



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNDC, O, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenants stated that the landlords were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 27, 2017. No explanation was given as the application was filed on July 27, 2017. I accept the tenants' undisputed affirmed testimony and find that the landlords were properly served as per sections 88 and 89 of the Act.

At the outset the tenants clarified that based upon the submitted monetary worksheet (RTB-37), the tenants were seeking return of double the security deposit under section 38 (6) and compensation under sections 49 and 51 of the Act.

The tenants failed to provide any details on their request for the landlord to comply with the Act, regulations or tenancy agreement. As such, this portion of their application is dismissed with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security, compensation for failing to comply with the Act and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants provided undisputed affirmed testimony that this tenancy began on May 1, 2014 on a one year fixed term tenancy and then thereafter on month-to-month basis. The monthly rent was \$1,395.00 which later increased to \$1,445.00 which was payable on the 1<sup>st</sup> day of each month. A security deposit of \$697.50 was paid.

The tenants seek a monetary claim of \$2,000.97 which consist of:

\$697.50	Return of Original Security Deposit
\$697.50	Compensation, Fail to Comply Sec. 38(6)
\$932.97	Compensation, Sec. 49 and 51, Landlord's Use

The tenants stated that they were notified by the landlord via text message that the landlord required possession of the rental premises for the owner's daughter as shown in the submitted copy of text messages. The tenants confirmed that no 2 Month Notice was served to them by the landlord.

The tenants stated that the tenancy ended on May 18, 2017 when they complied with the landlord's request. The tenants stated that the landlords have failed to return the original \$697.50 security deposit following the landlord being given the tenants' forwarding address in writing on July 6, 2017 in a letter sent on July 3, 2017 via Canada Post Registered Mail (letter and Canada Post Registered Mail Receipt submitted). The tenants' state that at no time was permission given to the landlord to retain the security deposit nor has the tenants been served with an application for dispute for the landlord to retain the security deposit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, 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, I accept the tenants' undisputed affirmed evidence that the landlords were provided with the tenants' forwarding address in writing on July 6, 2017 after the tenancy ended on May 18, 2017. I also accept the tenants' undisputed affirmed evidence that the landlords did not receive permission to retain the security deposit, nor did they make an application for dispute to retain it.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security and/or pet damage deposit(s).

As such, I find that the tenants have established a claim for return of double the security deposit for failing to comply with section 38 (1) and is entitled to compensation under section 38 (6) for \$1,395.00.

Section 49 of the *Act* states that a landlord may end a tenancy by giving a notice to end tenancy and that compensation subject to section 51 is that a tenant who receives this notice is entitled to receive from the landlord an amount equal to one months' rent payable under the tenancy agreement.

In this case, it is clear based upon the tenants' undisputed affirmed evidence that no notice was issued by the landlord and received by the tenants. The tenants had referenced text message exchanges between the two parties, but these exchanges did

not include service of a 2 Month Notice nor an actual agreement of compensation. As such, I find that the tenants are not entitled to compensation. The tenants are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$1,495.00.

This order must be served upon the landlords. Should the landlords fail to comply with this order, the 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: January 18, 2018

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Residential Tenancy Branch