



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI, MNDC, OLC, MNSD, O, FF

### Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- authorization to obtain a return of the remainder of the security deposit, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords did not attend this hearing, which lasted approximately 53 minutes. The two tenants, tenant JT ("tenant") and "tenant MT," 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 tenant testified that the landlords were each served separately with copies of the tenants' application for dispute resolution hearing package and amendment to the application, on September 9, 2017, by way of registered mail. The tenant provided two Canada Post tracking numbers verbally during the hearing. The tenant claimed that both packages were delivered and signed for by the landlords on September 13, 2017. In accordance with section 89 and 90 of the Act, I find that both landlords were deemed served with the tenants' application and amendment on September 14, 2017, five days after their registered mailings.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to confirm the monetary claim for damages of \$3,917.85 with the monetary order worksheet and supporting invoices. The tenants filed an amendment with evidence to confirm their monetary claim and served it to the two landlords, as required. Therefore, I amended the tenants' application.

At the outset of the hearing, the tenant confirmed that the tenants were not pursuing their application for an order requiring the landlords to comply and for other unspecified remedies. Accordingly, these portions of the tenants' application are dismissed without leave to reapply.

### Issues to be Decided

Are the tenants entitled to an order regarding a disputed additional rent increase?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a return of the remainder of their security deposit?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

The tenant testified regarding the following facts. This tenancy began on December 1, 2015 and ended on July 23, 2017. Monthly rent in the amount of \$1,285.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenants and the landlord returned \$312.50 to the tenants. Both parties did not sign a written tenancy agreement. No move-in condition inspection report was completed for this tenancy but a move-out condition inspection report was completed. A written forwarding address was provided to the landlords by the tenants on July 12, 2017 and again on August 4, 2017, both by way of letters sent by registered mail. The tenants did not provide copies of these two letters but provided Canada Post tracking numbers for them. The landlords did not have written permission from the tenants to keep any amount from their security deposit. The tenants did not receive an application for dispute resolution from the landlords to keep any part of the deposit.

The tenants seeks a return of the remainder of their security deposit of \$312.50, parking fees totalling \$17.50 while filing their application at the Residential Tenancy Branch ("RTB"), moving expenses of \$1,391.25, storage fees of \$200.00, one month free rent of \$1,285.00 pursuant to section 51 of the *Act*, and an overpayment in rent of \$280.00. The tenants also seek to recover the \$100.00 filing fee paid for this application.

The tenant claimed that the tenants moved out of the rental unit because the landlords served them with a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 20, 2017 ("2 Month Notice") with an effective move-out date of August 31, 2017. The tenants did not provide a copy of this notice and did not file an application to dispute it. They seek one month free rent of \$1,285.00, pursuant to this notice and section 51 of the *Act* because they said that the landlords did not provide it to them. The tenant testified that the tenants paid June and July rent of \$1,285.00 each to the landlords, but they did not pay for August 2017 rent.

The tenants seek storage fees of \$200.00 and moving expenses of \$1,391.25. The tenant testified that the tenants found a new unit to move into as of August 10, 2017 but the landlords refused to allow them to leave without paying a full month's rent for August 2017. The tenant stated that on July 8, 2017, they sent an email to the landlords that they were moving out on July 22, 2017, and they had to put their possessions in storage until August 6, 2017, because their movers were not available to move their items into their new place as of August 1, 2017. The tenant explained that the landlords threatened to change the locks to the rental unit if the tenants left their furniture inside the unit after leaving. So the tenant claimed that they paid for movers on July 22 for \$2,818.62 to move their items from the rental unit into storage and then again on August 6, 2017 for \$1,391.25 to move their items from storage to their new place. The tenant maintained that they are not claiming for the first moving expense, only the second one. They provided two invoices for both of the above moving expenses but not for the storage fees.

The tenants seek \$280.00 for an overpayment of rent of \$35.00 per month for eight months from December 2016 to July 2017. The tenant stated that the tenants did not receive a legal notice of rent increase form from the landlords to increase their rent from \$1,250.00 to \$1,285.00. She claimed that the tenants only received a verbal notice on November 7, 2016, that their rent would be increased on December 1, 2016, and that the tenants paid the increase until the end of their tenancy.

## Analysis

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

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I notified both tenants at the hearing that they were not entitled to recover \$17.50 in parking expenses relating to filing this application, as the only hearing-related costs that they are entitled to recover as per section 72 of the *Act*, are for filing fees. This claim is dismissed without leave to reapply.

I dismiss the tenants' claim for \$280.00 related to an overpayment of rent from December 2016 to July 2017, without leave to reapply. I find that the tenants did not dispute this rent increase during their tenancy and they agreed to pay this amount to the landlords, despite not receiving a legal notice of rent increase form.

I dismiss the tenants' application for one month free rent of \$1,285.00 pursuant to the 2 Month Notice and section 51 of the *Act*, without leave to reapply. The tenants failed to provide a copy of this notice, prior to the hearing, despite having ample time to do so from September 8, 2017, when they filed their application, to the hearing date of March 29, 2018, which is almost 7 months.

I dismiss the tenants' application for moving costs in the amount of \$1,391.25 and storage costs of \$200.00, without leave to reapply. I find that the tenants vacated the rental unit after receiving a 2 Month Notice from the landlords. The landlords are entitled to issue the 2 Month Notice for a valid reason. The tenants did not dispute the

reason or the notice at the RTB. They chose to move on their own accord, at the time that they did. They said that because they chose to move earlier than the effective date in the 2 Month Notice, the landlords would not permit it and said they would change the locks. However, this did not occur, the tenants did not file an application against the landlords for the above reason, and they still chose to move out. Therefore, if the tenants incurred moving costs, which they likely would have in any event when moving to a new place, they must bear these costs.

Section 38 of the *Act* requires the landlords to either return the tenants' deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities, based on the undisputed testimony of the tenant. The tenancy ended on July 23, 2017. The tenants did not give the landlords written permission to keep any part of their deposit. The landlords did not return the full security deposit or file an application to retain it. The tenants provided their written forwarding address to the landlords on July 12, 2017 and August 4, 2017. However, they did not provide proof of the two forwarding address letters with their application or the registered mail receipts for sending out the letters, despite having ample time to do so. Therefore, I find that the tenants are not entitled to the return of double the value of their deposit.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to a return of the original amount of their unreturned deposit of \$312.50.

As the tenants were mainly unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$312.50 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the tenants' 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: April 16, 2018

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Residential Tenancy Branch