



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT  
                             MNRL-S, FFL

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting return of the security deposit of \$750.00 and that the amount be doubled as a result of the Landlord’s non-compliance with the *Residential Tenancy Act* (“Act”). The Tenants also request an order for payment of the filing fee. The Landlord filed a cross-application for a monetary order for unpaid rent and to retain the security deposit in partial satisfaction of an award. The Landlord also applies for an order for payment of the filing fee.

The Landlord and both Tenants appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

### Issues to be Decided

Are the Tenants entitled to a return of the security deposit, pursuant to section 38 of the Act?

Is the Landlord entitled to a monetary award for rent arrears and other damages, pursuant to section 67 of the Act?

Is the Landlord entitled to retain a portion or all of the security deposit in satisfaction of the monetary award, pursuant to section 38 of the Act?

Is either party entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

### Background and Evidence

The tenancy began in June of 2014 and the latest signed tenancy agreement was dated July 1, 2017, a copy of which was submitted into evidence. It was originally a fixed term expiring September 30, 2017, with the condition that "*the tenancy may continue for another fixed length of time*" at the end of the initial term. The rent was set at \$1,500.00 per month, later increased to \$1,555.00 effective October 1, 2017, with proper notice to the Tenants. A security deposit of \$750.00 was paid.

The Tenants state that they were told by the Landlord that the premises were not up to safety codes and that contractors required access to do estimates to remove a bedroom and laundry/storage area from the suite. As the size of the suite was to be greatly reduced, the Tenants sought suitable housing and found a place for November 1, 2017. The Tenants provided written notice of their intention to vacate on October 6, 2017. The tenancy ended on October 31, 2017, and a move-out inspection was eventually completed; the Landlord stated that the Tenants did a very good job of leaving the premises clean.

The forwarding address was provided November 15, 2017 by way of email attachment, a copy of which was submitted into evidence; the Landlord acknowledged that this was the same date she received the notice of the forwarding address in her email account. The Tenants did not consent to the Landlord retaining any part of the security deposit. They argue that the deposit has not been returned, nor has the Landlord filed a claim within the 15 days to retain the deposit.

The Landlord filed a dispute application on December 14, 2017, almost a month after receiving the notice of the forwarding address. The Landlord is requesting a monetary order for payment of rent in the sum of \$1,555.00, arguing that the Tenants failed to provide a full month's notice to end the tenancy; the Landlord also requests payment of the filing fee and asks that the security deposit be applied to off-set the award. The Landlord began obtaining quotes and interviewing contractors after the Tenants

vacated, and when most of the renovation work was completed, she was able to re-rent the suite to a new renter in April of 2018.

### Analysis

#### Security Deposit:

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on October 31, 2017 when the Tenants vacated. I further accept the Tenants' undisputed testimony and evidence that the Landlord was put on notice of the Tenants' forwarding address on November 15, 2017. While email is not a recognized form of serving documents under the Act, I do accept the Tenant and Landlord's evidence that the Landlord received the email with the written forwarding address attached on November 15, 2017.

Therefore, the Landlord would have had 15 days from November 15, 2017 onwards, to deal properly with the Tenants' security deposit pursuant to the Act. The evidence before me shows that the Landlord filed an application approximately 30 days after receiving the Tenants' forwarding address. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenants by the Landlord. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written consent of a tenant.

Furthermore, section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant *double* the amount of the deposit. Based on the foregoing, I find the Tenants are entitled to double the return of their security deposit in the amount of **\$1,500.00**.

#### Monetary Claim:

I will next address the monetary claim of the Landlord. Under section 7 of the Act, a tenant who fails to comply with the Act must compensate the other party for damage or loss that results. 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

The Landlord argues that the Tenants are liable for the November rent in the sum of \$1,555.00. Under section 45(1) of the Act, a tenant can only end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. In this Application, the Tenants prepared a notice to end the tenancy on October 6, 2017, with an effective date of October 31, 2017. I find that the Tenants have not complied with the Act, which would have required notice to vacate effective November 30, 2017; accordingly, the Tenants are liable for the November rent of \$1,555.00.

However, the Landlord still has a duty to mitigate her losses by making reasonable attempts to re-rent the premises in a timely manner. The Tenant argues that the Landlord did not re-rent the premises until many months later. However, it was also acknowledged that the suite was not up to code and that repairs and renovations were necessary to remove one bedroom and reduce the square footage of the rental unit. The Landlord began taking measures to do that in a timely manner and I find that she acted reasonably in getting her rental unit prepared for a new renter in a timely manner. I find that the Landlord is entitled to the unpaid rent in the sum of **\$1,555.00**.

Under section 72(2) of the Act, I may allow an amount to be deducted from any security deposit due to the tenant. Accordingly, I will offset the amount owing to the Tenants (\$1,500.00) from the Landlord's monetary award (\$1,555.00), leaving a net balance owing by the Tenants in the sum of **\$55.00**. Given the mixed results of the decision regarding claims of both parties, I am not inclined to award either party the filing fee of \$100.00.

This 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. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Landlord is entitled to retain the security deposit in partial satisfaction of her claim. The Tenants will pay forthwith the sum of \$55.00 to the Landlord for the balance of the monetary award.

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 4, 2018

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Residential Tenancy Branch