



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC MNSD OLC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on December 18, 2017. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit;
- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement;
- Compensation for loss or other money owed

Both Tenants (referred to as the "Tenants") and both Landlords (referred to as the "Landlords") attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

During the hearing, the parties confirmed the Tenants vacated the rental unit on May 1, 2017. Accordingly, it is not necessary for me to consider their request for the following orders:

- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

I dismiss this ground and will not be addressing it any further.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

2. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

The parties confirmed the Tenants were in a fixed term tenancy agreement until August 30, 2017. Both parties also agreed that the Tenants moved out of the rental unit on May 1, 2017. Both parties agreed that the Tenants paid a security deposit of \$787.50 and a pet deposit of \$200.00. The Tenants testified that they paid the last month's rent (May 2017) on May 1, 2017, which was the same day they did their final walk through and the day they vacated the unit. The Tenants stated that at the time of the final walk through, they confirmed that they could provide their forwarding address via text message. The Tenants stated that they provided their forwarding address via text message on May 1, 2017. However, the Landlords deny ever getting this text message.

Subsequently, on May 22, 2017, the Tenants stated that they again texted the Landlords their forwarding address. The Landlord confirmed that they got the Tenants' forwarding address on May 22, 2017, and were not sure why they did not get the first message from the Tenants.

The Tenants stated that they made it clear to the Landlords that they wanted a cheque or cash, and were not willing to accept an email money transfer. In the hearing, the Landlords stated that they did not have any cheques, so they were looking for alternative ways to return the money for the security deposit. The Landlord stated that although they were trying to find an alternate way to return the money that didn't involve ordering new cheques, they got no further response from the Tenants after May 27, 2017. The Landlords stated that they offered cash but did not hear back.

The Tenants stated that they did not text the Landlords again after May 27, 2017, because they felt they had made it clear that they wanted either cash or cheque (nothing electronic) in all their conversation leading up to that point. The Tenants waited to get the cash or cheque in the mail but it did not appear. Subsequently, the Tenants submitted their claim on June 19, 2017. The Landlords stated that they sent a cheque to the Tenants around July 14, 2017. The Tenants confirmed that they received and cashed this cheque, in the amount of \$987.50 (for pet and security deposit), on July 14, 2017.

The Tenants stated that they are also seeking compensation (reimbursement) for the month of May 2017. The Tenants stated that they vacated the rental unit on May 1, 2017, and they attempted to assign the tenancy over to another party, because they still had a few months left in their fixed term lease agreement (which did not expire until August 30, 2017). The Tenants stated that they attempted to find suitable people to assign their tenancy to, and on April 20, 2017, they submitted a request for assignment to the Landlords. The Tenants stated that they were intending to assign their tenancy as of May 1, 2017.

The Landlords stated that on April 20, 2017, the Tenants put forward a request for assignment, and gave them two applicants who they felt would be suitable. The Landlord stated that on April 25, 2017, they met with the prospective tenants who stated they were looking for a place for June 1, 2017. The Tenants stated that when they spoke to the prospective tenants, prior to passing their info to the landlords for screening, they indicated that May 1, 2017, could work for the assignment, which was the date they planned on leaving. The Landlords maintain that the prospective tenants were not interested in May 1, 2017, but rather June 1, 2017.

Both parties agree that on April 28, 2017, the Tenants gave the Landlords written notice that they were leaving, effective June 1, 2017. The Landlords stated that they did not re-rent the unit until June 1, 2017, and they do not feel they should have to reimburse the Tenants for May rent, despite them leaving on May 1, 2017. The Landlord further stated that they signed a new tenancy agreement with the prospective tenants, and did not end up assigning the previous tenancy agreement to the new tenants.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on May 1, 2017, which I find reflects the end of the tenancy. The Landlords confirmed that they got the Tenants' forwarding address via text message no later than May 22, 2017. I find the Landlord received the forwarding address in writing on this day. Therefore, the Landlord had until June 6, 2017, to either repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. Although there were some discussions surrounding how the security deposit and pet deposit would be repaid (electronic or otherwise), there is no evidence that the Landlords actually returned these deposits within this 15-day time frame. In fact, the Landlord specifically confirmed that they did not give a cheque to the Tenants until early July, which is well beyond the 15 day window.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38.

Accordingly, as per section 38 of the Act, I find the Tenants are entitled to recover double the amount of the security deposit(\$787.50) and pet deposit (\$200.00), previously held by the Landlord, less the amount the Landlord has already given back, as follows:

<b>Item</b>	<b>Amount</b>
Return of Double security deposit (\$787.50 x 2)	\$1,575.00
Return of Double pet deposit (\$200.00 x 2)	\$400.00
<b>Less:</b> Returned Portion of Security Deposit	(\$987.50)
<b>Total Monetary Order</b>	<b>\$987.50</b>

Accordingly, pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of \$987.50, which is based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act.

Next, I turn to the Tenants' request for reimbursement of May 2017 rent. I acknowledge there were some discussions with respect to assigning the tenancy so that the Tenants could move out before the end of their fixed term tenancy. However, I find it important to note that the Tenants *were still in fixed term tenancy agreement at the material time*, and were until August of 2017, which means the Tenants were still obligated to ensure rent was paid until the end of their fixed term, August 30, 2017. Alternatively, if the Tenants wanted to leave before the end of the fixed term, they could have assigned their tenancy to a new party. It appears some effort was put into assigning the tenancy.

Residential Policy Guideline 19 provides that assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. In this case, the tenancy was not formally assigned, and the evidence indicates a *new* tenancy agreement with the prospective tenants was signed effective June 1, 2017. In any event, the Tenants are responsible for rent owing until the unit was re-rented.

Ultimately, I find the Tenants were responsible for May 2017 rent, and I do not find they are entitled to reimbursement of this amount, even though they left on May 1, 2017. The Landlord had a fixed term tenancy in place with the Tenants up until the end of August 2017, which entitles the Landlord to rent for those months. That being said, given that the Landlord re-rented the unit for June 1, 2017, I find the Tenants are not obligated for rent beyond the month of May. As the Tenants have already paid for the month of May 2017, and they are not entitled to recovery of this amount, I find no monetary orders are required for this issue. The Tenants application under this ground is dismissed.

Conclusion

I grant the Tenants a monetary order in the amount of \$987.50. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 22, 2017

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Residential Tenancy Branch