or a part of the tenants' security deposit on September 12, 2017 and continues to hold the tenants' security deposit which has accrued no interest to date.

Based on the above, I find the landlord breached section 38 of the *Act* by failing to return the tenants' security deposit of \$650.00 within 15 days of receiving the tenants' forwarding address in writing on May 15<sup>th</sup>, 2017, which is a later date than the end of tenancy date which was on April 30, 2017 as the tenants vacated on April 30, 2017.

The landlord waited almost four full months before submitting their application which included a claim towards the tenants' security deposit. Given the above, I find the landlord has failed to provide evidence that the tenants agreed in writing for the landlord to retain the security deposit or that the landlord had an order from an arbitrator giving her permission to retain the security deposit. As a result, I find the landlord had no right under the *Act* to retain any portion of the tenants' security deposit and that the tenants did not authorize the landlord to retain any portion of the security deposit. Therefore, I find the tenant has met the burden of proof to prove their claim and is entitled to the return of double the original security deposit of \$650.00 for a total amount of **\$1,300.00** from the landlord as claimed.

As both parties have been successful in proving a monetary claim of **\$1,300.00** I find that those amounts offset each and I find that a monetary order is not necessary for either party. I also note that this includes the offsetting of the filing fees for the parties.

### Conclusion

The applications of both parties result in offsetting \$1,300.00 monetary awards for each party, resulting in a zero balance owing by either party. Accordingly, a monetary order is not necessary.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 26, 2017

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Residential Tenancy Branch