



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The tenants did not attend the hearing, although I left the teleconference connection open until 2:05 PM to enable the tenants to call into the hearing scheduled for 1:30 PM. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference hearing.

I find that the Notice of Hearing and evidence package of the applicant were properly served by mail on December 23, 2017, on both responding parties and that the applicant's evidence was properly served and submitted. The evidence provided at the hearing by the landlord along with the tracking number showed that the two packages were sent out to the forwarding address provided by the tenants, and that both packages were "delivered" and signed for by one of the tenants on January 6, 2018.

The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Although any and all oral testimony and documentary evidence entered was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issue(s) to be Decided

Is the landlord entitled to:

- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

### Background and Evidence

This tenancy began on August 1, 2017, and ended December 15, 2017. The tenancy was for a fixed term of 12 months and was to end on July 31, 2018. The tenants gave notice of their intention to move out early via email on November 25, 2017, and left on December 15, 2017. The landlord did not agree to the early termination of the fixed term tenancy but did agree to try to re-rent the premises as soon as possible.

The amount of rent was \$2,000.00 per month, payable on the first day of each month. A security deposit of \$1,000.00 was received by the landlord on August 1, 2017. A move-in inspection report was completed at the start of the tenancy.

A forwarding address was provided by the tenants via email on November 25, 2017, a copy of which email was submitted into evidence. The landlord brought this Application on December 16, 2017, within the 15-day deadline.

The landlord was able to re-rent the premises as of January 1, 2018. Accordingly, she seeks from the tenants the sum of \$1,000.00, being ½ of the December rent, plus the filing fee.

### Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

I have determined that there was sufficient notice of the hearing provided by the applicant and, that the hearing could proceed in the absence of the tenants.

Either party to a tenancy may bring an application for damages under section 67 of the *Act*:

**67** *Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find that the landlord's undisputed evidence has proven it's claim for the following, on a balance of probabilities:

- Payment of the sum of \$1,000.00 for ½ of the rent payable for December of 2017.
- An Order that the landlord may retain the security deposit in the amount of \$1,000.00.

In reaching this conclusion, I have considered the fact that the landlord mitigated its losses by re-renting the suite as quickly as possible and, only claimed prorated rent for ½ of December 2017.

As the landlord was successful in its claim, I award the filing fee under section 72 of the *Act*.

The landlord has applied to retain the security deposit of \$1,000.00 in partial satisfaction of this award. I find that the landlord applied for permission to keep the security deposit

in compliance with section 38 of the *Act*, accordingly, I am authorizing the landlord to retain the security deposit and will issue a monetary order for the balance of **\$100.00**. The tenants are jointly and severally liable for this amount.

Conclusion

The landlord shall retain the security deposit of \$1,000.00. I further grant an Order for payment of \$100.00 to the landlord by the tenants forthwith.

The Order must be served on the tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the tenants fail to make payment. A copy of the Order is attached to the landlord's copy of this Decision.

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 18, 2018

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Residential Tenancy Branch