



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC-S, MNR, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

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

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 11, 2018. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in person on October 24, 2018. The landlord confirmed receipt of the submitted documentary evidence, but that the tenants notice of hearing package was not received. It was clarified with both parties the tenants' monetary claim list of two items. The landlord stated that he understood the

tenants' monetary issues and was ready to proceed without an adjournment. Neither party raised any other service issues. On this basis, I find that both parties have been sufficiently served with the notice of hearing packages and the submitted documentary evidence provided. Although the landlord was not served with the tenants' notice of hearing package, the landlord indicated that he was ready to proceed after being notified of the contents of the tenants' claims. As such, both parties have been found to have been sufficiently served as per section 90 of the Act.

During the hearing, the landlord stated that he wished to cancel 3 out of the 4 items listed for claim and wished to proceed with an amended claim for item #1, \$21.60 for unpaid utilities, Hydro. During the hearing the tenants accepted the landlord's claim that there was still \$21.60 outstanding and have conceded this amount to the landlord. The landlord is entitled to recovery of \$21.60 and as such, I find the landlord is entitled to recovery of the \$100.00 filing fee.

The hearing proceeded on the remaining issue of the tenants' application.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation, return of the security deposit and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on February 1, 2017 on a fixed term tenancy ending on January 31, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 19, 2017. Both parties confirmed that monthly rent was \$2,565.00 and a \$1,282.50 security deposit and a \$200.00 pet damage deposit were paid. Both parties confirmed that the tenancy ended when the tenants vacated the rental unit on March 31, 2018.

The tenants seek a total monetary claim of \$8,095.00 which consists of:

\$2,965.00	\$1,282.50	Return of Original Security Deposit
	\$200.00	Return of Original Pet Deposit

	\$1,282.50	Compensation, Sec. 38 (6), Security Deposit
	\$200.00	Compensation, Sec. 38(6), Pet Deposit
\$5,130.00		Compensation, Sec. 51

The tenants seek compensation of \$2,965.00 for return of double the security and pet damage deposits and claim that their forwarding address in writing was given to the landlord on April 15, 2018 in person after the tenancy ended on March 31, 2018. The landlord disputed this claim stating that tenant's forwarding address in writing was received, but at a later date. The landlord was unable to provide any further details of the date. Both parties confirmed that the tenants did not consent to the landlord to retain the security and pet damage deposits. Both parties confirmed that the landlord applied for dispute for returning the security and pet damage deposits on June 5, 2018.

The tenants also seeks compensation of \$5,130.00 as the landlord has failed to comply with the stated reasons listed on his 2 month notice dated January 25, 2018 pursuant to section 51 of the Act.

Both parties confirmed that the landlord served the tenants with a 2 month notice dated January 25, 2018 for landlord's use of property. The 2 month notice sets out an effective end of tenancy date of March 31, 2018 and reason for the notice selected as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Also written in the reasons by hand: *new tenants move in on the month of May.*

The landlord clarified and provided undisputed affirmed testimony that in May 2018 the landlord's son was to move-in and rent the premises from him, but later did not. The landlord stated that prior to moving in the landlord's son was to renovate the unit, but later changed their minds in deciding to move-in. The landlord confirmed in June 2018 that he then re-rented the unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case both parties confirmed that the tenancy ended on April 30, 2018 and the tenant provided his forwarding address in writing for the return of the \$1,282.50 security and the \$200.00 pet damage deposits. The landlord confirmed that he withheld both the security and pet damage deposits from the tenants.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

As for the tenants' claim for return of double the security and pet damage deposits, I find that the tenants have established a claim. The tenants claim that it was personally served on April 15, 2018 to the landlord, whereas the landlord has disputed the date, but received the forwarding address in writing. The landlord was unable to clarify by providing a date of receipt. As such, I find that the landlord was served with the tenant's forwarding address in writing as claimed by the tenant on April 15, 2018. I also find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlord. The tenants provided clear and consistent testimony throughout the hearing regarding service dates, whereas the landlord at times would provide conflicting and contradictory testimony. As such, the tenants are entitled to compensation under section 38(6) for the \$1,282.50 security and the \$200.00 pet damage deposits, combined for \$1,482.50.

On the tenants claim for compensation under section 51 of the *Act*, which states in part that a tenant who receives a notice to end tenancy under section 49 of the *Act* is entitled to receive compensation equal to 2 months' rent payable under the signed tenancy agreement if, steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy or the rental unit is not used for the stated purpose for at least 6 months duration.

Both parties confirmed that the landlord served the tenants with a 2 month notice dated January 25, 2018 for landlord's use of property. The 2 month notice sets out an effective end of tenancy date of March 31, 2018 and reason for the notice selected as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord provided undisputed affirmed testimony that the rental premises was to be occupied by his son as a tenant, but that it was later re-rented in June 2018 to a new tenant. On this basis, I find that the tenants have established a claim for \$5,130.00 which is equal to two months' rent payable under the signed tenancy agreement.

The tenants have established a total monetary claim of \$8,095.00. The tenants are also entitled to recovery of the \$100.00 filing fee. The landlord has established a total monetary claim of \$121.60.

In offsetting these claims, I find that the tenants are entitled to a monetary order for \$8,073.40 (\$8,195.00 - \$121.60).

### Conclusion

The tenants are granted a monetary order for \$8,073.40.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: November 14, 2018

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Residential Tenancy Branch