



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNSD MNDCT FFT

### **Introduction**

This hearing dealt with the tenant's 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 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 landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence. The landlord did not submit documentary evidence for this hearing.

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

Is the tenant entitled to the return of her security deposit?

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

This month-to-month tenancy began on April 15, 2016, with monthly rent set at \$1,900.00. The tenant paid a security deposit in the amount of \$950.00, which the tenant testified was not

returned to her. The tenant submitted in evidence a copy of the written tenancy agreement, which indicates an agreement between the landlord and two tenants: the applicant and RB. The tenant testified in the hearing that there were 4 authorized tenants residing at the residence: herself, RB, BK, and a baby.

The tenant testified that that BK's boyfriend, RK, was not allowed to be at the residence, which BK was aware of, and agreed to. The tenant testified that BK's boyfriend, RK, along with his stepson RJ, moved in after RK was released from jail. At that point the tenant ME contacted the landlord to inform him that there were now 6 people in the home, including 2 unauthorized occupants. The tenant testified that the landlord attended the residence and asked the unauthorized occupants to leave, and called the police. The occupants left, but returned later.

The tenant testified that BK and the two other parties refused to leave, and the tenant ME decided to move out after a series of events that caused her to fear for her own safety. ME testified that her car was stolen, her room was broken into, and money was stolen. The tenant testified that the landlord did not address the matter, and even accepted rent from BK and the other parties. The tenant testified that she moved out on July 31, 2016, and provided her forwarding address on August 24, 2016.

BK attended the hearing and testified as the landlord's witness that she rented the home with ME and the tenant's boyfriend. BK testified that her boyfriend RK assisted with the rent payments, and that there was no agreement that RK was not allowed to attend the home. BK testified that the first month's rent was paid by her boyfriend, and that the tenant ME chose to move out.

RK also testified in the hearing as the landlord's witness. RK testified that he was BK's boyfriend, and that he was the party who paid the \$950.00 security deposit at the beginning of the tenancy, and rent to secure the home. RK testified that he paid rent to the landlord during this tenancy as ME often did not have the money. RK and BK moved out in April of 2017.

The tenant is seeking a monetary order in the amount of \$6,650.00 as set out in the table below:

Item	Amount
Return of security deposit	\$950.00
Compensation for landlord's failure to return security deposit	950.00
½ of Rent for April 2016	950.00
Rent for May 2016	\$1,900.00
½ of Rent for June 2016	950.00

½ of Rent for July 2016	950.00
<b>Total Monetary Order Requested</b>	<b>\$6,650.00</b>

### **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 tenant bears the burden of establishing their claim on the balance of probabilities. The tenant 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 tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have considered the sworn testimony of both the tenant and landlord, along with the witnesses who attended the hearing. I have also considered the documentary evidence submitted by the tenant for this hearing. The tenant submitted a copy of the written tenancy agreement for this tenancy which indicates 2 named tenants. The tenant testified in the hearing that BK was also

an authorized tenant despite the fact that she was not named in the original written tenancy agreement. Under the Act, the definition of a tenancy under the Act, **"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit". I find that in this case BK was a tenant by this definition.

Residential Tenancy Policy Guideline #13 clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

*"A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.*

*Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord."*

Although the tenant ME provided testimony that BK's boyfriend RK was prohibited from the residence, I find that his contribution to the rent, which he often paid directly to, and was accepted by the landlord, implies that a tenancy existed between RK as well. I am not satisfied that the tenant ME has provided sufficient evidence to support that RK was an unauthorized occupant in this tenancy. As stated above, co-tenants have equal rights under the tenancy agreement. I find that the tenant has failed to provide sufficient evidence to support that the landlord failed in his obligations under the Act. I therefore dismiss the tenant's monetary application for compensation without leave to reapply.

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the Act). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, I find that although the tenant ME moved out on July 31, 2016, the tenancy continued with the remaining tenants. Under section 38 of the Act, the security deposit remains in the landlord's possession until the tenancy has ended. I am not satisfied that the tenant ME has provided sufficient evidence to support that the landlord has failed to comply with the Act.

On this basis, the tenant's application for compensation in the amount of double the deposit is dismissed with leave to reapply. The security deposit, if still in the possession of the landlord, should be dealt with at the end of the tenancy in accordance with section 38 of the Act. If the landlord fails abide by the *Act*, the tenants may apply for the return of their deposit and associated compensation.

### **Conclusion**

The tenant's application pertaining to the security deposit is dismissed with leave to reapply.

The remaining portion of the tenant's 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: January 10, 2019

---

Residential Tenancy Branch