



# 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 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.

While the tenant AB attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was 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. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution and evidence package on July 8, 2019 by way of registered mail. The tracking information was provided in the tenant's evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application and evidence on July 13, 2019, five days after mailing.

**Preliminary Matter: Does the Residential Tenancy Branch have jurisdiction to hear the dispute between the parties?**

The tenant provided sworn testimony in the hearing that the tenants had no business relationship with the landlord, and that this was in fact a tenancy that falls under the jurisdiction of the RTB. The tenants testified that the rental unit was rented solely for the purposes of living accommodation, and that the tenants and the landlord strictly had a tenant and landlord relationship where the tenants paid monthly rent in exchange for accommodation.

Section 4 of the *Act* states that the *Act* does not apply to:

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
  - (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (i) in a community care facility under the [\*Community Care and Assisted Living Act\*](#),
  - (ii) in a continuing care facility under the [\*Continuing Care Act\*](#),
  - (iii) in a public or private hospital under the [\*Hospital Act\*](#),
  - (iv) if designated under the [\*Mental Health Act\*](#), in a Provincial mental health facility, an observation unit or a psychiatric unit,
  - (v) in a housing based health facility that provides hospitality support services and personal health care, or
  - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

I have considered the sworn testimony of the tenant, and find the tenant to be credible. I find that this tenancy meets the definitions and criteria as set out in the *Act*. I therefore find that this matter falls under the jurisdiction of the RTB.

### **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 money owed?

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

### **Background and Evidence**

This fixed-term tenancy began on May 1, 2019, with monthly rent set at \$900.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$900.00, which the landlord still holds.

The tenant testified that on July 3, 2019, the landlord had ended this tenancy, and threatened to call the police if they did not leave on that date. The tenants testified that they had paid \$450.00 towards the July 2019 rent. The tenants testified that they had provided a forwarding address to the landlord on July 4, 2019, but the landlord had not returned any portion of their security deposit.

The tenants are seeking reimbursement of their rent for July 2019 in the amount of \$360.00 ( $\$450.00/15 \times 12$  days), as well as the return of their security deposit.

### **Analysis**

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 it undisputed that the landlord had failed to return the tenants' security deposit within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. 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 deposit.

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.

The undisputed testimony of the tenants was that neither party had signed any Mutual Agreements to end tenancy, nor did the landlord issue any Notices to End Tenancy. The landlord did not have an Order of Possession. Based on the sworn testimony provided by the tenants, I find that the landlord failed to comply with section 44(1) of the *Act* in ending this tenancy. I find that the tenants are entitled to a reimbursement of their rent for the period of July 4-15, 2019.

I find that the tenants are entitled to recover the filing fee for this application.

### **Conclusion**

I issue a Monetary Order in the tenants' favour as set out in the table below:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	900.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	900.00
Reimbursement of Rent for July 4-15, 2019	360.00

Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$2,260.00</b>

The tenant(s) are provided with this Order 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, 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: October 25, 2019

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Residential Tenancy Branch