



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD MNDCT FFT

### **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 deposits 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.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 1:43 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants provided sworn, undisputed testimony that they had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on January 10, 2019. The tenants provided the tracking information in her evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application and evidence on January 15, 2019, five days after mailing.

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

Are the tenants entitled to the return of their security deposit?

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

Both tenants entered into a fixed-term tenancy agreement with the landlord that was to begin on December 1, 2018. Monthly rent was set at \$650.00 for each tenant, which both tenants paid for the month of December 2018. The tenant EE paid a security deposit of \$350.00, while the tenant KB paid a security deposit of \$200.00.

The tenants testified that the landlord had contacted them on November 29, 2018, and informed them that she had decided to revoke the tenancy agreement. The tenants were never returned their first month's rent, or their security deposits despite the fact that they had provided a forwarding address on December 10, 2018.

The tenants are seeking the return of their rent and security deposits, as well as compensation for the landlord's failure to comply with section 38 of the *Act*.

### **Analysis**

Section 44 of the *Act* states how a tenancy may be ended:

#### **How a tenancy ends**

- 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:
    - (i) section 45 [*tenant's notice*];
    - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
    - (ii) section 46 [*landlord's notice: non-payment of rent*];
    - (iii) section 47 [*landlord's notice: cause*];
    - (iv) section 48 [*landlord's notice: end of employment*];
    - (v) section 49 [*landlord's notice: landlord's use of property*];
    - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 16 of the *Act* states the following about when a tenancy agreement takes effect.

### **Start of rights and obligations under tenancy agreement**

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that both the landlord and tenants had agreed to enter into a tenancy agreement that was to commence on December 1, 2018. Both parties, as stated in Section 16 of the *Act*, were therefore bound by the rights and obligations required by this tenancy agreement and *Act* despite the fact that the tenants were never able to occupy the rental unit. The undisputed testimony of the tenants was that the landlord had unilaterally decided to end this tenancy before the tenants were able to move in. Neither party had signed any Mutual Agreements to end tenancy, nor did the landlord issue any Notices to End Tenancy to the tenants. The landlord did not have an Order of Possession, nor do I find that that the tenants abandoned this tenancy. Based on these facts, I find that the landlord failed to comply with section 44(1) of the *Act* in ending this

tenancy. I accept the tenants' evidence that they had paid the first month's rent, but were never able to move in. Accordingly, I allow the tenants' application for the return of their first month's rent of \$650.0 each.

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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenants' security deposits in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlord had applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposits. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security deposits.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposits, plus applicable interest.

As the tenants were successful in their application, I allow the tenants to recover the filing fee for this application.

## **Conclusion**

I find that the tenants are entitled to her monetary claim of \$2,500.00 as set out in the table below.

<b>Item</b>	<b>Amount</b>
Return of security deposits	\$550.00
Compensation for landlord's failure to return security deposit	550.00
Refund of rent paid by the tenants	1,300.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$2,500.00</b>

The tenant(s) are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: May 1, 2019

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Residential Tenancy Branch