



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AAT AS ERP FFT LAT LRE MNDCT OLC PSF

### Introduction

This review hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* ("Act") for the following:

- authorization to obtain a return of double the amount of the security or pet deposit, pursuant to section 38 of the *Act*;
- for a monetary order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Following opening remarks, the tenants explained that they were no longer in occupation of the rental unit and said that they were no longer seeking the relief contained in their original application and would only like to pursue their amended application as described above.

Both tenants, along with the landlord attended the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Issue(s) to be Decided

Can the tenants recover their security deposit? If so, should it be doubled?

Are the tenants entitled to a monetary award?

Are the tenants entitled to a return of their filing fee?

### Background and Evidence

The tenants explained that this tenancy began on September 1, 2017 and ended on April 30, 2018, with tenant M.C. vacating the suite on April 21, 2018. Rent was

\$2,300.00 per month and a security deposit of \$2,300.00 was collected at the outset of the tenancy.

The tenants said that they withheld half of rent for April 2018 because they had overpaid their security deposit and wished to recover an amount equal to half of the deposit. The tenants argued that the remainder of their security deposit, \$1,150.00 continued to be held by the landlord.

The landlord disputed that she held on to any part of their security deposit, saying that she returned \$1,150.00 to the tenants by cheque sent via regular mail on May 5, 2018. The landlord provided a cheque number associated with the returned deposit during the hearing.

The tenants have applied for a return of their security deposit along with a monetary award of \$827.70. The tenants have applied for a monetary award as follows:

- Vacuum Cleaner - \$99.00 (USD)
- Yearbook - \$45.00
- Utility overpayment - \$646.24
- 5 boxes damaged - \$8.90

= \$827.70

The tenants argued that they were entitled to a monetary award because the landlord had failed to care for items left behind in the rental unit, as required under the *Act*. The tenants said they had inadvertently left five boxes in the rental unit following the conclusion of the tenancy and they alleged that the landlord had disposed of these boxes in the trash without taking proper consideration of the items contained in the boxes. The tenants said that as a result of the landlord's negligence, numerous items were exposed to the elements and destroyed by the rain.

In addition to their application related to damage to items allegedly left in the rain, the tenants have applied for a monetary award related to a utility overpayment. They argued that they were overcharged for utilities throughout their tenancy and had paid 2/3rds of the properties utilities, but they argued the landlord used portions of the home for which they paid utilities. The tenants said that while their tenancy agreement called for them to pay ½ of the utilities a past decision before the *Residential Tenancy Branch* found that a tenant did not need to pay utilities for a portion of the home they did not

use. Furthermore, the tenants submitted the *Act* did not allow for this type of charge, though the tenants could not identify which section of the *Act* they were relying on.

The landlord disputed the tenants' version of events. She said that the tenants themselves had placed the items in the garbage and had informed her that a junk removal company was coming to the property to clear the boxes from the premises. Furthermore, the landlord disputed the tenants' account of their use of the property, noting that they paid utilities as were used in accordance with the terms of their tenancy.

The parties completed a condition inspection of the property on April 30, 2018 and the tenants provided their forwarding address in writing to the landlord on March 13, 2018. The tenants said that they did not agree to surrender any part of their security deposit following the conclusion of the condition inspection report and alleged that the landlord had altered the condition inspection report to show that tenant J.S. had agreed to forfeit some portion of the deposit. The landlord said that after having considered all matters related to the tenancy, she decided to return the tenants security deposit by Regular Mail on May 5, 2018. The tenants denied receiving this deposit but confirmed receipt of the landlord's evidentiary package.

### Analysis

I will begin by examining the tenants' application for a monetary award and then turn my attention to their application for a return of the security deposit.

*Residential Tenancy Regulation 24(1)* states, "A landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that they have vacated after the tenancy agreement has ended." This *Regulation* continues by stating, "If personal property is abandoned as described in subsection (1), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part."

Section 25 of the *Regulation* expands on the above by noting –

(1)The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

**Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that**

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

After considering the oral testimony of both parties and after having reviewed the photographic evidence submitted by the tenants, I find that the landlord had no responsibility to store the tenants' possession as prescribed by section 25(1) of the *Regulations*. The boxes displayed in pictures provided to the hearing are small in nature, do not clearly contain property with a total market value of more than \$500.00 and appear to be haphazardly packed. I find it reasonable for the landlord to conclude that these items were "junk" and find that the landlord was entitled to dispose of the property in a reasonable manner as prescribed by section 25(2) of the *Regulations*. For these reasons, I dismiss this portion of the tenants' application for a monetary award.

The second portion of the tenants' application concerns utilities which they say were overpaid because the landlord used portions of the home for which the tenants paid utilities. The tenants argued that they had been overcharged for utilities during the course of their tenancy and sought return of the funds associated with this alleged overpayment. The tenants sought to rely on a past decision rendered by an Arbitrator with the *Residential Tenancy Branch* but failed to provide a copy of the decision or a citation, along with an unidentified section of the *Act*. After having reviewed the *Act*, the *Regulations* and the *Policy Guideline* I can find no information related to shared utilities other than the information provided in section 1-9 of the *Policy Guideline*. This section speaks to a term of a tenancy agreement which requires that a tenant put the electricity, gas or other utilities in their name for a premises that the tenant does not occupy, is likely to be found unconscionable as defined in the *Regulations*." The tenants explained that they did not put the utilities in their name and agreed in their tenancy agreement to pay ½ of the utilities as they were billed. It is clear that they had the benefit of these utilities they had agreed to pay for throughout the tenancy.

Furthermore section 64(2) of the *Act* states, "The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part."

I find based on the evidence presented that the tenants have failed to demonstrate they are entitled to a return of the funds they agreed to pay per the terms of their tenancy agreement and dismiss this portion of their application for a monetary award.

The second portion of the tenants' application concerns a return of the security. Both parties acknowledged that the tenants provided their forwarding address to the March 13, 2018, and that a condition inspection of the property was completed by tenant J.S. and the landlord on April 30, 2018.

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

During the hearing the tenants said that they had not received their security deposit within 15 days of the end of the tenancy (April 30, 2018), while the landlord said that she sent the entire amount of the deposit to the tenants by way of Canada Post Regular Mail on May 5, 2018. After considering the oral testimony of both parties, I find sufficient evidence was presented at the hearing by the landlord demonstrating that efforts were made to return the security to the tenants within the allotted time limit. I found the landlord to be a credible witness who was able to precisely identify a date on which a cheque containing the deposit was sent, she provided a cheque number associated with a return of the deposit and her written submissions were consistent with the oral testimony she presented on this matter.

I therefore dismiss the tenants' application for a return of the security deposit, with leave to reapply. The tenants are free to reapply for a return of the security deposit if it has not been received by the time this decision was rendered.

As the tenants were unsuccessful in their application they must bear the cost of their own filing fee.

Conclusion

The tenants' application for a monetary award is dismissed without leave to reapply.

The tenants' application for a return of the security deposit is dismissed with 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: June 21, 2018

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Residential Tenancy Branch