



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND MNR MNSD MNDC FF

### Introduction

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

- A monetary order for unpaid rent and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy in partial satisfaction of the monetary award pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants were assisted by their counsel.

As both parties were present service of documents was confirmed. The tenants each confirmed receipt of the landlord's application for dispute resolution. I find that the application was served in accordance with section 89 of the Act. The tenant testified that they served their evidence by fax to the phone number provided by the landlord on their application on March 16, 2018. While the landlord stated that he did not receive the tenant's evidence package, the tenant provided a fax confirmation sheet showing the package was sent. In accordance with sections 88 and 90 of the Act I find that the tenant's evidence is deemed served on March 19, 2018, three days after being faxed.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as sought?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### 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 landlord's claims and my findings around each are set out below.

This fixed term tenancy began in April, 2017 and was scheduled to end March 31, 2018. The landlord said that the tenants moved out without giving prior written notice on August 31, 2017. The monthly rent for this tenancy was \$1,400.00 payable on the first of each month. A security deposit of \$700.00 was paid at the start of the tenancy and is still held by the landlord.

The tenants gave evidence that no condition inspection report was prepared at either the start or the end of the tenancy. The landlord confirmed that a move-out inspection was not done and that they did not offer the tenants an opportunity to attend at a move-out inspection. The landlord did not recall if there was a move-in inspection report prepared. No copy of a condition inspection report was submitted into evidence.

The landlord seeks a monetary award of \$4,000.00. The landlord said that they are seeking \$1,200.00 for cleaning and repair of the rental unit as the suite was left in disarray. The landlord seeks \$2,800.00, the equivalent of 2 month's rent, as they say they were found a new occupant who started a tenancy October 1, 2017 at a monthly rate of \$1,600.00.

The tenants submit that the landlord failed to provide them with quiet enjoyment of the rental suite as there were frequent, loud fights in the other suite and that the tenants felt in personal danger. The tenants submit that they made numerous written requests to the landlord regarding the noise and concerns for safety but the landlord did not respond adequately. The tenants also submit that the landlord changed the locks on the rental unit door without prior notice or authorization. The tenants say that due to the landlord's conduct and breaches they were entitled to end the fixed term tenancy.

### Analysis

Section 38 of the *Act* requires the landlord to either return the 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing and providing a copy of a condition inspection

report at the start of the tenancy. Similarly, section .36 of the *Act* provides that the right of a landlord to claim against a security deposit for damages is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a move-out condition inspection report.

The tenants testified that no condition inspection report was prepared at the start of the tenancy. The landlord testified that he believes one was done but did not submit a copy into evidence and was uncertain. Furthermore, the parties gave evidence that no condition inspection report was prepared at the end of the tenancy and the landlord did not offer the tenants an opportunity as set out in the regulations.

Based on the evidence before me I find that the landlord has extinguished their right to claim against the security deposit for this tenancy as no condition inspection report was prepared at either the start or the end of the tenancy. While the landlord filed their application seeking authorization to retain the security deposit on September 5, 2017, within 15 days of the tenancy ending on August 31, 2017, I find that the landlord had extinguished their right to claim against the security deposit. Consequently, in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$1,400.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

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 tenants' central submission is that the landlord breached the *Act*, regulations and tenancy agreement by failing to take appropriate steps to address their concerns. The tenants testified about the noise levels, feeling threatened, and multiple instances where the landlord entered the

rental suite without prior notice or authorization. The tenants submit that the landlord's failure to comply gave rise to the tenants' right to end the fixed term tenancy on a date earlier than specified under the tenancy agreement pursuant to section 45 of the *Act*.

Section 26(1) of the *Act* provides that, a tenant must pay rent when due whether or not the landlord complies with the *Act*. Based on the evidence submitted I do not find that the landlord's conduct amounted to a failure to comply with a material term of the tenancy such that the tenants were authorized to end the tenancy. While the tenants gave evidence about the conflicts and difficulties, I do not find that the issues that arose during the tenancy were such that they were material terms of the tenancy. I find that despite the tenants' complaints the tenancy agreement was in place and the tenants were still obligated to pay their full rent owed.

In this case, the parties gave evidence that the tenants moved out at the end of August, 2017. The landlord gave evidence that a new occupant was found for the rental unit and that tenancy commenced on October 1, 2017 at a monthly rent of \$1,600.00. While the landlord testified that he is seeking the equivalent of 2 Month's lost rent, the landlord confirmed that a new tenancy started on October 1, 2017. The parties gave evidence that the tenants paid the monthly rent through August, 2017. Therefore, based on the evidence provided, I find that the landlord suffered a loss of the rent for September, 2017 of \$1,400.00. Accordingly, I issue a monetary award in the landlord's favour for that amount.

I find that the landlord has provided insufficient evidence in support of the other portions of the monetary claim. In the absence of a condition inspection report prepared at the start of the tenancy I have little evidence that the state of the rental unit at the end of the tenancy differs from how it was initially. Furthermore, there is insufficient evidence to support the claim that any damages was caused by the tenants or that the monetary amount the landlord claims is the amount of actual loss. The landlord did not submit any receipts, invoices or written evidence in support of the monetary amount claimed. I find there to be insufficient evidence to find that on a balance of probabilities there has been a loss by the landlord attributable to the breach of the tenant. I dismiss this portion of the landlord's claim.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,400.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was not wholly successful I decline to allow the landlord to recover the filing fee for their application.

Conclusion

The tenants are entitled to double the security deposit. The landlord is entitled to recover the rent for September, 2017. As the amounts of the monetary award cancel each other I find there is no need to issue a monetary order.

Item	Amount
Double Security Deposit Payable to Tenants (2 x \$700.00)	-\$1,400.00
Unpaid Rent September 2017	\$1,400.00
<b>TOTAL</b>	<b>\$0.00</b>

The balance of the landlord's application is dismissed without leave to reapply.

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: March 29, 2018

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Residential Tenancy Branch