



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT MNDCT MNSD

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,685.00 for the failure of the landlords to return the security deposit pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the landlords to call into this teleconference hearing scheduled for 1:30 pm. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants testified that the landlords were each served the notice of dispute resolution form and supporting evidence package via registered mail sent to the address for service listed on the tenancy agreement on January 7, 2019. The tenants provided two Canada Post tracking number confirming these mailing which are reproduced on the cover of this decision. I find that the landlords are deemed served with these packages on January 12, 2019, five days after the tenants mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Matter – Identity of Parties

In this action, there are two tenants (SR and ER) and two landlords (FM and AB) named on the application for dispute resolution. The tenants submitted the first page of a tenancy agreement into evidence. It lists the tenant as tenant SR and the landlord as landlord FM. Neither tenant ER nor landlord AB is a party to the agreement.

Accordingly, tenant ER and landlord AB are not proper parties to this application. As such, pursuant to Rule of Procedure 4.2, I order that the application be amended to remove tenant ER and landlord AB as parties.

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

Is tenant SR entitled to:

- 1) a monetary order in the amount of \$1,685.00; and
- 2) recover the filing fee from landlord FM?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony tenant SR, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the claim and my findings are set out below.

Tenant SR and landlord MF entered into a written tenancy agreement starting June 1, 2017. Monthly rent was \$1,200.00 and is payable on the first of each month. Tenant SR paid landlord MF a security deposit of \$550.00. The landlord MF still retains this deposit.

### **Security Deposit**

In mid-November 2018, tenant SR moved out of the rental unit and terminated the tenancy agreement. On November 30, 2018, ER, as agent for SR, provided landlord FM with tenant SR's forwarding address.

To date, landlord FM has failed to return the security deposit.

### **Return of Final Month's Rent**

ER testified that the reason for tenant SR moving out of the rental unit was due to the fact that landlord MF issued a Two Month Notice to End Tenancy (the “**Notice**”). No copy of the Notice was uploaded into evidence. ER was under the impression that she had previously submitted a copy of the Notice to the Residential Tenancy Branch. On this basis, I permitted her to re-upload a copy of the Notice during the hearing. However, neither her nor tenant SR had access to a copy of the Notice, so they could not do this.

ER testified that landlord FM did not provide tenant SR with one month’s free rent, as required by section 51(1) of the Act, which reads:

**Tenant's compensation: section 49 notice**

**51** (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Tenant SR did not enter any documents into evidence which showed that he paid rent for the final month of the tenancy.

**Analysis**

**Recovery of Final Month’s Rent**

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. [...]

In this case, tenant SR bears the onus to prove that:

- 1) the tenancy agreement was terminated by landlord FM as a result of the issuance of a Two Month Notice to End Tenancy; and
- 2) landlord FM failed to provide tenant SR with compensation in accordance with section 51(1) of the Act.

While ER gave oral testimony on these two points, there is no documentary evidence to corroborate her testimony. Such documents ought to have been produced. Without them, ER's testimony is unsupported.

As such, I find that tenant SR has failed to discharge his evidentiary onus. Accordingly, I decline to make any order respecting the compensation to tenant SR pursuant to section 51(1) of the Act.

### Security Deposit

Section 38(1) of the Act states:

#### **Return of security deposit and pet damage deposit**

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the tenancy ended in mid-November, 2018 and that tenant SR provided his forwarding address, in writing, to landlord FM on November 30, 2018.

I find that landlord FM has not returned the security deposit to tenant SR within 15 days of receiving the forwarding address.

I find that landlord FM has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from tenant SR.

Accordingly, I find that landlord FM has failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

**Return of security deposit and pet damage deposit**

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As landlord FM has failed to comply with section 38(1), I must order that she pay tenant SR double the amount of the security deposit (\$1,100.00).

As tenant SR has been successful in his application, he is entitled to have the filing fee of \$100.00 repaid by landlord FM.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that landlord FM pay \$1,200.00 to tenant SR, representing an amount equal to double the security deposit plus the filing fee for this application.

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: April 25, 2019

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Residential Tenancy Branch