



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFT MNSD MNRT

### **Introduction**

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

While the tenants attended the hearing by way of conference call, the landlords did not. I waited until 1:43 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the 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

The tenants provided sworn, undisputed testimony that they had served the landlord with their application for dispute resolution hearing package ("Application") and evidence by way of registered mail on December 7, 2017. The tenants provided tracking numbers during the hearing. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlords were deemed served with the Application and evidence on December 12, 2017, five days after mailing.

**Preliminary Issue-Tenants' Forwarding Address**

The tenants testified in the hearing that they had moved out on October 31, 2017. The landlords had collected a security deposit in the amount of \$900.00 at the beginning of the tenancy. The tenants provided the landlords with their forwarding address by way of text message, but have not received any portion of their security deposit back from the landlords. The tenants testified that they had also provided the landlords with their forwarding address in writing when the keys were returned to the landlord.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

In this case the tenants have applied for the return of the security deposit as well as compensation for the landlords' failure to comply with section 38 of the *Act*, but did not have sufficient evidence to support the provision of their forwarding address in writing. The tenants, in their evidence, provided the text message communication in support of their application, which I informed the tenants does not meet the requirements of section 38(1) of the *Act*. The tenants then inquired whether the address on their dispute resolution package is sufficient as the provision of their forwarding address. I indicated in the hearing that a forwarding address provided by the tenants on the Application for Dispute Resolution form does not meet the requirement of a separate written notice to the landlords.

Accordingly, I dismiss the tenants' application for the return of their security deposit and compensation under section 38 of the *Act* with leave to reapply. The tenants must provide their forwarding address to the landlords in writing, and the landlords must, within 15 days of the receipt of that address, either return the tenants' security deposit, or make an application for dispute resolution. If the landlords fail to comply with section 38 of the *Act*, the tenants may reapply. Liberty to reapply is not an extension of any applicable limitation period.

**Issues(s) to be Decided**

Are the tenants entitled to monetary compensation for monetary loss, or money owed?

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began as a fixed-term tenancy on March 1, 2013, and continued on a month-to-month basis until ended on October 31, 2017. Monthly rent was set at \$1,900.00 at the end of the tenancy.

The tenants were given the opportunity to provide oral testimony in the hearing in support of their monetary claim, but indicated in their hearing that they had already provided written evidence. It was indicated to the tenants that the onus fell on them as the applicants to support their monetary claim of \$400.00 for the losses associated with this tenancy, and they declined to make additional submissions other than the following statement.

The tenants testified that the roof had leaked, and as a result their printer was damaged. Accordingly, the tenants wanted compensation for this damage.

The tenants provided the text messages that they had sent to the landlords.

The hearing ended at 1:43 p.m. and the tenants were again given the opportunity to provide further submissions, which they declined.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant 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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In support of their claim, the tenants indicated the \$400.00 as the estimate of the value of their loss. I find that in the absence of sufficient supporting evidence such as receipts for the original printer or a replacement printer, I find that the tenants have not demonstrated the actual value of their loss. Although I acknowledge that the tenants' printer may have been damaged, I find that the tenants did not provide sufficient evidence to support that the landlords were responsible. I find that the tenants' text messages to the landlords are not sufficient to support that the fact that the landlords had failed in their obligations under the *Act*, nor did the tenants provide sufficient evidence to support how the landlords' direct contravention of the *Act* contributed to their losses. Furthermore I am not satisfied that the tenants had made an effort to mitigate the landlords' exposure to the tenants' monetary loss as is required by section 7(2) of the *Act*. I find that the tenants have not met the burden of proof to support their monetary claim, and accordingly the tenants' monetary claim for \$400.00 is dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful in their application, the tenants must bear the cost of this filing fee.

**Conclusion**

The tenants' application related to their security deposit was dismissed with leave to reapply.

The remaining portion 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: July 19, 2018

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Residential Tenancy Branch