



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FFT MNDCT MNSD

### **Introduction**

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

### **Preliminary Issue-Tenants' Forwarding Address**

The tenants testified in the hearing that they had provided the landlords with their forwarding address on the same date that the landlords with their application for dispute resolution. The landlords dispute that they had received the tenants' forwarding address in writing.

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.

RTB Policy Guideline 17, paragraph 10 establishes the following:

*The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.*

The tenants had applied for the return of their security deposit, but did not provide sufficient evidence to support that the landlords were provided with their forwarding address in writing, as required by section 38 of the *Act*.

As both parties were present in the hearing, the tenants' forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties that the date of the hearing, June 21, 2018, serves as the date that the landlords were served with the tenants' forwarding address, and that the tenants' security deposit must be dealt with in accordance with section 38 of the *Act*. 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.

### **Issue(s) to be Decided**

Are the tenants entitled to a monetary compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

### **Background and Evidence**

This fixed-term tenancy began on May 15, 2017, and was to end on February 28, 2018. Monthly rent was set at \$1,600.00, payable on the first of the month. This tenancy ended sometime in November 2017. The landlords testified that they had decided to change the locks after November 10, 2017 as the rental unit was vacant, and the police and insurance company had instructed them to change the locks.

The tenants testified that the agreement was for the tenancy to end on November 30, 2017, and the locks were changed without their knowledge or permission. The tenants testified that they had tried to enter the rental unit on November 12, 2017 only to discover that they no longer had access to the rental unit as the locks had been changed. It was undisputed by both parties that the tenants had paid rent for the entire month of November 2017. The tenants are requesting the return of half of their rent for November 2017 in the amount of \$800.00 as the locks were changed without their

permission during this tenancy. Both parties confirmed that no written Mutual Agreements to End Tenancy were signed for this tenancy.

### **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;...

I find that the landlords did not provide sufficient evidence to support that they had mutual agreement in writing to end this tenancy before the end of the fixed-term tenancy, as required by section 44(1)(c) of the *Act*, or in any event before November 30, 2017.

Furthermore Section 31 of the *Act* states as follows:

### **Prohibitions on changes to locks and other access**

**31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and
- (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By changing the locks sometime between November 10 and 12, 2017, I find the landlords failed to comply with sections 31 of the *Act*. Although the landlords testified that the tenancy ended in accordance with a mutual agreement with the tenants, it was undisputed that no written mutual agreements were signed.

I find that the evidence supports the fact that the tenants were denied access to the home after November 12, 2017 despite the fact that this was a fixed-term tenancy, and rent was paid for the entire month of November 2017. I find that the landlords failed to comply with sections 31 and 44 of the *Act*, and therefore the tenants are entitled to return of their November 2017 rent in the amount of \$800.00 as they had applied for.

I find that the tenants are entitled to recover the filing fee for their application.

### **Conclusion**

I issue a monetary order in the tenants' favour in the amount of \$900.00 in compensation for the landlords' failure to comply with section 31 of the *Act*, and for recovery of the filing fee.

The tenants are provided with a monetary order in the above terms and 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 tenants' application for the return of their 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: July 27, 2018

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Residential Tenancy Branch