



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package and written evidence package well in advance of this hearing, I find that the landlord was duly served with this package in accordance with sections 88 and 89 of the *Act*. Since the tenants confirmed that they had received a copy of the landlord's written evidence, I find that the landlord's written evidence was duly served in accordance with section 88 of the *Act*.

At the commencement of this hearing, the tenants gave undisputed sworn testimony that their tenancy ended on February 3, 2019, and that they provided the landlord with their forwarding address in writing on April 2, 2019. The landlord confirmed that as of April 2, 2019, the tenants had provided the landlord with their forwarding address for the return of their security deposit. As these were also monies owed the tenants, I have included the return of the tenants' security deposit as part of the tenants' revised application for dispute resolution.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses or other money owed arising out of this tenancy? Are the tenants entitled to a monetary award equivalent to double the

value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

### Background and Evidence

The tenants signed a fixed term Residential Tenancy Agreement on March 22, 2019, which enabled them to take possession of the rental unit by April 1, 2018. When the fixed tenancy ended, the tenancy continued on a month-to-month basis. Monthly rent was set at \$1,000.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$500.00 security deposit paid on April 1, 2018.

The parties agreed that the tenants gave the landlord their notice to end this tenancy by email on January 26 or 27, 2019. The tenants vacated the rental unit on February 3, 2019. The parties agreed that the tenants paid the landlord monthly rent of \$1,000.00 for February and \$1,000.00 for March 2019, by way of post-dated cheques they had previously provided to the landlord.

The tenants application for a monetary award of \$1,000.00 sought a return of their monthly rent payment for March 2019. They maintained that the landlord did not advertise the availability of the rental unit in the landlord's advertisements for new tenants until April 1, 2019, because the landlord had planned to be on vacation from February 16, 2019 until March 23, 2019.

The landlord provided written evidence to confirm that the landlord had previously booked flights and a holiday rental abroad for the period noted above, and could not participate in trying to re-rent the premises until their return after March 23, 2019. The landlord gave sworn testimony that the tenants had not objected to the landlord only seeking to obtain replacement tenants for the rental suite until April 1, 2019, when he informed them that he had planned to be on vacation from mid-February until March 23, 2019.

Tenant JB noted that the tenants had attempted to find other tenants for this rental suite, but that the landlord refused to show the rental unit to people who were interested in this rental accommodation before April 1, 2019. The tenants maintained that the landlord had failed to adequately mitigate their exposure to the landlord's loss of rent for March 2019.

## 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, the onus is on the tenants to prove on the balance of probabilities that the landlord has contravened the *Act*, the Regulation or the tenancy agreement, and that the tenants are entitled to compensation resulting from that contravention.

Section 45(1) of the *Act* requires a tenant to end a month-to-month tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2019, the tenants would have needed to provide their notice to end this tenancy before January 1, 2019. Section 52 of the *Act* requires that a tenant provide this notice in writing.

In this case, there is undisputed evidence that the tenants did not provide their notice to end this tenancy until January 27, 2019, seven days before they ended their tenancy. In addition, the tenants did not provide their notice to end this tenancy in writing, instead ending their tenancy by way of an email to the landlord. This late notice to the landlord disqualified them from seeking a recovery of rent they paid for February 2019, as it would have been very difficult for the landlord to find a tenant willing to take possession of the rental unit for February 2019, on such short notice.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, the landlord cashed the tenants' post-dated cheque for rent that would have become due for March 2019, without taking measures to try to re-rent the suite to other prospective tenants for that month. While it was unfortunate that the landlord had planned to be abroad for a month from mid-February 2019 until March 23, 2019, landlords must treat their responsibilities as landlords as a business, and must make alternate plans to have someone responsible for performing the duties of landlord when they schedule vacations requiring them to be unavailable for their responsibilities. Although the tenants did not give the landlord sufficient time to secure

tenants for February 2019, I find that the landlord has not taken adequate steps to mitigate the tenants' exposure to the landlord's loss of rent for the month of March 2019. In this case, the tenants provided evidence that prospective tenants who were interested in starting a tenancy for this suite prior to April 1, 2019 were not shown the rental suite due to the landlord's failure to appoint someone to look after the landlord's affairs as landlord in the landlord's absence due to the vacation the landlord had planned prior to the landlord's receipt of the tenant's notice to end their tenancy.

Under these circumstances, I find that the landlord's failure to mitigate the tenants' exposure to the landlord's loss of rent for March 2019, entitles the tenants to a monetary award of \$1,000.00, the amount the tenants paid for their rent for that month.

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 security deposit in full 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 tenant 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, the landlord had 15 days after April 2, 2019, the date when the landlord had received the tenants' forwarding address to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." As there is no evidence that the tenants have given the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the value of their \$500.00 security deposit with interest calculated on the original amount only. No interest is payable.

### Conclusion

I issue a monetary Order under the following terms, which allows the tenants a monetary award for losses and other money owed arising out of this tenancy, which includes the return of double their security deposit:

<b>Item</b>	<b>Amount</b>
Return of Rent Paid for March 2019	\$1,000.00
Return of Double Security Deposit as per section 38 of the Act (\$500.00 x 2 = \$1,000.00)	1,000.00
<b>Total Monetary Order</b>	<b>\$2,000.00</b>

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with

these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 22, 2019

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Residential Tenancy Branch