



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

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

This tenancy originally began as a fixed term tenancy on January 1, 2019, and reverted to a month-to-month after January 2020. The tenants moved out on March 1, 2020. Monthly rent was set at \$1,950.00, payable on the first of every month. The landlord collected a security and pet damage deposit in the amount of \$900.00 each deposit. At the end of the tenancy, the landlord returned to the tenants the pet damage deposit.

The tenants testified that they had allowed the landlord to retain \$50.00 of the security deposit in compensation for a parking pass, and provided the landlord with their forwarding address on April 10, 2020, requesting the return of the remaining \$850.00. The tenants were only returned \$500.00 of their security deposit. The tenants are requesting the return of \$350.00 for the remaining portion of their security deposit. The landlord confirmed in the hearing that she had received the tenants' forwarding address, and that she has not filed any applications to retain the remaining portion of the security deposit.

The tenants testified that they moved out on request of the landlord as her son would be moving in. The tenants are seeking compensation equivalent to one month's rent as compensation for the Notice. Both parties confirmed that the tenants were never formally served with a 2 Month Notice to End Tenancy.

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 remaining portion of the tenants' security deposit within 15 days of receipt of the tenant's

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. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain more than the \$50.00 the tenants had agreed to. I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had given permission for the landlord to hold the deposit longer than the 15 days required by the *Act*.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order in an amount equivalent to the original security deposit plus the return of the remaining portion of their deposit.

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Section 51(1) of the *Act* states the following about a tenant's compensation after receiving a notice under section 49.

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...

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Although the landlord communicated to the tenants that she required the suite for her son's use, I find that the landlord did not serve the tenants with a notice in the approved form. The tenants applied for compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

I find that the tenants moved out as requested by the landlord, and not as a result of receiving a 2 Month Notice pursuant to Section 49. I find that the notice given to the tenants does not comply with section 52 of the *Act*, and the tenants moved out without applying to dispute this notice. On this basis, I am not allowing the tenants' application for monetary compensation pursuant to section 51 of the *Act* as the tenants agreed to vacate the rental suite and moved out as requested by the landlord, and not on the basis of a Notice given under section 49 of the *Act*.

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

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants a monetary award equivalent to the original value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*, as

well as for the return of the remaining \$350.00. The tenants are also entitled to recover half of the filing fee.

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	900.00
Return of Security Deposit	350.00
Recovery of half of Filing Fee	50.00
Total Monetary Order	\$1,300.00

The tenants 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.

I dismiss the remainder of the tenants' application without leave to reapply.

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: June 26, 2020

Residential Tenancy Branch