



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For a monetary order for loss of rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Issues to be Decided

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

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on March 1, 2019. Rent in the amount of \$1,675.00 was payable on the first of each month. The tenants paid a security deposit of \$800.00. The tenancy ended on May 31, 2019.

The parties agreed that the landlord received two letters from the tenants ending their tenancy effective May 31, 2019. One letter was dated May 18, 2019; and the second letter which was filed in evidence by the landlord is dated May 22, 2019.

### Tenants' application

The tenants testified that the landlord had their forwarding address on May 22, 2019. The tenants stated that the landlord told them that they would not be returning their deposit.

The landlord acknowledged that they had the tenants' forwarding address on May 22, 2019.

### Landlord's application

The landlord testified that the tenants did not give sufficient notice to end the tenancy and that it was not re-rented until August 2019. The landlord seeks to recover the amount of \$1,675.00.

The tenants testified that the landlord had the rental unit rented prior to them vacating and they even met the potential renter and they were asked by the new renter to leave furniture for them to use. The tenants stated that they went back to the rental unit in June 2019, and they spoke to the person that said they were the cousin of the new renter and that they had just moved into the rental unit on June 1, 2019. The tenants stated that the landlord did not suffer a loss of rent.

The landlord argued that they did not rent the unit. The landlord stated that a friend came from out of province and was staying in the unit, and they would also use the rental unit to make themselves a cup of coffee. The landlord stated they advertised the rental unit for rent at the end of June 2019 and found a new renter for August 2019.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Tenants' application

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

### **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.

...

(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.

In this matter, the landlord had the tenants' forwarding address on May 22, 2019. The landlord filed their application claiming against the security deposit on July 2, 2019. I find the landlord did not comply with the Act, as they were required to return the security deposit or make their application claiming against the security deposit within 15 days of

the tenancy ending. I find the landlord breached section 38 of the Act, as they were required to meet their obligations under the Act, no later than June 10, 2019.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$1,700.00**, comprised of double the security deposit (\$800.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

#### Landlord's application

##### **Tenant's notice (month-to-month)**

**45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

...

In this case, the parties agreed that the landlord received from the tenants notice to end tenancy on May 18 and May 22, 2019, to end the tenancy May 31, 2019. Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was June 30, 2019.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this matter, I am not satisfied that the landlord suffered a loss or that they mitigated the loss.

The evidence of the tenants was that they were at the unit and they spoke to the person that indicated they had moved into the premises on June 1, 2019. In support they provided a photograph of the person at the rental unit.

The evidence of the landlord was that they allowed one of their friends to stay there while they were visiting. Both versions are probable. Even, if I accept the landlord's version, that it was a friend staying in the rental unit. The rental unit was not available for rent at that time and the landlord and their friend both benefited from this arrangement.

Further, the evidence of the landlord was that they did not advertise the rental unit for rent, until the end of June 2019; however, that is unreasonable as the landlord must do whatever is reasonable to mitigate their loss for the month of June 2019, as soon as they were aware that the tenants were vacating on May 22, 2019. I find the landlord failed to mitigate their loss.

Based on the above, I dismiss the landlord's application for loss of rent.

### Conclusion

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

The landlord's application is dismissed.

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: September 23, 2019

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Residential Tenancy Branch